

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

KRISTINE FLYNN, *et al.*, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

Case No. 06-CV-537- RTR

SCOTT WALKER, *et al.*,

Defendants.

JOINT MOTION FOR DISMISSAL WITH PREJUDICE

I. Introduction

On May 1, 2006, Plaintiffs filed this action alleging that, with regard to the Taycheedah Correctional Institution (TCI), Defendants violated the Eighth Amendment by failing to provide adequate health care and violated the Americans with Disabilities Act and Rehabilitation Act by failing to provide prisoners with disabilities adequate access to programs and services. On March 14, 2007, the Court granted Plaintiffs' motion for class certification, certifying a class of "all prisoners who are now or in the future will be confined at TCI" and a subclass of "all individuals with disabilities who are now or in the future will be confined at TCI." After substantial discovery and litigation, the Parties engaged in mediation and reached a settlement agreement to resolve all pending claims. Pursuant to Fed. R. Civ. P. 23(e), the Court directed that notice be issued to the class and a fairness hearing held. Following the fairness hearing, the Court entered an Order approving the settlement agreement on December 2, 2010 (Dkt. #274).

The settlement agreement consisted of provisions related to medical care, mental health care, and access for prisoners with disabilities. Over the five years since the approval of the settlement agreement, Defendants have made the required changes in each of these areas. Having satisfied all of the requirements of the settlement agreement, the agreement requires that the Parties move for dismissal of this action with prejudice.

II. Defendants have satisfied all of the terms of the settlement agreement

A. Medical Care

As summarized below, Defendants have met their obligations under the settlement agreement. For example, Defendants hired an Associate Medical Director with oversight responsibilities at TCI. *See* Stipulation of Satisfaction of Settlement Agreement (hereinafter, “Stipulation”) § I.B. In addition, with the input of Plaintiffs’ counsel and a Consultant in correctional health care, Defendants developed compliance indicators in twelve key areas of medical care. For each compliance indicator, the Parties selected a threshold (e.g., 95% compliance) and audits were conducted to assess whether TCI’s health care program was meeting the relevant thresholds. After ten visits by the Consultant and five years of auditing, on October 23, 2015, the Consultant, Dr. Marc Stern, MD, MPH, determined that Defendants had met the compliance thresholds for all compliance indicators for at least two out of three consecutive site visits, thus satisfying section I.A.2 of the settlement agreement. *See* Stipulation § I.A.2. *See also* Declaration of Marc Stern. Further, on June 15, 2014, TCI’s health care program was accredited by the National Commission on Correctional Health Care, thus satisfying section I.A.1 of the settlement agreement. *See* Stipulation § I.A.1. Further, as required by section I.C of the settlement agreement, medications have been administered by health care staff with credentials

equal to or greater than those of a licensed practical nurse (LPN). Finally, in accordance with section I.E.1.d of the settlement agreement, “no un-remediated egregious circumstances exist.” *See* Stipulation § I.D. *See also* Stern Declaration ¶ 6. Section I.E.1 states that “[t]he Parties will move to dismiss with prejudice the medical-related claims in this action” when Defendants have satisfied all of the medical-related provisions of the settlement. By this motion, Plaintiffs move for dismissal with prejudice.

B. Mental Health Care

Defendants have similarly fulfilled their obligations to comply with the mental health-related provisions of the settlement agreement. As required by section II.A. of the agreement, Plaintiffs’ counsel was permitted to communicate with Dr. Jeffery Metzner, the Consultant for Defendants’ settlement with the United States Department of Justice in *United States v. Doyle*, No. 08-C-753 (E.D. Wis.). Plaintiffs’ counsel was granted access to Dr. Metzner’s reports for comments and was permitted to submit to Dr. Metzner a report on the discipline of prisoners with serious mental illnesses. *See* Stipulation § II.A. Further, in accordance with section II.C of the settlement agreement, on April 9, 2012, Defendants completed construction of and initiated services at the mental health treatment annex at TCI. This annex provided space for out-of-cell therapeutic activities and group and individual therapy. *See* Stipulation § II.B. Finally, as required by section II.D of the settlement agreement, Defendants completed construction of and began accepting prisoners at the Wisconsin Women’s Resource Center, a facility designed to provide inpatient-level psychiatric services to women from TCI. *See* Stipulation § II.C. Section II.E.4 of the settlement agreement states that “[u]pon compliance with all mental health-related terms in the Agreement, the Parties will seek dismissal with prejudice of the mental health-

related claims in this action.” Having satisfied all mental health-related provisions of the settlement agreement, Defendants are entitled to dismissal with prejudice of all mental health-related claims.

C. Access for Prisoners with Disabilities

Defendants have similarly satisfied all disability-related provisions of the settlement agreement. Per section III.A of the agreement, Defendants adopted DAI Policy 200.00.25, providing prisoners with qualified sign language interpreters and/or other accommodations as necessary to make available core programs and services. Prisoners with vision-related disabilities are to be provided with reading assistants, Braille materials, and/or other accommodations. *See* Stipulation § III.A. As required by section III.B of the agreement, the new policy provides that hearing-impaired prisoners have access to adaptive hearing devices to allow them to place and receive telephone calls with the same ability as prisoners without hearing impairments. The policy provides that prisoners with hearing impairments will be permitted three times the usual amount of time to place and receive their calls. In addition, TCI ensured that visual alarms and/or other means of notifying deaf or hard-of-hearing prisoners would be made available and that closed captioning would be available. TCI complied with these provisions. *See* Stipulation § III.B. Defendants have complied with the remaining disability-related provisions of the settlement agreement, including clarifying a policy relating to the approval of accommodations, providing Plaintiffs’ counsel with access to disability-related prisoner grievances, ensuring that paths between buildings are maintained in a state of repair such that prisoners with mobility impairments can travel safely, allowing prisoners with disabilities to use the dining hall, ensuring that prisoners with hearing-related disabilities had their disability considered in disciplinary

proceedings, and conducting a study of the availability of accessible cells in medium-security housing units. *See* Stipulation §§ III.C-III.H. Section III.I.2 states that “[t]he provisions of this Agreement relating to Disability Access shall terminate upon the termination of the Medical and Mental Health provisions and the Parties will seek dismissal of the Disability Access claims in this action at this time.”

III. Dismissal with Prejudice is Appropriate

As discussed above, over the course of five years, Defendants have satisfied all of the substantive requirements of the settlement agreement. “Consent decrees are fundamentally contracts,” *People Who Care v. Rockford Bd. of Educ. Dist. No. 205*, 961 F.2d 1335, 1337 (7th Cir. 1992). And, the necessary conditions having been met, the parties are obliged by the settlement agreement to seek dismissal with prejudice of all claims.¹

Respectfully submitted,

Dated: February 10, 2016

/s/ Gabriel B. Eber

Gabriel B. Eber
David C. Fathi*
915 15th Street, N.W., 7th Floor
Washington, D.C. 20005
Telephone: (202) 393-4930
geber@aclu.org

¹ Fed. R. Civ. P. 23(e) states that “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromise only with the court’s approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise: (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal. (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate...” The Court has the discretion to order a second notice and hold another fairness hearing in connection with this voluntary dismissal. However, here, the Settlement Agreement (section IV.D.) provides that “[n]o termination hearing shall be required,” and the plaintiff class has already had the opportunity to comment on or object to the dismissal-related provisions of the settlement agreement prior to the agreement’s approval in 2010.

**Not admitted in DC; Practice limited to federal courts*

/s/ Laurence J. Dupuis

Laurence J. Dupuis
State Bar No. 1029261
207 East Buffalo Street, Suite 325
Milwaukee, WI 53202
ldupuis@ACLU-WI.org

Attorneys for Plaintiffs

/s/ Corey F. Finkelmeyer

Corey F. Finkelmeyer
Wisconsin State Bar No. 1034147
P.O. Box 7857
Madison, WI 53707-7857
(608) 267-2222
FinkelmeyerCF@DOJ.state.wi.us

/s/ Julio Barron

Julio Barron
Chief Legal Counsel
Wisconsin Department of Corrections
3099 E. Washington Ave
PO Box 7925
Madison, WI 53707
Phone: (608) 240-5049
Fax: (608) 240-3306
julio.barron@wisconsin.gov

Attorneys for Defendants