

**UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN**

J.T., by and through his next friend,
Sakeena Jackson, for themselves and all
others similarly situated, N.L., and L.G.

Plaintiffs,

v.

Case No.: 17-CV-47

JON E. LITSCHER, in his official capacity
as Secretary of the Wisconsin Department
of Corrections, et al.,

Defendants.

**UNOPPOSED MOTION TO TERMINATE CONSENT DECREE
AND DISMISS ACTION**

Defendant, Secretary Jon Litscher, by his attorneys, Crivello, Nichols & Hall, S.C., and pursuant to Rule 60(b)(5) of the Federal Rules of Civil Procedure move the Court for an Order terminating the Consent Decree in this matter, declaring that the Decree has been satisfied, and; pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure move the Court for an Order dismissing Plaintiffs' claims against Defendants in this matter.

IN SUPPORT THEREOF:

A. THE CONSENT DECREE SHOULD BE DISMISSED

i. All Terms of the Consent Decree have been Substantially Complied With, Allowing Dismissal.

On October 31, 2018, the Parties stipulated and agreed to enter a Consent Decree and Permanent Injunction (hereafter the “Consent Decree”). (Dkt. 107). The Consent Decree outlined a number of terms that the Defendant must comply with. (*See, e.g.*, Dkt. 107). Per the Consent Decree, the Court shall grant a motion and the Consent Decree shall terminate and all claims shall be dismissed if the Administrative Code has been amended to codify certain material terms of the Consent Decree and the Monitor has certified, in two consecutive inspections of each operational Type I juvenile correctional facility, that such facilities are operating in compliance with sections III. A, B, C, and D of the Consent Decree. (See Dkt. 107, at 10; Aff. of Abreu, ¶ 7). The Defendants have made significant improvements over the life of the Consent Decree, including the following:

1. By January 25, 2021, the use of OC-spray was completely eliminated. (Dkt. 121, at 42). In addition, all staff were trained in trauma-informed care. (Id. at 47).
2. In August 2021, there was no longer evidence of any youth being restrained to fixed objects. (Dkt. 127 at 37).
3. By the Monitor’s eleventh report, on November 16, 2021, Defendants were in substantial compliance with a number of terms related to strip searches. (Dkt. 130, at 27-29). Specifically, there were no strip searches during that reporting

period, and the policy and procedure for Searches of Youth had been finalized. (Id. at 27). This outlined all the necessary criteria and documentation requirements under which a strip search may be conducted and specified that only supervisors can authorize a strip search. (Id.). Furthermore, the process for tracking and documenting any necessary strip searches was incorporated into J-Tracker. (Id. at 29).

4. During the next reporting period, Defendants improved the youths' access to water, hygiene supplies, or nighttime toilet usage, and improved this documentation and data collection of the same. (Dkt. 131, at 32). In June of 2022, Defendant achieved substantial compliance with a number of terms related to punitive confinement. (Dkt. 132, at 15).
5. Defendant next achieved substantial compliance with terms prohibiting administrative confinement over 24 hours in certain circumstances – during the March 2023 reporting period, there were no youths confined beyond 24 hours. (Dkt. 140, at 30). Furthermore, youth were promptly transferred or returned to the general population when placed in administrative confinement. (Id. at 29-30). Youth also routinely ate meals out of their rooms, except for in justified instances when a youth posed an immediate and substantial threat of physical harm to others. (Id. at 36).
6. Notably, during the March 2023 reporting period, Defendants significantly reduced the use of mechanical restraints and there was zero use of restraints other than handcuffs. (Dkt. 140 at 40-42). These improvements resulted in the

finding of substantial compliance with a number of terms involving the appropriate and restricted use of mechanical restraints. (Id.). In addition, the facility superintendent established performance goals, and analyzed data to ascertain whether the goals were met, employing corrective action if they were not. The Monitor described the Defendants' quality assurance program as "exceptional." (Id. at 46).

7. In her report dated July 5, 2023, the Monitor noted that all youth were housed in renovated rooms and that the rooms were clean and organized with safety and security measures in place, to allow staff to clearly view the room, perform room searches, and help ensure that there are no dangerous items in the youth's room. (Dkt. 142, at 18).
8. Defendants also utilized DJC Clinical Observation Policy 500.70.24, governing the observation of youth who are an imminent risk of serious self-harm to themselves. (Dkt. 144, at 14). The Monitor described the newly developed policies as "detailed and comprehensive," and reviewed mental health documentation of 42 youth who were in observation status during the reporting period, finding the Defendants to be in substantial compliance with the terms of the Consent Decree. (Id.)
9. On October 20, 2023, Defendants were also substantially complying with the required visual safety check of each youth every 30 minutes. (Dkt. 144, at 16). The Monitor noted that she "observed safety/wellness checks being completed on various days/times on every unit during this reporting period and observed

no instances in which staff did not make visual contact with youth per policy - 100% of the checks were compliant. Staff met or exceeded the 30-minute timeframe, looked into room, and the intervals were staggered.” (Id.).

10. Defendants continued to be in substantial compliance with key terms governing the use of OC spray (Id. at 20), mechanical restraints (Id. at 20-23), and strip searches (Id. at 23-25).

11. Defendants also made significant efforts to improve staffing ratios and staff morale. (Dkt. 147, at 27). The implementation of several initiatives to increase recruitment and retention resulted in a staff with positive attitudes. (Dkt. 147, at 27-28).

12. Defendants became substantially compliant with terms regarding documentation, review, and quality assurance. (Id. at 26). In addition to the aforementioned quality assurance program established by the facility superintendent, the Defendants also established a review process involving a 24-hour timeline for any incident involving the use of force. (Id.). The Monitor again describes the quality assurance program as “exceptional” and noted that it “continues to further develop the program to include compliance measures.” (Id.).

13. Defendants submitted to the State Legislature requested modifications to the Administrative Code governing Type 1 Secured Correctional Facilities. (Dkt. 140, at 26). These proposed changes modified both DOC Administrative Code Chapters 373 and 376, and incorporated aspects of the behavioral management

system and current treatment model. (Id.). The modified Code Chapter 376 was passed and signed by the Governor, effective March 1, 2025, and Chapter 373 was passed soon thereafter. (Dkt. 158, at 8). These modifications memorialize into law material provisions of the Consent Decree relating to: (1) Room Confinement; (2) OC-Spray and Other Chemical Agents; (3) Mechanical Restraints; and (4) Strip Searches. (Dkt. 140, at 26; Dkt. 107, at 8, 10).

14. Defendants were substantially compliant with a number of terms related to room confinement in the Monitor's August 27, 2024, report, (Dkt. 153, at 13-16), including terms requiring that a mental health evaluation be performed no later than 24 hours after a youth is placed in confinement.

15. Following the Monitor's visit on July 24 and 25, 2025, the Defendants achieved substantial compliance with all provisions of the Consent Decree. (Aff. of Abreu, ¶¶ 2-3).

16. Then, the Defendants again achieved substantial compliance with all provisions of the Consent Decree, in the following reporting period. (Aff. of Abreu, ¶ 5).

These two reports constitute two consecutive reporting periods in which the Monitor certified that the Defendants have achieved substantial compliance with all provisions of the Consent Decree. (Aff. of Abreu, ¶ 8). Thus, all obligations under the Consent Decree have been fully performed, and no further court supervision is required.

Therefore, the Defendants respectfully request that the Consent Decree be terminated. Plaintiffs do not oppose this request.

ii. Post-Consent Decree.

To ensure class members are aware of and understand that the Consent Decree has been terminated, but that legal protections remain, Plaintiffs' counsel intends to visit Lincoln Hills and Copper Lake (hereinafter the "facility"), to educate youth about the termination of the Consent Decree and explain that youths' legal protections remain in place as codified in the Administrative Code. This shall occur following the dismissal of the Consent Decree, at a mutually agreeable date and time.

In addition, the Handbook supplied to all new residents of Lincoln Hills and Copper Lake has been updated to explain youths' ongoing rights as codified in the Administrative Code, including but not limited to their rights regarding chemical agents, mechanical and physical restraints, strip searches, and room confinement.

In addition, recognizing that the facilities' progress was made with the substantial contributions by the monitors, and the Monitor's warning that the facilities not become complacent and continue to improve, the Department of Corrections intends to continue receiving ongoing technical assistance from The Council of Juvenile Justice Administrators (CJJA), and its Executive Director, Mike Dempsey, who has served as one of the monitors at Lincoln Hills and Copper Lake.

Defendants will also promptly fulfill Plaintiffs' current outstanding request for attorneys' fees and expenses and also fulfill a final request for attorney's fees after the Consent Decree has closed. The final request, to be paid within 60 days after it is

submitted, shall include fees and expenses since October 1, 2025 and include appropriate post-termination activities—such as the above-mentioned facility visit and drafting of Handbook materials at the rates and conditions set forth in Section F(3)-(5) of the Consent Decree.

B. THE CLAIMS SHOULD BE DISMISSED

Now that all material terms of the Consent Decree have been fully satisfied, dismissal of all claims against the Defendants is appropriate. Pursuant to the agreed upon terms of the Consent Decree, the Court shall grant a motion and the Agreement shall terminate and all claims shall be dismissed if the Administrative Code has been amended to codify certain material terms of the Consent Decree and the Monitor has certified, in two consecutive inspections of each operational Type I juvenile correctional facility, that such facilities are operating in compliance with sections III. A, B, C, and D of the Consent Decree. (See Dkt. 107, at 10). While the facilities must continue to be vigilant in following the Administrative Code and respecting youths' rights, the terms of the Consent Decree regarding outside enforcement have been satisfied.

The undersigned counsel has permission to state that Plaintiffs do not oppose this motion.

WHEREFORE, the Defendants respectfully move this Court for an Order dismissing the Consent Decree, and, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure move the Court for an Order dismissing Plaintiffs' claims against Defendants in this matter.

Dated this 28th day of January, 2026.

CRIVELLO, NICHOLS, AND HALL, S.C.
Attorneys for Defendants

By: *Electronically signed by Samuel C. Hall, Jr.*
SAMUEL C. HALL, JR.
State Bar No.: 1045476

P.O. ADDRESS:

710 North Plankinton Avenue
Suite 500
Milwaukee, WI 53203
Phone: 414-271-7722
Email: shall@crivellolaw.com