

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

DISABILITY RIGHTS VERMONT,)
Plaintiff,)
)
)
v.)
)
STATE OF VERMONT,)
DEPARTMENT OF CHILDREN)
AND FAMILIES,)
KEN SCHATZ, COMMISSIONER,)
in his official capacity,)
JAY SIMONS, WOODSIDE JUVENILE)
REHABILITATION CENTER)
DIRECTOR, in his official capacity,)
Defendants.)

Docket No. 5:19-cv-106

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

The Plaintiff, Disability Rights Vermont, has filed the above-captioned lawsuit on behalf of children with disabilities at Woodside Juvenile Rehabilitation Center to challenge certain policies and practices at the facility, including its isolation practices. Plaintiff alleges that Woodside’s isolation policies and practices violate the Fourteenth Amendment of the United States Constitution. Compl. ¶¶ 191-93, ECF No. 1. The United States of America, through the United States Department of Justice, Civil Rights Division, respectfully submits this Statement of Interest to bring to this Court’s attention the juvenile isolation principles embodied in the recently-enacted First Step Act, 18 U.S.C. § 5043.

I. Interest of the United States

The United States files this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General “to attend to the interests of the United States” in any case

pending in federal court.¹ The United States can enforce the constitutional rights of children in institutions pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 (CRIPA), as well as the provision of the Violent Crime Control and Law Enforcement Act that gives the Attorney General the authority to seek declaratory and injunctive relief for violations of the Constitution or federal law by entities responsible for “the incarceration of juveniles.” 34 U.S.C. § 12601 (Section 12601) (formerly codified at 42 U.S.C. § 14141). The United States has a long history of enforcing children’s constitutional rights under CRIPA and Section 12601, including the rights of youth subjected to excessive isolation, and thus has an interest in ensuring that Defendants develop an isolation policy that that is consistent with the constitutional rights of children at Woodside. The United States further believes that the juvenile isolation principles set forth in the recently-enacted First Step Act, 18 U.S.C. § 5043, may be of interest to the Court as the Court reviews the adequacy of Defendants’ forthcoming policy, which is being devised in response to this Court’s order.

II. Background

Woodside is a locked facility for children between the ages of 10 and 17 years. Order on Mot. for Prelim. Inj. at 2, ECF No. 34. Within the facility is a unit called the “North Unit,” which contains three individual rooms. *Id.* at 2-3.

On June 21, 2019, Plaintiff filed a Complaint (ECF No. 1) and, simultaneously, a Motion for Preliminary Injunction (ECF No. 2), challenging (among other claims) the constitutionality of Woodside’s practice of confining residents to the North Unit for prolonged periods of time. On

¹ The full text of 28 U.S.C. § 517 is as follows: “The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

July 22, 2019, the Court held a hearing on Plaintiff's preliminary injunction, during which the Court heard testimony from Plaintiff's mental health and restraint experts as well as Woodside's director. On August 9, 2019, the Court granted Plaintiff's motion. Prelim. Inj. Order, ECF No. 35. On the issue of isolation, the Court found that "Plaintiff's experts were very credible in describing the harm caused by prolonged isolation of young people from their peers and normal activities of life." Order on Mot. For Prelim. Inj. at 4, ECF No. 34. The Court held that the Defendants' practice of "locking youths in their rooms for days or in some cases weeks on end is unreasonable," in violation of the state's obligation to "balance the needs of the institution against the individual's right to be free from unnecessary limitations on his or her freedom." *Id.* at 16-17. Accordingly, the Court ordered that Defendants provide a draft policy on isolation "not less than ten (10) days before the next hearing." *Id.* at 17. The Court stated that it anticipates that "over the course of several hearings, a policy which meets constitutional standards will develop." *Id.*

On October 11, 2019, Defendants informed the Court that, among other things, Defendants had eliminated the North Unit and were in the process of developing a new policy to govern "restraint and seclusion" at Woodside. Defs.' Mem. In Anticipation of the Status Conf. Set for Oct. 22, 2019, at 3, ECF No. 44. Defendants indicated that they anticipate providing Plaintiffs with a draft of the new policy as soon as possible. *Id.*

III. Discussion

When considering the adequacy of Defendants' proposed policy, the juvenile isolation² principles embodied in the First Step Act may be helpful to the Court. The First Step Act was

² The United States uses the term "isolation" in this Statement to refer to the conditions for children on the North Unit as found by the Court, *i.e.*, children confined for prolonged periods of time during which they are unable to interact with their peers or anyone other than the staff member assigned to supervise them, nor engage in "normal activities of life." Order on Mot. For Prelim. Inj. at 4, ECF No. 34.

enacted in December 2018 and included provisions, entitled “Juvenile solitary confinement,” to apply to children in federal custody. 18 U.S.C. § 5043(a)(1). The Act explicitly prohibits the isolation of children “for discipline, punishment, retaliation, or any reason other than as a temporary response to a covered juvenile’s behavior [which] poses serious and immediate risk of physical harm to any individual, including the covered juvenile. . . .” 18 U.S.C. § 5043(b)(1).³ The Act requires that facility staff members attempt to use less restrictive techniques prior to resorting to isolation, including talking with the child in an effort to de-escalate the situation, and allowing a qualified mental health professional to talk to the child. 18 U.S.C. § 5043(b)(2)(A)(i). If facility staff nonetheless decide to place a juvenile in isolation after attempting to use less restrictive measures, the Act requires that the staff member explain to the juvenile the reasons for doing so and that he or she will be released as soon as he or she regains self-control, *i.e.*, is no longer engaging “in behavior that threatens serious and immediate risk of physical harm to himself or herself, or to others.” 18 U.S.C. § 5043(b)(2)(B)(i).

The First Step Act prohibits any child being kept in isolation for longer than three hours. 18 U.S.C. § 5043(b)(2)(B).⁴ If a child continues to pose a “serious and immediate risk of physical harm” beyond the maximum period of time in isolation permitted under the Act, the Act requires the facility to transfer the child “to another juvenile facility or internal location where services can be provided to the covered juvenile without relying on room confinement,” or “if a qualified mental health professional believes the level of crisis service needed is not currently

³ Section 5043 of the First Step Act uses the term “room confinement,” as opposed to “isolation,” but essentially addresses similar conditions of confinement. *See* 18 U.S.C. § 5043(a)(3) (defining “room confinement” as “the involuntary placement of a covered juvenile alone in a cell, room, or other area for any reason.”). *See also Paykina ex rel. E.L. v. Lewin*, 387 F.Supp.3d 225, 238 (N.D.N.Y. 2019) (noting testimony by plaintiff’s expert in a juvenile isolation case that the practice of removing individuals ““from their typical interactions within a facility”” can be referred to by a variety of terms).

⁴ The Act requires that juveniles who pose “a serious and immediate risk of physical harm only to himself or herself” be released no later than 30 minutes, and juveniles who pose “a serious and immediate risk of physical harm to others” be release no later than three hours. 18 U.S.C. § 5043(b)(2)(B)(ii)(I) and (II).

available, a staff member of the juvenile facility shall initiate a referral to a location that can meet the needs of the covered juvenile.” 18 U.S.C. § 5043(b)(2)(C). Finally, the Act explicitly prohibits “[t]he use of consecutive periods of room confinement to evade the spirit and purpose” of the Act. 18 U.S.C. § 5043(b)(2)(D).

IV. Conclusion

For the reasons set forth above, the United States believes that the juvenile isolation principles embodied in the First Step Act, 18 U.S.C. § 5043 (2018) may be helpful to the Court when reviewing the adequacy of Defendants’ proposed policy.⁵

Dated: October 22, 2019

Respectfully submitted,

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⁵ The United States takes no position on the merits, or on any other claims or issues not specifically addressed in this Statement of Interest.