

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

S.H., et al.,	:	Case No. 2:04-cv-1206
	:	
Plaintiffs,	:	JUDGE GEORGE C. SMITH
	:	
vs.	:	MAGISTRATE JUDGE
	:	TERENCE P. KEMP
TOM STICKRATH,	:	
	:	MOTION TO LIFT STAY AND
Defendant.	:	AMEND COMPLAINT
	:	
	:	

The plaintiffs hereby move to lift the stay on litigation in the above case (Doc. 40) and, Pursuant to Fed R. Civ Proc 15, move to amend the complaint in order to address the systemic, state-wide crisis facing juveniles in Ohio. A copy of the proposed amendment is attached.

MEMORANDUM

This action challenges unconstitutional and illegal conditions of confinement endured by juveniles in the custody of the Ohio Department of Youth Services (ODYS). Plaintiffs originally sued on behalf of juveniles at Scioto Juvenile Correctional Facility and agreed to a stay in 2005 to allow the parties an opportunity to settle the matter. Shortly thereafter the United States Department of Justice initiated an investigation of two additional facilities operated by ODYS. Tragically, these efforts have not succeeded at improving the conditions of confinement for the class. Specifically,

- Youth are exposed to an ongoing and pervasive level of violence and assaultive behavior (including sexual assaults), by other youth as well as by juvenile corrections officers;

- ODYS relies inappropriately and excessively on the use of restraint and isolation as a means of controlling youth, including recent policies that extend the use of isolation by guards;
- Youth are routinely subjected to abusive language, racial slurs, and intimidation by guards;
- The provision of health care and mental health care lacks consistency in ensuring routine and critical care services in a timely manner; and
- Youth do not have an adequately staffed and responsive grievance process that can address these crucial issues and bring about relief appropriate to their safety and well-being.

These present conditions are experienced daily by the named plaintiffs who remain in custody. Nothing short of a comprehensive state-wide conditions case will have the scope necessary to solve the problems that fester within ODYS. Plaintiffs respectfully request, therefore, that the stay be lifted.

Plaintiffs also seek to amend the complaint to raise state-wide issues. A draft of the proposed amended complaint is attached. A new representative plaintiff has been added and the defendants have been reduced to name just the director in his official capacity. Plaintiffs allege a system-wide failure regarding conditions of confinement within facilities operated by ODYS that endanger Plaintiffs' physical health and safety; threaten Plaintiffs' emotional and psychological well-being; deprive Plaintiffs of adequate programming, education, medical and mental health care, and dental care; and deprive Plaintiffs of due process of law. Plaintiffs bring claims under both federal and

state law. They seek a preliminary and permanent injunction prohibiting defendants from imposing these illegal and unconstitutional practices and conditions.

Rule 15 of the Federal Rules of Civil Procedure provides that leave of the Court to amend a pleading "shall be freely given when justice so requires." Reasonable requests to amend should be viewed with favor by the Court. See Wright and Miller, *Federal Practice and Procedure*, §1484, p.417 and cases cited therein. Leave to amend should normally be granted unless the moving party is guilty of undue delay, bad faith, dilatory motive, or the proposed amendment will be futile or cause undue prejudice to the opposing party. *Forman v. Davis*, 371 U.S. 178, 182 (1962). In this case the plaintiffs have acted promptly upon learning through their renewed examination of the facts that conditions for juveniles have only deteriorated since the stay was imposed. A Justice Department investigation of two facilities that the parties had hoped would address many of the systemic issues does not appear to be near a resolution. The situation requires prompt action. This motion should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2007, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Alphonse A. Gerhardstein
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