

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

**JESSICA TURNER,
Plaintiff,**

v.

**STATE OF IOWA; CHARLES
PALMER; RICHARD SHULTS;
DEBORAH HANUS; IONA AVERY;
DR. JOAN GERBO; REVAE GABRIEL;
DEB WILKENS;
Defendants**

Case No.

**PETITION AT LAW AND JURY
DEMAND**

COMPLAINT

COMES NOW Plaintiff, Jessica Turner, and for her causes of action against the Defendants, states the following:

INTRODUCTION

1. Plaintiff Jessica Turner (hereafter “Ms. Turner”) brings this action under 42U.S.C. § 1983 and Iowa Code Chapter 669, against the above named Defendants for damages arising out of cruel and unusual punishment and deprivation of the Plaintiff’s property and liberty interests without Due Process between March 16, 2011, and August 24, 2012.

JURISDICTION

2. Ms. Turner brings this action against the Defendants to redress the deprivation of rights secured her by the Fourth and Eighth Amendments to the United States Constitution, 42 U.S.C. § 1983, and the common law.
3. Ms. Turner is a citizen of Iowa and resident of Pottawattamie County Iowa. To the knowledge of Plaintiffs, all Defendants are citizens of Iowa. The Toledo Iowa

Juvenile Home operates and exists under the laws of the State of Iowa. Specifically, the Toledo Iowa Juvenile Home is an institution governed and controlled by the Iowa Human Services Department pursuant to *Iowa Code* § 218.1.

4. Venue is proper in this District pursuant to Iowa Code Section 669.4.
5. Plaintiff filed notice of claim with the state of Iowa, pursuant to Iowa Code Chapter 669 on August 29, 2013.
6. Plaintiff's claim with the state appeal board was denied on April 7, 2014.
7. Plaintiff has exhausted all administrative remedies.

PARTIES

8. At all times material to this action, Ms. Turner was a resident of Pottawattamie County, Iowa.
9. Defendant Charles Palmer is the duly appointed Director of the Iowa Department of Human Services. (hereinafter, "DHS"), the state agency responsible for the control, management, direction, and operation of the Iowa Juvenile Home (hereinafter "IJH") located in Toledo, Iowa pursuant to *Iowa Code* § 218.1. At all time relevant hereto, Defendant was employed by DHS.
10. Defendant Richard Shults was, at all relevant times, an Iowa resident and employed as the "Mental Health and Disability Services Division Administrator" by DHS in its central Des Moines office..
11. Defendant Deborah Hanus was, at all relevant times, an Iowa resident and employed by DHS as the "Superintendent" of the IJH in Toledo, Iowa..
12. Defendant Iiona Avery was, at all relevant times, an Iowa resident and employed by DHS as the "Clinical Director" of the IJH in Toledo, Iowa.

13. Defendant Dr. Joan Gerbo was, at all relevant times, an Iowa resident and employed by DHS as the “Director of Education” of the IJH in Toledo, Iowa.
14. Defendant Revae Gabriel was, at all relevant times, an Iowa resident and employed by DHS as the “Youth Counselor Supervisor” of the IJH in Toledo, Iowa.
15. Defendant Deb Wilkins was, at all relevant times, an Iowa resident and employed by DHS as the “Youth Counselor” of the IJH in Toledo, Iowa.
16. From March 16th 2011 to August 24, 2012, and all times pertinent hereto, Defendants acted under color of law, statute, ordinance, regulation, custom or usage.

FACTS

17. Plaintiff was born on August 30, 1994 with labor and birth complications as she was delivered posterior and with significant oxygen deprivation.
18. As a newborn Ms. Turner had a lot of difficulties, including irritability, vomiting, problems sleeping, and colic.
19. Plaintiff came to IJH on March 16, 2011 as a 16 year old with dual Child in Need of Assistance and Delinquency placement.
20. Ms. Turner had multiple prior placements since she was a very young girl including several psychiatric hospitalizations and placements, and has been prescribed multiple psychotropic medications for emotional and behavioral control.
21. Upon Plaintiff’s placement at the IJH on March 16, 2011, she was examined and diagnosed with Oppositional Defiant Disorder with possible Conduct Disorder, Mood Disorder, possible Attention Deficit Hyperactivity Disorder and diagnosed as having Mild Mental Retardation.

22. From Plaintiff's arrival in March of 2011 until her discharge in August of 2012 Plaintiff spent numerous consecutive weeks in cemented small isolation cells labeled as: Quiet Room; Safety Room; Comfort Room; and the Special Unit.
23. During these stays, Ms. Turner was crying and repeatedly informed the staff at IJH that she was in pain and wanted out.
24. During these stays Ms. Turner would bang her head violently against the cement walls of her cell in an attempt to garner the attention of the IJH staff.
25. During these stays Ms. Turner would be allowed to exit the cell to use the restroom, but was required to eat all meals in her cell.
26. During these stays Ms. Turner would be locked in her cell.
27. During many of these stays Ms. Turner would not be allowed any homework, classroom instruction, reading material, or outside communication.
28. During these stays Ms. Turner would be allowed one thin mat to put on the concrete floor to sleep on.
29. Out of Ms. Turner's 528 days at the IJH, she spent approximately 280 days locked in isolation cells.
30. As a direct and proximate result of the aforementioned acts of Defendants, Ms. Turner suffered damages, including emotional distress, humiliation, and suffered multiple physical and emotional injuries.
31. Pursuant to 42 U.S.C. § 1983, Plaintiff is entitled to declaratory and injunctive relief, and damages, from the Defendants for the above deprivations of her liberty interests without due process and for suffering cruel and unusual punishment.

DIVISION I: VIOLATION OF UNITED STATES CONSTITUTIONAL RIGHTS (42

U.S.C. § 1983) – AGAINST ALL DEFENDANTS

32. Ms. Turner repleads paragraphs 1 through 31 and incorporates same by reference.
33. The aforementioned acts of Defendants, acting under the color of state law, against Ms. Turner violated her rights as guaranteed by the Fourth, Eighth and Fourteenth Amendments to the United States Constitution, for which Defendants are individually liable.
34. Said actions, which included the use of cruel and unusual punishment, violated Ms. Turners' constitutional rights to be free from such inhumane and excessive treatment and further violated her rights of due process of law.
35. As a cause of the aforementioned acts of Defendants, Ms. Turner sustained injuries and other damages as alleged in paragraph 30.
36. The aforementioned acts of Defendants were perpetrated against Ms. Turner without justification. The acts were excessive, done with actual malice towards Ms. Turner, and with willful and wanton indifference to, and deliberate disregard for human life and the constitutional rights of Ms. Turner, who is therefore entitled to exemplary damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants in an amount which will fully and fairly compensate her for her injuries and damages, exemplary (punitive) damages and for attorneys' fees, interest and costs as allowed by law.

DIVISION II: NEGLIGENCE – AGAINST THE STATE OF IOWA ONLY

37. Ms. Turner repleads paragraphs 1 through 36 and incorporates same by reference.
38. While Ms. Turner was receiving services from the IJH, the State of Iowa was negligent in one or more of the following respects:
 - Failing to properly train IJH staff and employees which resulted in the improper use of isolation cells on Ms. Turner in violation of Iowa Law; and

- Failing to properly supervise IJH staff and employees which resulted in the improper use of isolation cells on Ms. Turner.

39. The State of Iowa's negligence was a proximate cause of the injuries and damages sustained by Ms. Turner.

40. As a result of the State of Iowa's negligence, Ms. Turner has sustained injuries and damages including past and future physical injuries and emotional distress.

WHEREFORE, Plaintiff prays for judgment against the Defendants in an amount which will fully and fairly compensate her for her injuries and damages and for attorneys' fees, interest and costs as allowed by law.

DIVISION III: NEGLIGENCE PER SE – AGAINST STATE OF IOWA ONLY

41. Ms. Turner repleads paragraphs 1 through 40 and incorporates same by reference.

42. The State of Iowa oversaw and operated the IJH, while Ms. Turner was a resident at the IJH.

43. Certain employees and staff locked Ms. Turner in isolation cells during her stay at the IJH.

44. Certain employees and staff negligently locked Ms. Turner in isolation cells during her stay at the IJH for periods which exceeded the rules promulgated by DHS in Iowa Administrative Code 441-115.7.

45. As a result of the State of Iowa's negligence, Ms. Turner has sustained injuries and damages including past and future physical injuries and emotional distress.

WHEREFORE, Plaintiff prays for judgment against the Defendants in an amount which will fully and fairly compensate her for her injuries and damages and for attorneys' fees, interest and costs as allowed by law.

JURY DEMAND

COMES NOW the Plaintiff, Jessica Turner, and hereby demands trial by jury of all issues herein.

Respectfully Submitted:

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