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IN THE CHANCERY COURT OF GEORGE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI	**PLAINTIFF**
VS.	**CAUSE NO. 2003-326**
BETHEL BAPTIST CHURCH OF LUCEDALE, INC., a/k/a BETHEL BAPTIST CHURCH OF LUCEDALE, a/k/a BETHEL BOYS ACADEMY, HERMAN E. FOUNTAIN, HERMAN E. FOUNTAIN, II, and JOHN DOES 1- 10	**DEFENDANTS**

CONSENT DECREE

i. **Whereas**, the Defendants own and operate a child residential home, as defined by Miss. Code Ann. § 43-16-3, known as "Bethel Boys Academy" which is a "Christian Military Boot Camp" hereinafter referred to as "Bethel," which accepts mainly troubled youths, and is located in whole or in part in George County, Mississippi.

ii. **Whereas**, the Attorney General of the State of Mississippi received multiple complaints that the residents of Bethel Boys Academy were the victims of suspected abuse and/or neglect.

iii. **Whereas**, on or about July 2, 2003, the Attorney General of the State of Mississippi, after investigation, filed a complaint for injunctive and other relief, along with a motion for preliminary injunction pursuant to Miss. Code Ann. § 43-16-21 and Rule 65 of the Mississippi Rules of Civil Procedure.

iv. **Whereas**, the complaint alleged, *inter alia*, that Bethel:

(a) breached its duty to use reasonable care to protect the health, welfare and safety of the children at Bethel, and to see that they are not harmed, neglected, and/or abused in any

manner; that the children at Bethel were subjected to a pattern and practice of mental and physical abuse by the Defendants, as well as the Defendants' staff, employees, and/or agents;

(b) subjected the children at Bethel to mental and physical abuse and/or neglect which was condoned by top management and/or supervisory staff at Bethel; (c) failed to remedy dangers to the health, safety and welfare of the children residing at Bethel;

(d) and provided supervision, care, lodging or maintenance for the children in Bethel without filing notification in accordance with Miss. Code Ann. § 43-16–1*, et seq.*, as well as failed to satisfactorily comply with local health department or State Fire Marshal inspections made pursuant to Miss. Code Ann. § 43-16-15, regarding the health, nutrition, cleanliness, safety, sanitation, written records and discipline policy of Bethel.

v. **Whereas**, the Defendants do not deny or acknowledge that there may have been probable cases where children residing at Bethel possibly were mistreated in the past, and therefore in order to assure to the fullest extent possible that no acts of abuse or neglect will occur in the future, and

following a period of extended negotiations, the Defendants and the Plaintiff have agreed to the entry of this decree.

vi. **Whereas**, the Defendants have dismissed those employees accused of wrongdoing by the Plaintiff regarding this action;

vii. **Whereas**, the Defendants have begun to perform criminal background and felony conviction record checks on all current and prospective employees;

viii. **Whereas,** the Defendants have employed the services of licensed instructors to provide educational services to the residents of Bethel;

ix. **Whereas**, the Defendants are utilizing a video camera system capable of upgrading to fully monitor all areas of Bethel Boys Academy;

x. **Whereas**, the Defendants have employed a full-time medical nurse to extend immediate medical care to any resident of Bethel;

xi. **Whereas**, the Defendants have implemented an incident reporting system;

xii. **Whereas**, the Defendants have committed to the establishment of a community advisory board;

xiii. **Whereas**, entry of this consent decree settles all claims by the State of Mississippi against the Defendants in George County Chancery Court Cause No. 2003-326, as of the date of entry of this decree;

xiv. **Whereas**, the Defendants stand ready and willing to fully comply with this Decree.

I. ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that:

1. This Court has jurisdiction over the subject matter of all of the claims against the Defendants and jurisdiction over the persons of all of the Defendants. After consideration of the parties' submissions and being fully advised of the legal and factual premises, this Court adopts the terms and conditions set forth herein as an order to govern the actions of the parties until such time as this Court modifies or terminates this order (hereinafter referred to as the "Decree"). This Court shall retain jurisdiction for the purposes of implementing, modifying and enforcing the terms of this Decree. Any party to this Decree may petition for modification of the Decree or any portion thereof.

II. EMPLOYEES AND CONTROL

2. The Defendant, Herman E. Fountain, Sr. shall relinquish any and all interest and control with Bethel Boys Academy, and he shall take all steps, including the execution of all documents, legal or otherwise, necessary to effectuate his departure and relinquish any control that he may have of Bethel Boys Academy no later than 120 days from date of entry of this Decree. This provision shall not be construed so at to prevent Herman E. Fountain, Sr. from remaining as the Pastor at Bethel Baptist Church of Lucedale. However, Herman E. Fountain, Sr., shall not take part in any of the operations of Bethel Boys Academy.

3. The Defendants shall immediately begin to perform criminal record background checks, and felony conviction record information checks on all employees, prospective employees, volunteers and prospective volunteers at such home, and shall maintain such records to the extent permitted by law, for every such employee, prospective employee, volunteer and prospective volunteer pursuant to Miss. Code Ann. § 43-16-9. Any employees, prospective employees, volunteers and/or prospective volunteers who are found to have a criminal history or background which would disqualify them from employment pursuant to Mississippi law or regulations promulgated by the Mississippi Department of Health for licensing and operation of a child care facility shall be ineligible for employment by the Defendants, and if already employed by the Defendants, shall be terminated immediately. The Defendants shall also provide all records and reports to the Mississippi Department of Health required by the Child Residential Home Notification Act.

III. ABUSE AND NEGLECT POLICY

4. The Defendants shall immediately adopt a policy strictly prohibiting abuse and neglect of any of the children residing at Bethel Boys Academy by any employee, volunteer, or other child residing at Bethel, and shall strictly enforce said policy and immediately terminate any employee who is found to be in violation of said policy.

IV. CONSULTANT(S)

5. The Defendants shall retain, at their expense, a consultant or consultants skilled in the operation of facilities similar to Bethel Boys Academy to create and implement policies which include, but are not limited to, internal operating procedures, disciplinary and family communication policies, reporting requirement policies, employee/volunteer training requirements, policies regarding exercise and other physical activities, and any other requirement deemed by the consultant(s) to be necessary in the safe, effective and efficient operation of Bethel Boys Academy. The consultant(s) shall be suitable to all parties, and should the parties be

unable to agree on a consultant, then the Court shall appoint a consultant upon the request of any of the parties.

6. If one of the parties believes the consultant or consultants are not complying with his/her duties as set forth in this Decree, are in violation of the terms of their contracts, or other good cause exists, the parties shall meet within ten (10) working days to negotiate in good faith regarding the continued retention of the consultant(s). The parties may only choose another consultant by mutual agreement. If the parties are unable to reach an agreement regarding a replacement for a consultant, the matter shall be submitted to the Court for resolution in accordance with paragraph 24 of this Decree.

7. The Defendants shall take all reasonable measures necessary, at their expense, to implement and comply with the above consultant's recommendations. The Defendants shall provide, to the extent allowed by applicable law, access to Bethel Boys Academy's physical facilities, records, reports, policies, procedures, memos, handbooks, surveys/studies, reports and other information necessary for the consultant(s) to fully and effectively complete his or her assigned tasks and responsibilities

V. TRAINING AND CERTIFICATION

8. Any employees, instructors, volunteers or any other persons who have regular contact with the children residing at Bethel Boys Academy shall be trained by a person or persons licensed and/or certified in the appropriate field of expertise. Any and all organized athletic activities shall be supervised by a coach or coaches certified in the appropriate field. The coach or coaches shall be responsible for carrying out all policies regarding physical exercise, activities or sports. No child residing at Bethel shall be required to participate in boxing except on a completely voluntary basis. A coach shall not be required to supervise the daily physical exercise and training regimen which is part of the regular curriculum of Bethel Boys Academy, but said daily physical exercise and training regimen shall be monitored by instructors who have been properly trained and/or certified in accordance with the provisions of this Decree.

VI. PREMISES

9. The Defendants shall implement a video system and/or upgrade the existing video system to monitor all areas of Bethel Boys Academy. The cameras, monitors, videotape system, and all other portions of the system shall be kept secure so as to prevent tampering with the system. Only authorized individuals shall have access to the video systems and its components.

10. The Defendants shall remove any and all electric fences from the areas surrounding the property of the Defendants upon which Bethel Boys Academy is located. The Defendants shall be prohibited from the further use of electric fences and/or other electrical devices in or around the premises of Bethel Boys Academy. The Defendants shall be further prohibited from the use of any electrical devices of any type whatsoever in the discipline of any children residing at Bethel Boys Academy.

11. The Defendants shall make the premises of Bethel Boys Academy accessible for reasonable inspections deemed necessary by the State of Mississippi and/or its agencies. The State of Mississippi and its agencies shall provide reasonable notice to the Defendants in advance of such inspections, except in cases where exist exigent circumstances, the safety a child or children at Bethel Boys Academy is thought to be a risk, or in cases in which there is suspected abuse and/or neglect of a child or children residing at Bethel. Nothing in this provision shall be construed as being more limiting on the access of the State of Mississippi and/or its agencies to the premises of Bethel Boys Academy than is provided by Mississippi law.

VII. EDUCATION

12. The Defendants shall comply with all state laws and regulations regarding compulsory education and home schooling of children. All academic classes and/or activities shall be taught by a teacher or teachers licensed by the state of Mississippi. The Defendants shall create and implement a policy which provides for an educational plan for each child residing at Bethel Boys Academy. The policy shall insure that each child is tested in order to determine the appropriate educational level of the child.

VIII. HEALTH AND MEDICAL TREATMENT

13. The Defendants shall create and implement a policy concerning the diagnoses and treatment of any and all illnesses and/or injuries of the children residing at Bethel Boys Academy. The policy shall include safeguards to assure the physical and mental health and well-being of said children. The policy shall also include provisions regarding physical exercise and activities of the children residing at Bethel Boys Academy, and shall specifically include the manner in which the children shall be allowed access to water and restrooms during physical exercise, sports or activities. Proper medical records for each child residing at Bethel Boys Academy shall be kept as required by Miss. Code Ann. § 43-16-9 (j).

14. The Defendants shall make provisions to provide the children residing at Bethel Boys Academy with appropriate medical treatment in a timely and reasonable manner. A full-time nurse shall be employed by the Defendants to provide medical services to the children residing at Bethel Boys Academy. Should any of the children residing at Bethel be in need of care beyond which the full-time nurse is able to provide, the Defendants shall arrange for treatment by a licenced doctor of medicine. The Defendants shall retain the services of a barber, cosmetologist, or other individual licensed by the state of Mississippi to provide haircuts and/or similar services to the children residing at Bethel Boys Academy.

IX. DISCIPLINE AND FAMILY COMMUNICATION POLICIES

15. As required by Miss. Code Ann. § 43-16-17, the Defendants shall create and implement discipline and family communication policies which shall be approved in writing, if possible, by the parent(s) or guardian(s) of the children residing at Bethel Boys Academy, and shall be made available to authorized inspection personnel upon request.

X. REPORTING

16. The Defendants shall create and implement a written policy regarding reporting of any type of mental or physical neglect and/or abuse. Said policy shall include a grievance process which will allow the

reporting individual to go directly to the alleged violator's superior. The policy shall also provide that no one shall be permitted to retaliate against any child in any manner whatsoever for making said allegations. The children shall be notified of the complaint process immediately upon becoming a resident of Bethel.

17. The Defendants shall create and implement, at their expense, a reporting system to memorialize in writing any and all allegations or incidents of alleged abuse and/or neglect, as well as the results of any and all investigations made in connection with said allegation(s), and what corrective measures, if any, were taken in response to the allegation(s). Said system shall provide that any and all reports and/or allegations of abuse shall be maintained for a period of not less than five (5) years.

XI. COMMUNITY ADVISORY BOARD

18. The Defendants shall establish a community advisory board (hereinafter referred to as the "Board") made up of community leaders, health care professionals, educators, law enforcement officials and others. The exact composition and identity of those who shall serve on the Board shall be determined and agreed on by the parties. The Board shall meet periodically at Bethel Boys Academy to survey the facilities, talk with the children who are residing at Bethel and suggest any changes necessary to improve the operation of the academy.

XII. MONITORING

19. The Court shall appoint a guardian ad litem or special master, who shall, at the Defendants' expense, investigate compliance with the Decree and act as an independent advocate for the children residing at Bethel Boys Academy. The guardian ad litem or special master shall file quarterly reports for the first twelve months that this Decree is in effect, and thereafter shall file bi-annuals reports with the Court and submit copies to the parties. The reports shall, among other things, reflect the results of the guardian ad litem's or special master's inspection and/or investigation regarding the Defendant's implementation and compliance with the terms and conditions of the Decree, as well as note any recommended changes which

should be made by the Defendants. To the extend that the report may deal with minors and their affairs, the reports shall be kept confidential to the extent required by law and deemed appropriate by the Court. The Defendants shall provide, to the extent allowed by applicable law, access to Bethel Boys Academy's physical facilities, records, reports, policies, procedures, memos, handbooks, surveys/studies, reports and other information necessary for the guardian ad litem or special master to fully and effectively complete his or her assigned tasks and responsibilities.

XIII. CONTROLLING PROVISIONS

20. The Defendants shall comply with all applicable laws of the state of Mississippi and all applicable rules and regulations of its agencies. If any portion of this Decree shall be deemed to be less-restrictive than the applicable laws of the state of Mississippi and/or the applicable rules and regulations of it agencies, then the more restrictive provisions shall be deemed controlling, and should a dispute arise regarding the provisions of this paragraph, then is shall be resolved in accordance with Paragraph 24 of this Decree.

XIV. RESOURCES

21. The Defendants shall make an ongoing, good faith effort to obtain all resources necessary to ensure full implementation and compliance with the Decree.

XV. JURISDICTION

22. The Court retains jurisdiction of this action for purposes of granting further relief or other appropriate orders. The parties agree to present any disputes under this decree including any claims for breach or enforcement of the Decree to this Court in accordance with the procedures specified in paragraph 24 below.

23. The terms and conditions of the Decree shall be binding upon each of the Defendants, their agents, employees and representatives and upon their successors in office without the necessity of formal

substitution. The terms and conditions of the Decree shall be binding upon any successor counsel representing the parties.

24. If any of the parties have any questions or issues as to the terms or provisions of the Decree, or the Defendants' compliance with the Decree's requirements, the parties shall first attempt to negotiate in good faith to resolve such issues between themselves. If the parties are unable to resolve such disputes, the parties shall present such disputes to this Court for resolution.

XVI. DISMISSAL

25. This shall be considered a final judgment, and all claims and defenses which were or could have been asserted are hereby resolved by the entry of this decree. However, the Court maintains jurisdiction over this matter for the purpose of enforcing this Decree between the parties.

26. After the expiration of three years from the date of entry of this Decree, and upon a showing of compliance with all terms of the Decree, the Defendant may petition the Court for termination of this Decree.

SO ORDERED, ADJUDGED AND DECREED, this the day of August, 2003.

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CHANCERY COURT JUDGE

SUBMITTED AND APPROVED:

For the Plaintiff:

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For Bethel Baptist Church, Inc. and Individually:

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HERMAN E. FOUNTAIN

_____

JOHN FOUNTAIN



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