SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY

DOCKET NO. C-123-07

KATHLEEN JONES, LAKESHA JONES, SYLVIA FLYNN and HELEN L. EWELL, on behalf of themselves and all individuals similarly situated

Plaintiffs

v.

GEORGE W. HAYMAN et al.

Defendants

DECISION

Motion to Dismiss Complaint

MARIA M. SYPEK, P.J. Ch.

July 21, 2008

The matter comes before the Court on a Motion to Dismiss Complaint for Failure to State a Claim, or in the Alternative for Summary Judgment filed by the Office of the Attorney General, Diane M. Moratti, Deputy Attorney General appearing on behalf of the Defendants' and opposition having been filed by the American Civil Liberties Union of New Jersey Foundation, Mia Lewis, Esq., admitted Pro Hac Vice and Edward L. Barocas, Esq., appearing on behalf of the Plaintiffs' and the Court having

reviewed all documents submitted and having heard oral argument and for good cause shown, the Court makes the following findings:

This matter arises from a class action complaint and order to show cause with temporary restraints filed on December 12, 2007 by Kathleen Jones ("Kathleen"), Lakesha Jones ("Lakesha"), Sylvia Flynn and Helen L. Ewell (collectively "Plaintiffs") against George W. Hayman, the Commissioner of the New Jersey Department of Corrections ("DOC"), James Barbo, the Acting Deputy Commissioner of the DOC, Lydell Sherrer, the Acting Assistant Commissioner for the Division of Operations of the DOC, William Hauck, the Acting Administrator of the Edna Mahan Correctional Facility ("EMCF"), Michelle Ricci, the Administrator of the New Jersey State Prison ("NJSP"), Alfred N. Kandell, an Assistant Administrator of the NJSP, James Drumm, an Assistant Administrator of the NJSP, Herbert A. Kaldany, the Director of Psychiatry of the DOC and Thomas F. Dechan, the Director of Education of the NJSP (collectively "Defendants") alleging that the transfer of women prisoners to the NJSP and the conditions to which they are subject there violate the New Jersey Constitution, New Jersey Civil Rights Act and New Jersey Law Against Discrimination. On January 22, 2008, the parties entered into a consent order whereby the parties agreed that the DOC would not transfer any

female inmates from the EMCF to Section 1EE of the NJSP until further order of the court. The consent order also permitted the DOC to transfer female inmates from the EMCF to the administrative segregation unit or the Stabilization Unit of the NJSP so long as they were later returned to the EMCF. Defendants now move to dismiss the complaint for failure to state a claim upon which relief can be granted, or in the alternative, for summary judgment.

This case centers on the transfer of approximately forty women prisoners in March 2007 from the EMCF to the NJSP. Plaintiffs are four of the forty prisoners who were transferred by the DOC to the NJSP, a maximum-security men's prison which holds approximately 1,800 male inmates. Plaintiffs have alleged that these transfers were unlawful and claim that since arriving at the NJSP, they and the other women prisoners have been subject to inhumane and inequitable conditions of confinement.

Defendant George W. Hayman is the Commissioner of the DOC. Pursuant to N.J.S.A. 30:1B-6, he serves as the administrator and chief executive officer of the DOC and has numerous responsibilities and duties, including the appointment and removal of officers and the determination of all policy matters as they relate to the administration of institutions.

Defendant James Barbo is the Acting Deputy Commissioner of the DOC and Defendant Lydell Sherrer is the Acting Assistant Commissioner for the Division of Operations of the DOC. As such, Plaintiffs contend that they are also responsible for the unlawful transfer of women prisoners from the EMCF to the NJSP and for the unlawful conditions to which women prisoners are subject at the NJSP.

Defendant William Hauck is the Acting Administrator of the EMCF. As such, Plaintiffs state that he is responsible for carrying out or overseeing the unlawful transfer of women prisoners from the EMCF to the NJSP.

Defendant Michelle Ricci is the Administrator of the NJSP. As such, Plaintiffs assert that she is also responsible for the carrying out or overseeing of the unlawful transfer of women prisoners from the EMCF to the NJSP and for the unlawful conditions to which women prisoners are subject at the NJSP.

Defendant Alfred N. Kandell was the Assistant Administrator of the NJSP until October 2007 and Defendant James Drumm has since October 2007 served in the same position. As such, Plaintiffs state that they have had direct authority over the housing unit where the women prisoners are confined in the NJSP and are consequently responsible for the unlawful conditions to which the women prisoners are subject there.

Defendant Herbert A. Kaldany is the Director of Psychiatry of the DOC. Therefore, Plaintiffs contend that he is responsible for the denial of mental health care for the women prisoners confined at the NJSP.

Defendant Thomas F. Dechan is the Director of Education for the NJSP. Plaintiffs state that in that position he has the duty of providing legal services, including law library services, for all prisoners confined at the NJSP. Plaintiffs assert that he is responsible for denying the women prisoners' access to educational, rehabilitative and legal services.

Plaintiffs first challenge their transfer and the transfer of thirty-six other female inmates from the EMCF to the NJSP. Plaintiffs provide that prior to these transfers, the EMCF held all women prisoners in New Jersey. Plaintiffs state that the EMCF holds approximately 1,000 women prisoners of all security classifications. Before March 2007, Plaintiffs claim that the only women prisoners who were transferred out of the EMCF were those who had committed serious violations of prison rules. However, Plaintiffs state that before prisoners were transferred, they had a right to be heard before a disciplinary board. If the board found that the violation had occurred, Plaintiffs state that the prisoner would be sent to a disciplinary segregation unit at the NJSP before eventually returning to the EMCF.

Plaintiffs' position is that in March 2007, approximately forty female inmates, the majority of whom were classified as medium-security prisoners and had excellent disciplinary records, were transferred to a maximum-security unit in the NJSP on two separate occasions. Plaintiffs allege that no notice was given of these transfers and no opportunity was presented to be heard. Plaintiffs assert that the DOC later admitted that no policy guided this decision to transfer these forty women prisoners.

Furthermore, Plaintiffs contend that the women prisoners were subject to harassment and embarrassment when they were first transferred. Plaintiffs allege that when each of them was taken from their rooms, they were stripped naked while male guards armed in full riot gear observed and video taped them. After the strip searches were completed, Plaintiffs allege that the women prisoners were handcuffed and loaded on a bus to be taken to the NJSP. Plaintiffs state that many of the women being transferred became panic-stricken because they were extremely frightened by the procedures employed by the officers during the transfers and by the thoughts of being confined in a men's prison. Plaintiffs provide that many of these women were medicated in order to treat them during the transfers.

Plaintiffs state that the DOC explained the transfers by referring to a settlement agreement reached by prisoners with mental disorders and the

DOC in D.M. v. Terhune, 67 F. Supp. 2d 401 (D.N.J. 1999). Plaintiffs claim that this settlement agreement requires that certain special-needs prisoners be housed in single-occupancy cells. However, Plaintiffs contend that this agreement does not require that non-special-needs prisoners be transferred.

Plaintiffs also make numerous claims that they have been subject to inhumane and inequitable conditions of confinement at the NJSP. Plaintiffs first state that they were able to spend many hours of the day outside of their cells while confined at the EMCF but now are rarely permitted movement around the NJSP. Plaintiffs state that although male general population prisoners at the NJSP are able to move around the prison for meals or to attend certain programs, female general population prisoners there are confined to their units and prohibited from moving about the prison. As a result, Plaintiffs contend that female general population prisoners are locked up in their cells for a longer period of time each day than male general population prisoners. Plaintiffs also state that the window of each woman's cell is frosted over whereas the male prisoners each have clear views out of their windows. Plaintiffs compare these restrictive and isolated conditions of confinement to those of women sent to the NJSP for punishment in disciplinary segregation. Plaintiffs provide that such conditions have created

or exacerbated feelings of anxiety, depression and other emotional distress in the women prisoners who were transferred from the EMCF.

Plaintiffs contend that they have been deprived of psychiatric care at the NJSP. Plaintiffs state that the EMCF provided women prisoners with some measure of psychiatric care and services including counseling and mediation, and the ability to obtain prescriptions for medication. Plaintiffs also state that male prisoners at the NJSP receive similar care. However, Plaintiffs provide that women prisoners at the NJSP are denied psychiatric counseling and mediation. Plaintiffs contend that when women prisoners request such care or prescriptions for medication, they are placed in or threatened to be sent to Unit 1GG, a stabilization unit, in order to punish them for making such a request. Plaintiffs claim that the conditions in Unit 1GG are filthy and dangerous; the women are only given one quilt-like drape and a piece of rubber foam for bedding, and are not provided with running water.

Specifically, Lakesha states that she has been suffering from depression and anxiety attacks since her sister died in 1996. Lakesha provides that while confined at the EMCF, she was able to discontinue the use of her medications because of the availability of activities there. However, after she was transferred to the NJSP, she claims that her

condition has worsened. She states that she was told by correctional officers there that if she requested medication or other care she would be sent to Unit 1GG. Lakesha asserts that she now suffers from frequent anxiety and asthma attacks which go untreated.

Plaintiffs next assert that women prisoners are deprived of medical care at the NJSP. Plaintiffs claim that women prisoners at EMCF receive private medical examinations in the prison hospital with no custody staff present. Furthermore, Plaintiffs allege that male prisoners at the NJSP receive on-site medical care in a clinic or in an infirmary where no guards are present. However, Plaintiffs state that women prisoners at the NJSP are denied access to the prison's clinic, unable to obtain information about their own medical conditions and have no privacy because they are examined in an open area of their housing unit. Plaintiffs allege that these examinations are conducted in the presence of male guards. Plaintiffs claim that on rare occasions, examinations are conducted in a tiny, ill-equipped room; however, the male guards then stand inside the room where they are in view the procedure. Plaintiffs claim that women prisoners are routinely denied receipt of the following services: medical examinations, diagnoses, routine treatment and prescriptions. Alternatively, if these services are provided, often they are delayed. Additionally, some women prisoners have to be

transferred back to the EMCF for some medical needs and only receive treatment after being locked up in a cell for several hours.

Lakesha states that on one occasion, she had an asthma attack outside her cell and signaled to an officer because she needed her inhaler which was inside her cell. However, Lakesha states that although the officer saw her, she refused to open Lakesha's cell door and just waived her off. Lakesha asserts that other prisoners were screaming that she was having an asthma attack, yet she did not receive any help for several more minutes. Lakesha states that after another asthma attack, she required a "breathing treatment" which included a prescription for a steroid. Additionally, she claims that she has requested eye care on multiple occasions but has been denied each time.

Ms. Flynn provides that she suffers from high cholesterol and a thyroid condition. She states that she needs medication in order to prevent heart attacks, strokes and to control weight gain. However, she claims that refills of her medication are filled late and that she doesn't have access to her cholesterol count. She states that NJSP officers once told her that doctors "don't have time" for her. Additionally, she claims that she severely injured her arm in November 2007 but was told she wouldn't receive an x-ray for at least two to three months.

Ms. Ewell states that she needs gynecological care following a hysterectomy she had while at the EMCF. However, she refuses to submit to a gynecological exam at the NJSP because the examination room is filthy and because male guards would be present. Furthermore, she states that when she left her false teeth for repair, it took nine weeks before they were replaced.

Finally, Kathleen states that she was forced to submit to a medical examination while a male guard watched. She states that she also forced herself to take a gynecological exam in the dirty examination room in the women's unit because if she refused to be examined in that room, she wouldn't receive any care.

Plaintiffs next contend that women prisoners are denied access to legal services. Plaintiffs state that women prisoners at the EMCF have access to a law library, may conduct their own research and can keep their legal matters private. Plaintiffs also allege that male prisoners at the NJSP have direct personal access to the law library, including reporters and Lexis-Nexis, and receive assistance from the Inmate Law Association. However, Plaintiffs claim that women prisoners at the NJSP are prohibited from entering the law library and are only provided access to paper, envelopes and pencils once a month. Plaintiffs further allege that women prisoners must

use a "paging" system in order to request copies of specific statutes or cases, but because their access to research materials is denied, they have no way of knowing what to request.

Plaintiffs also state that NJSP officials have placed a computer in the women's housing unit with Lexis-Nexis that has only been available for short periods of time. However, Plaintiffs allege that this version of Lexis-Nexis is inadequate because it excludes materials available in printed volumes found in the NJSP's law library, including treatises on criminal and civil procedure in New Jersey. Plaintiffs claim that only two women prisoner paralegals are permitted to use the computer. Furthermore, Plaintiffs state that they have no privacy during communications with their attorneys as any phone call must be conducted in the presence of a staff member.

Plaintiffs next maintain that women prisoners have also been denied access to educational and other rehabilitative programming. Plaintiffs state that women prisoners at the EMCF are provided access to classrooms where various academic programs are offered. Similarly, Plaintiffs state that male prisoners at the NJSP are offered approximately one hundred educational and therapeutic programs to choose from. Plaintiffs claim that male prisoners are taught classes at the Donald Bourne School, which consists of

dozens of classrooms. Plaintiffs allege that male prisoners also have access to college correspondence courses, computers and a library with over 2,000 volumes. However, Plaintiffs state that women prisoners are excluded from the Donald Bourne School and all other educational programs offered to male prisoners. Plaintiffs assert that the only educational opportunity that has ever been provided to women prisoners at the NJSP was one GED program that began in October 2007. Additionally, Plaintiffs state that the NJSP created an "educational area" by emptying out a storage closet and adding a few desks and chairs, but argue that this falls short of providing equal learning facilities for male and female inmates.

As to rehabilitative programming, Plaintiffs state that at the EMCF women prisoners are offered various programs including those dealing with domestic violence, parenting skills, alcohol and drug abuse. Plaintiffs further provide that male prisoners at the NJSP are offered similar programs in addition to religious services and peer programs such as a chess club and the NAACP. However, Plaintiffs allege that women prisoners at the NJSP are barred from all of these programs. Plaintiffs claim that the only programming once available to women prisoners was a weekly anger management and twelve-step classes that have already ended and a weekly Christian church service and bible study group. Further, although a book

club is open to women for participation once a month and a parenting class has been held twice, Plaintiffs assert that because the facilities are so inadequate, the programs are held in the open and as a result the women have no privacy if they choose to discuss personal matters.

Specifically, Ms. Flynn states that while confined at the EMCF, she participated in the "Women Aware" program and received one-on-one counseling from a domestic violence specialist. In addition, she completed twenty-two certificate granting programs, a 5000-hour apprenticeship in upholstery, and worked as an upholsterer and hairdresser. She also participated in the New Jersey Flower Show and in a number of religious and vocational programs. However, she states that since she was transferred to the NJSP, she has been denied access to all of these programs and any other programs available to the male prisoners.

Kathleen provides that while confined at the EMCF, she participated in programs designed to maintain mothers' bonds with their children and was permitted to occasionally call her children for free and have them visit her at the prison. However, at the NJSP, she states that she is required to pay at least $13 for all calls to her children and alleges that programs to aid children's visitation are not provided.

Plaintiffs also contend that women prisoners do not receive an equal allocation of work opportunities at the NJSP. Plaintiffs state that at the EMCF, women prisoners have access to all available work assignments and work approximately six hours a day. However, Plaintiffs claim that women prisoners at the NJSP are allocated only a small number of assignments and consequently are less able than men to purchase necessary items. Ms. Flynn and Kathleen provide that they earned $6.00 and $4.00 a day respectively while confined at the EMCF, but now receive $2.50 and $2.30 a day respectively working at the NJSP.

Plaintiffs next assert that women prisoners at the NJSP are denied their right to meaningful exercise. Plaintiffs state that female inmates at the EMCF receive between two and four hours a day of outdoor exercise in a large yard and two hours a day for three to five days a week of indoor exercise in a gymnasium. Plaintiffs also state that male inmates at the NJSP receive outdoor exercise in a larger yard and are permitted to participate in intramural sports. However, Plaintiffs state that women prisoners at the NJSP are only offered outdoor exercise for two hours a day every other day in a much smaller yard. Plaintiffs allege that the exercise equipment in the women's yard was constructed for use by male prisoners and is in poor condition. Plaintiffs claim that women prisoners are prohibited from

participating in intramural sports. Furthermore, Plaintiffs state that male prisoners in cells overlooking the female yard expose themselves at their windows and make numerous degrading comments towards the female inmates. Plaintiffs also state that women prisoners recently gained access to the gymnasium for one hour a day, three days a week but because there are very few pieces of equipment, many women fail to get any meaningful exercise.

Finally, Plaintiffs maintain that women prisoners have been denied their rights to basic hygiene and privacy. Plaintiffs state that women prisoners at the EMCF are allowed to clean their cells every day with clean water and are allowed to do their own laundry in washing machines and dryers in each housing unit. Furthermore, women prisoners there are supplied with an adequate amount of sanitary napkins and toilet paper. However, Plaintiffs claim that female inmates at the NJSP are only permitted to clean their cells once a week and must share one bucket of water with ten to twelve other cells. Plaintiffs state that women prisoners at the NJSP also are not permitted to launder their own clothes but must send their clothing to a laundry service operated by male prisoners. Plaintiffs contend that NJSP officers have warned them not to send undergarments with their laundry because they will likely be stolen. As a result, Plaintiffs

claim that many of the women prisoners wash their undergarments by hand in their cells, but don't have clean water to do so. Additionally, Plaintiffs claim that women prisoners there do not receive an adequate supply of sanitary napkins and toilet paper.

As to the denial of their privacy rights, Plaintiffs state that at the NJSP, male guards occasionally peer into their cells, sometimes with a flashlight, when women prisoners are undressed or using the toilet. Additionally, Plaintiffs claim that windows in the door of each shower expose women to the view of anyone who walks by.

As a result of these allegedly unlawful transfers and inhumane conditions, Plaintiffs filed this class action complaint seeking declaratory and injunctive relief. Plaintiffs claim that these transfers from the EMCF to the NJSP violated their substantive and procedural due process rights under the New Jersey Constitution and New Jersey Civil Rights Act. Plaintiffs allege that Defendants have knowingly and foreseeably subjected the women prisoners at the NJSP to conditions of confinement that constitute cruel and unusual punishment. Plaintiffs assert that a disparity in conditions and treatment exists between male prisoners and female prisoners at the NJSP which violates the women prisoners' right to equal protection under the New Jersey Constitution, New Jersey Civil Rights Act and New Jersey Law

Against Discrimination. Therefore, Plaintiffs seek a declaration that the policies, procedures, acts and omissions of Defendants are prohibited and a permanent injunction prohibiting Defendants from subjecting the women prisoners to the unconstitutional and unlawful confinement and punishment they have described.

In response, Defendants first address Plaintiffs' contention that the transfer of prisoners from the EMCF to the NJSP was unlawful. Defendants state that pursuant to NJSP policy, inmates are not given advance notice of any transports because it is a security risk which may lead inmates to plan escapes, assaults or otherwise compromise the safe operation of the prison. Defendants further contend that they are not required by law to provide notice to inmates who are being transferred from one prison to another.

Defendants also provide a background as to the operation and running of the housing of women prisoners at the NJSP. Defendants state that they have several different units where the women prisoners are housed. Defendants state that Unit 1EE is where the general population women prisoners are housed, Unit 1FF houses those women prisoners in administrative segregation and Unit 1GG houses any women prisoners for mental health stabilization. Defendants claim that the NJSP has gradually created and scheduled programs for the female inmates and takes into

consideration the needs and interests of the inmates, the resources available and the schedule of the rest of the prison. Ms. Ricci and Mr. Drumm state that they regularly tour Unit 1EE, speak to inmates and address any inmate concerns.

As to the general restrictions alleged by Plaintiffs, Senior Corrections Officer Naomi Coleman reports that, based on her conversations with female inmates, women prisoners have adjusted to the NJSP and are content with their housing. She further reports that 1EE is a relatively stable unit where only a few disputes have occurred. Defendants state that there have been no suicide attempts on Unit 1EE and only one fight on the unit. Furthermore, the two prisoners involved in the fight have both expressed their desire to return to Unit 1EE after being released from administrative segregation.

Defendants claim that the windows in Unit 1EE were frosted over in October 2007 after several female inmates complained that male inmates could see into their cells when the male inmates were in the recreation yard. Defendants state that the window frosting allows sunlight into the cells and only blocks anyone outside from seeing into the cell. Defendants also state that some of the male inmates' cells were frosted over after female inmates complained that men could see into their yard.

Defendants state that Unit 1EE inmates have been advised that in order to submit grievances they must fill out an administrative remedy form ("ARF"). However, Defendants provide that very few of these forms have been filled out, and that those that were filled out did not raise any serious concerns or any of the issues raised by Plaintiffs in this litigation. Furthermore, Defendants claim that Kathleen and Ms. Flynn have only submitted three ARF's, Ms. Ewell has submitted five ARF's and Lakesha has failed to submit any ARF's.

As to mental health care, Defendants state that a committee is in place which regularly discusses concerns and resolutions to those concerns in order to avoid any critical incidents from occurring. Defendants provide that before an inmate can be transferred to Unit 1GG, several criteria must first be met and a recommendation must be issued by the mental health staff.

As to medical examinations and treatment, Defendants state that there is a medical office in Unit 1FF where routine medical treatment is administered. Defendants provide that correctional officers are present outside of the door only to ensure safety and not to violate the privacy of the inmates. Defendants state that officers are similarly stationed when male inmates are being treated. Furthermore, Defendants claim that women

prisoners do have access to the main clinical areas when more complex medical procedures are necessary.

Defendants also contend that women prisoners at the NJSP are provided with sufficient legal access. Defendants state that there is currently one computer with Lexis-Nexis access in Unit 1EE and another one on the way. Defendants assert that there are two female inmate paralegals, which makes up 5.5% of the women general population prisoners, whereas there are eight male inmate paralegals, which makes up only 0.0074% of the male general population. Furthermore, Defendants claim that Lexis-Nexis training is currently being offered for the women prisoners and that a majority of the female inmates have signed up for it.

As to educational opportunities, Defendants state that both male and female inmates have educational opportunities and that a higher percentage of female inmates are involved in a GED program than are male inmates. Defendants allege that a classroom has been provided for women who have requested entry into a GED program. Defendants state that six women, or 16.6% of the women prisoner population, have made such a request. Defendants also provide that the classrooms in the Donald Bourne School are used for a GED program for seventy general population male inmates. Defendants state that this only constitutes 6.5% of the male general

population. Defendants assert that none of the female inmates have requested access to pre-GED programs and that several of the female inmates have been provided college correspondence course information. Defendants also state that a paralegal functions class will soon be offered to the women prisoners and that a creative writing program will be held for female inmates only.

Regarding rehabilitative and other programming, Defendants state that women prisoners have access to televisions in the day area and weekly instructional video programs. Defendants provide that women prisoners may participate in a parenting program, the fall stock market game, a hobby/arts program and a book club under the guidance of Dr. Nancy Wolff of Rutgers University. Defendants state that religious services for women prisoners are held and that a beauty salon is available to the prisoners in Unit 1EE as well. Defendants claim that women prisoners also may participate in Alcoholics Anonymous.

As to visitation, Defendants contend that contact visitation for all inmates is on Saturday and Sunday and that female inmates in Unit 1EE may also have non-contact window visits from 3:30-6:00 P.M. on Tuesdays and 6:30-9:00 P.M. on Thursdays. Defendants state that although a grant was provided to the EMCF for a "federally funded visitation program," there is

no similar program for any of the inmates at the NJSP. Defendants contend that during visitation hours, children are permitted to sit next to their mothers and that female inmates may have their pictures taken with their children.

As to work opportunities for women prisoners, Defendants state that male and female inmates receive the same number of work credits and are paid the same rate for the same types of jobs. Defendants claim that the DOC has formed an inmate wage committee which standardizes jobs and wages for the fourteen institutions in New Jersey, and that each institution has different job assignments based upon the needs of that particular prison.

Regarding Plaintiffs' contention that women prisoners' right to exercise has been denied, Defendants state that cardiovascular equipment is available to the female inmates in Unit 1EE even though it is not available to the male general population inmates. Defendants claim that aerobics, Pilates and other strength conditioning and programming has been made available daily to the female inmates by way of sign-up sheets. Defendants assert that yard movement for Unit 1EE is scheduled for two hours a day, four days a week where the female inmates have access to numerous games and activities. However, Defendants claim that male inmates are only provided five hours of outdoor recreation a week. Defendants also state that female

inmates have access to gym movements three nights a week whereas male inmates only have such access for two hours every fifth day. Furthermore, Defendants provide that a handball league is currently being formed for female inmates and that they have access to seasonal incentive-based programming depending on interest.

Defendants finally address Plaintiffs' allegation that women prisoners are denied their right to basic hygiene and privacy. Defendants state that female inmates are permitted to have clothes sent down to the laundry on any day of the week if such a need arises whereas male inmates may only send clothes down on Wednesdays. Defendants contend that both male and female inmates complain of lost laundry and that no female inmate in Unit 1EE has ever submitted a claim for lost or damaged property. Furthermore, Lt. Schafer, who is responsible for Unit 1EE and male housing units represents that many male inmates also wash their undergarments in their cells and thus no difference exists between male and female inmates in this regard. Defendants further provide that female inmates are supplied with more rolls of toilet paper than male inmates, and are provided sanitary pads whenever they are needed. Defendants also assert that all inmates are provided with cleaning supplies, and on request, can obtain more cleaning supplies on a daily basis.

As to Plaintiffs' privacy concerns, Defendants state that the door to the showers in Unit 1EE is completely covered and that officers cannot see into the showers. Furthermore, Defendants assert that all inmates have the ability to cover half of the window to their cell door when using the toilet in order to protect their privacy.

Defendants now bring this motion to dismiss Plaintiffs' complaint or in the alternative a motion for summary judgment against Plaintiffs. Defendants state that the transfer of the women prisoners from the EMCF to NJSP was not unlawful, and additionally was a final agency determination which can only be challenged in the Appellate Division. Furthermore, Defendants contend that the information they have presented demonstrates that female inmates in Unit 1EE of the NJSP are not being treated unfairly, not being discriminated against and are not subjected to cruel and unusual punishment. Defendants also assert that the conditions in Unit 1EE of the NJSP and the state of mind of the female inmates are not as Plaintiffs would have the Court believe. Ms. Ricci reports that based on her personal observations, Unit 1EE is clean, quiet, and any grievances aired by the female inmates are relatively minor and quickly addressed. Ms. Coleman alleges that many of the female inmates in Unit 1EE like being housed there because it provides them with a structured environment and keeps them out

of trouble. Ms. Ricci concludes that based on her experience over the last ten months, after the female inmates initially adjust to the NJSP, they have become generally content to remain at the NJSP.

In reply, Plaintiffs contend that Ms. Ricci rarely visits Unit 1EE and that women prisoners are prohibited from speaking to her or Mr. Drumm. Therefore, Plaintiffs maintain that neither Ms. Ricci nor Mr. Drumm has first-hand knowledge about what happens on the unit.

Plaintiffs dispute Defendants' contention that Unit 1EE is mostly quiet and that the NJSP has received very few complaints from the women prisoners. Plaintiffs state that there have been multiple fights among women prisoners confined in Unit 1EE as well as other critical problems including suicide attempts and medical emergencies. Plaintiffs state that when women prisoners make complaints, they are frequently intimidated by Ms. Coleman and other NJSP officers. Furthermore, Plaintiffs contend that when women prisoners ask for ARF's, they are frequently denied such forms, and even when they are able to submit them, the forms are frequently lost.

As to Defendants' contentions concerning legal access, Plaintiffs state that women prisoners have not received any meaningful legal training. Plaintiffs contend that some women prisoners were provided with fifteen to thirty minutes of group instruction by a prisoner paralegal and then forced

by Ms. Ricci to sign forms acknowledging that legal research instruction had been given.

As to Defendants' statements regarding women prisoners' access to exercise equipment and yard time, Plaintiffs contend that because the aerobics class coincides with the GED class, the aerobics videos cannot be used at all. Plaintiffs state that the yard time for women prisoners is often less than eight hours per week because it doesn't begin until the periodic count of prisoners has been completed. Additionally, Plaintiffs state that women prisoners' gym time is shorter than indicated by Defendants.

Plaintiffs also dispute Defendants' contentions about the details of the visitation rights of women prisoners. Plaintiffs state that weekend visits are only from 5:00-6:30 P.M. and sometimes start late. Plaintiffs claim that non-contact window visits are available to male prisoners all day long everyday. Furthermore, Plaintiffs state that women prisoners are not permitted to sit next to their children during visits.

As to the laundry services, Plaintiffs directly refute Defendants' statements that women prisoners are able to send clothes down to the laundry on any day of the week if the need arises. Plaintiffs also reiterate that women prisoners were warned not to send undergarments to the laundry because they would be stolen and state that this has happened on a number

of occasions. Moreover, two male prisoners have certified that they have never been warned about sending their undergarments to the laundry, as none of the male prisoners are concerned that their undergarments will be stolen.

Finally, Plaintiffs state that NJSP officials failed to provide women prisoners with a covering for a metal grating on the shower door through which the women could be seen. Plaintiffs state that although a woman prisoner made a curtain to be placed over the grating, officers can open the curtain from the outside. Furthermore, Plaintiffs claim that women prisoners are often prevented from covering the windows in their cells and have even been forced to uncover their cell windows when using the toilet or when nude.

Plaintiffs therefore conclude that summary judgment is inappropriate in this matter because they have demonstrated that several issues of material fact are present here. Plaintiffs further contend that the entry of summary judgment is premature because discovery has yet to begin in this matter. Furthermore, Plaintiffs argue that some of the evidence relied upon by Defendants is inadmissible hearsay and should not be considered by the Court for purposes of this motion. Therefore, Plaintiffs ask the Court to deny Defendants' motion for summary judgment in this matter.

The first issue before the Court is whether to treat Defendants' motion as one seeking to dismiss the complaint or one for summary judgment. R. 4:6-2(e) provides that a motion to dismiss may be made alleging a plaintiff's failure to state a claim upon which relief may be granted. R. 4:6-2 also provides, in relevant part:

> If, on a motion to dismiss based on the defense numbered (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable opportunity to present all material pertinent to such a motion.

The primary distinction between a motion under R. 4:6-2(e) and R. 4:46 is that the former is based on the pleadings themselves. The rule expressly provides that if any material outside the pleadings is relied on on a 4:6-2(e) motion, it is automatically converted into a summary judgment motion. PRESSLER, Current N.J. COURT RULES, Comment R. 4:6-2, (GANN). See also Lederman v. Prudential Life Ins. Co. of America, Inc., 385 N.J. Super. 324, 337 (App. Div.), certif. den. 188 N.J. 353 (2006).

Based on this distinction, the Court shall treat Defendants' present motion as a motion for summary judgment under R. 4:46. In determining the outcome of this motion, the Court will be considering the numerous allegations made and certifications submitted by Plaintiffs and Defendants. Thus, the Court will be considering material outside of the pleadings and

therefore, must treat Defendant's motion as a motion for summary judgment. See J.L. v. J.F., 317 N.J. Super. 418, 437-38 (App. Div. 1999) (finding that because the motion judge considered the certifications filed by plaintiffs in support of their opposition to defendant's motion to dismiss, the motion judge properly converted defendant's motion to dismiss to a motion for summary judgment).

The issue before the Court then becomes whether it should grant Defendants' motion for summary judgment against Plaintiffs. Under R. 4:46-2, summary judgment is only appropriate where the pleadings, affidavits, and other matters of record show that there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995). If the moving party makes the requisite prima facie showing, it is incumbent upon the opposing party to come forward with competent proofs indicating that the facts are not as the moving party asserts. Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App. Div.), certif. den., 37 N.J. 229 (1962). The Court is then obligated "to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the

alleged disputed issue in favor of the moving party." Brill, supra, 142 N.J. at 540.

The Court first addresses whether summary judgment should be granted as to the transfers of the women prisoners from the EMCF to the NJSP. Defendants contend that because Plaintiffs have challenged a final agency decision of the DOC, they must challenge the DOC's decision in the Appellate Division. Defendants also maintain that the women prisoners have no constitutional interest or right to be assigned to a particular prison or be assigned to any particular custody level.

Plaintiffs respond by stating that this Court is the proper court to hear their challenge to these transfers of women prisoners. Plaintiffs contend that women prisoners have substantive and procedural due process rights which were violated when they were provided no notice or any opportunity to be heard before the transfers occurred. Plaintiffs also argue that the transfers are unlawful because the conditions at the NJSP are violative of their constitutional and civil rights.

R. 2:2-3(a)(2) provides that appeals may be taken to the Appellate Division as of right to review final decisions or actions of any state administrative agency or officer. Thus, what is mandated by R. 2:2-3(a)(2) is the exclusive allocation to the Appellate Division of review of state

agency and officer action. Prado v. State, 186 N.J. 413, 422-23 (2006). Specifically, challenges to prison classification and transfer issues are directly appealable to the Appellate Division and the appellate court will not interfere in those determinations absent a showing that a prisoner's constitutional rights were infringed or that the action was arbitrary. State v. Clark, 54 N.J. 25 (1969).

Plaintiffs argue that an exception to this rule is present here which would allow them to bring a challenge of the transfers in this Court. In Infinity Broadcasting Corp. v. N.J. Meadowlands Comm'n, 186 N.J. 212, 223 (2006), the New Jersey Supreme Court stated that two exceptions to this rule have been judicially recognized, one of which is present where a record must be developed as a prerequisite to meaningful appellate review. The Appellate Division has explained this exception by providing that it would be incompatible with the function of a reviewing court for such a court to entertain an action where no proceedings were taken before the agency and no record presented for review. Montclair v. Hughey, 222 N.J. Super. 441, 446-47 (App. Div. 1987). In sum, if an action by its very nature requires particularized fact finding and determinations, it is best resolved in a trial court. See Infinity Broadcasting, supra, at 225-26 (stating that

condemnation and inverse condemnation actions are best resolved in the Law Division).

This Court finds that a distinction exists between Plaintiffs' argument that their procedural due process rights were violated because no notice or hearings were provided and their argument that their substantive due process rights were violated because the women prisoners are now subject to inhumane and inequitable conditions at the NJSP. A fact-finding record would not necessarily need to be developed in order for the Appellate Division to consider whether the DOC was obligated to provide notice or an opportunity to be heard to the women prisoners before they were transferred to the NJSP. Thus, insofar as Plaintiffs contend that the transfer of women prisoners violated their procedural due process rights, the Court finds that this claim could be decided by the Appellate Division.

However, in order to determine whether the transfers violated the women prisoners' substantive due process rights, the court must first make a fact-finding record. Plaintiffs have made a number of allegations that women prisoners are deprived of and denied several of their constitutional and civil rights and these allegations have been strongly refuted by Defendants. A fact-finding record is necessary in order to analyze all of these allegations and reach a conclusion as to what, if any, constitutional and

civil rights are being violated. This analysis must first be completed before a court can determine if the transfers are unlawful on this basis. Therefore, the Court finds that this issue is properly litigated before this Court.

Because this Court finds that Plaintiffs' claim that the transfer of women prisoners to the NJSP violates the women prisoners' substantive due process rights is properly before the Court, the record can be further developed, if necessary, as to whether their procedural due process rights were also violated. For example, the DOC maintains that security issues explained the failure to give notice of the transfer. Discovery may uncover a factual, experimental, or justifiable basis for this position. As a result, the Court will allow discovery on this issue to the extent requested.

The Court next addresses Plaintiffs' contentions concerning the inhumane and inequitable conditions of confinement that they allege women prisoners are subject to at the NJSP. Defendants first argue that Plaintiffs' claims under the New Jersey Civil Rights Act must fail because there is no allegation that government officials used threats, intimidation or coercion. Plaintiffs respond by arguing that a showing of threats, intimidation or coercion is not required, but nevertheless, such a showing can be made here.

The New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. (the "Civil Rights Act") became effective on September 10, 2004, and was enacted in

order to "provide the citizens of New Jersey with a State remedy for deprivation of or interference with the civil rights of an individual." See N.J. Senate, Judiciary Committee, Statement to Assembly No. 2073 with Committee Amendments, May 6, 2004. N.J.S.A. 10:6-2(c) describes a type of action permitted under the Civil Rights Act, and provides:

> Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection.

Defendants argue that the "threats, intimidation or coercion" language applies to a situation where a person has been deprived of rights or when the exercise or enjoyment of such rights has been interfered with. Plaintiffs on the other hand maintain that the "threats, intimidation or coercion" language is only applicable when a person complains that another party has interfered with his exercise of these rights.

When interpreting a statute, a court's paramount goal is to honor the Legislature's intent, and generally, the best indicator of that intent is the statutory language. DiProspero v. Penn, 183 N.J. 477, 492 (2005). It is not

the function of the court to rewrite a plainly-written enactment of the Legislature or presume that the Legislature intended something other than that expressed by way of the plain language. Ibid. Furthermore, a court should not resort to extrinsic interpretative aids when the statutory language is clear and unambiguous, and susceptible to only one interpretation. Ibid.

In this matter, the Court finds N.J.S.A. 10:6-2(c) to be clear and unambiguous, and that the "threats, intimidation or coercion" language applies both to actions brought by a person alleging deprivation of rights and actions brought by a person alleging interference with the exercise or enjoyment of those rights. The Legislature inserted a comma in between "or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with," and "by threats, intimidation or coercion . . . ." The Court finds that this clearly indicates that this "by threats, intimidation or coercion" language was not to be read alone with the "interference" clause, but also with the "deprivation" clause as well. The Legislature carefully drafted the Civil Rights Act and the placement of any commas cannot be said to be inadvertent or, for purposes of this issue, lack any significance.

The Court's finding is further supported by the language of other subsections of N.J.S.A. 10:6-2. Subsection (a) of N.J.S.A. 10:6-2 provides

that the Attorney General may bring an action if a person subjects any other person to the deprivation of any substantive due process or equal protection rights. Subsection (b) of N.J.S.A. 10:6-2 provides that the Attorney General may bring an action if a person interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment of such rights. Thus, the Legislature drafted two separate subsections which make it clear that, if the Attorney General is bringing an action, "threats, intimidation or coercion" is only a requirement where interference or attempted interference with such rights is present. The Court finds that if the Legislature intended for the same dichotomy to exist when the injured person is the party bringing the action, it certainly could have drafted two separate subsections again. However, it chose not to, and instead drafted a single subsection where "threats, intimidation or coercion" applies to both the "deprivation" clause and "interference" clause. The Court thereby finds that a finding of "threats, intimidation or coercion" is required in order for Plaintiffs to bring successful claims under the Civil Rights Act.

However, the Court also finds that Plaintiffs have raised genuine issues of material fact regarding any threats, intimidation or coercion by Defendants or DOC officers. Plaintiffs provide that they were involuntarily moved from the EMCF to the NJSP where they allege that women prisoners

are subject to the inhumane and inequitable conditions as previously described. Plaintiffs claim that when women prisoners request psychiatric or medical care or otherwise make complaints, they are intimidated by Ms. Coleman and other officers, and have been threatened to be placed in Unit 1GG. Therefore, the Court finds that it cannot grant summary judgment to Defendants on the issue of whether Plaintiffs have any claims under the Civil Rights Act.

Plaintiffs also contend that the women prisoners' equal protection rights have been violated because male inmates' rights are protected whereas rights of female inmates are not. Article I, paragraph 1 of the New Jersey Constitution provides that all persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness. This provision of the Constitution also guarantees equal protection for all New Jersey citizens. Peper v. Princeton Univ. Bd. of Trustees, 77 N.J. 55, 79 (1978). The equal protection of the laws means that no person or class of persons shall be denied the protection of the laws enjoyed by other persons or classes of persons in their lives, liberty and property, and in the pursuit of happiness, both as respects privileges conferred and burdens imposed. Ibid.

(citing Washington Nat'l Ins. v. Bd. of Review, 1 N.J. 545, 553 (1949)). In determining whether a citizen's equal protection rights have been violated, a court shall employ a balancing test in analyzing the claims. Greenberg v. Kimmelman, 99 N.J. 552, 567 (1985). In striking the balance, courts shall consider the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction. Ibid.

In this matter, the Court finds that Plaintiffs have raised genuine issues of material fact relevant to whether this balancing test can be satisfied. Plaintiffs have claimed that their rights to psychiatric and medical care and to legal access, among others, have been affected by Defendants. Furthermore, Plaintiffs contend that the conditions present at the NJSP cause the environment there to be far from rehabilitative in its nature. Plaintiffs contend that Defendants have collectively prevented the women prisoners from receiving necessary care or otherwise interfering with their fundamental rights, while at the same time permitting male inmates to freely exercise such rights. Finally, the Court has not been presented with a public need for this alleged disparity in treatment of male and female inmates. Therefore, Defendants' motion for summary judgment on the issue of whether Plaintiffs have legitimate equal protection claims is denied.

Plaintiffs also contend that women prisoners have been subject to cruel and unusual punishment by Defendants. Article I, paragraph 12 of the New Jersey Constitution provides that cruel and unusual punishment shall not be inflicted. For conditions of confinement in prisons to constitute cruel and unusual punishment, the conditions must involve the wanton and unnecessary infliction of pain or be grossly disproportionate to the severity of the crime warranting imprisonment. Peterkin v. Jeffes, 855 F.2d 1021, 1023 (3d Cir. 1988) (citing Rhodes v. Chapman, 452 U.S. 337 (1981)). The objective factors which a court must examine in prison conditions cases include basic human needs such as food, shelter, and medical care, as well as sanitation, safety, the physical plant, educational/rehabilitative programs, the length of confinement and out-of-cell time. Id. at 1025.

Specifically, courts have found that the deliberate indifference to serious medical needs of prisoners constitutes "the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 104 (1976). See also St. Barnabas Med. Ctr. v. Essex County, 111 N.J. 67, 74 (1988) (finding that the State has a federal constitutional duty to provide medical care for those whom it is punishing by incarceration). Prisoners also have a right to psychological or psychiatric treatment when needed. Clark-Murphy v. Foreback, 439 F.3d 280, 292 (6th Cir. 2006); Woodall v. Foti, 648 F.2d 268,

270 (5th Cir. 1981). Additionally, the deprivation of adequate sanitation may also constitute cruel and unusual punishment. Green v. Ferrell, 801 F.2d 765, 771 (5th Cir. 1986); Peterkin, supra, at 1025. In sum, when the cumulative impact of the conditions of incarceration threatens the physical, mental, and emotional health and well-being of the inmates, the court must conclude that the conditions violate the Constitution. Rhodes, supra, at 364.

In this matter, Plaintiffs have made a number of allegations that the conditions to which the women prisoners are subject are dangerous, filthy, and inhumane. Plaintiffs maintain that women prisoners receive inadequate, if any, medical and psychiatric care, little, if any, educational and rehabilitative programming, unmeaningful exercise, and are placed in cells with windows frosted over blocking their views of the outside world. Plaintiffs claim that women prisoners can only clean their cells once a week and must share bucket water with ten to twelve other cells. Plaintiffs allege that female inmates are not provided with a sufficient supply of sanitary napkins and toilet paper. In sum, Plaintiffs raise a number of significant genuine issues of material fact as to the general conditions of confinement, and specific actions or inaction on the part of Defendants, which if later found to be true, constitutes cruel and unusual punishment. Therefore, the Court denies summary judgment on the issue of whether Plaintiffs have been

subject to cruel and unusual punishment in violation of the New Jersey Constitution.

Finally, Defendants challenge Plaintiffs' contention that women prisoners have been denied legal access. Defendants contend that because none of the women prisoners have demonstrated that they have suffered an actual injury, Plaintiffs' claim must fail. Plaintiffs respond by arguing that their legal access claim does not arise under the U.S. Constitution but rather under their right to equal protection as they are asserting that women prisoners are provided inferior legal access in comparison to male inmates. Moreover, Plaintiffs maintain that two of them have suffered actual injuries in that they have been unable to bring non-frivolous challenges to their convictions.

In Lewis v. Casey, 518 U.S. 343, 346 (1996), the United States Supreme Court reiterated its prior holding in Bounds v. Smith, 430 U.S. 817, 828 (1977) that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by, for example, providing prisoners with adequate law libraries or adequate assistance from persons trained in the law. The Court stated that prison law libraries and legal assistance programs are not ends in themselves, but only the means for ensuring "a reasonable adequate

opportunity to present claimed violations of fundamental constitutional rights to the courts." Id. at 351 (quoting Pounds, supra, at 825). The Court also held that an inmate must demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim. Ibid. The Court provided two examples of how an inmate could make such a showing:

> He might show, for example, that a complaint he prepared was dismissed for failure to satisfy some technical requirement which, because of deficiencies in the prison's legal assistance facilities, he could not have known. Or that he had suffered arguably actionable harm that he wished to bring before the courts, but was so stymied by inadequacies of the law library that he was unable even to file a complaint.
>
> Ibid.

In this matter, the Court first finds that Plaintiffs' claim of the denial of legal access, insofar as it relates to the level of access that women prisoners have as compared to the access that male prisoners have, will not be disposed of by summary judgment. The Court has already indicated that Plaintiffs have made a number of allegations, including those concerning legal access, which raise genuine issues of material fact as to the alleged disparity of treatment of male and female inmates.

Additionally, the Court finds that Plaintiffs have raised genuine issues of material fact as to whether women prisoners have actually been hindered

in efforts to make a legal claim. Both Kathleen and Lakesha have certified that they wish to bring non-frivolous challenges to their convictions but have been unable to do so because they have been denied access to the NJSP law library. The Court finds therefore, that they and perhaps others have been so stymied by their denial of access to the law library that they have been unable to file papers with the court. Therefore, the Court denies summary judgment on the issue of the denial of legal access to the women prisoners.

Plaintiffs have also filed claims under the New Jersey Law Against Discrimination, arguing that they have been discriminated against on the basis of their gender. Defendants have indicated that they have withdrawn, without prejudice, their challenge to Plaintiffs' claims under this law. Therefore, the Court finds that it need not address the potential merits of Plaintiffs' claims under the New Jersey Law Against Discrimination.

Finally, the Court also cannot grant summary judgment on the issue of whether the transfers violated the women prisoners' substantive due process rights. As explained by the Court, Plaintiffs have raised several genuine issues of material fact concerning the conditions to which the women prisoners are subject at the NJSP. Therefore, it would be inappropriate to grant summary judgment on this issue.

The Court also finds that awarding summary judgment to Defendants at this juncture would be inappropriate in light of the fact that discovery has yet to commence in this matter. Generally, New Jersey courts seek to afford every litigant who has a bona fide cause of action or defense the opportunity for full exposure of his case. Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 193 (1988). When critical facts are peculiarly within the moving party's knowledge, it is especially inappropriate to grant summary judgment when discovery is incomplete. Ibid. In this matter, the Court has found several genuine issues of material fact which currently exist that can be resolved or clarified through the discovery process. Therefore, the Court finds that it will not grant summary judgment on this basis as well.

Finally, Defendants argue that Plaintiffs' complaint should be dismissed because female inmates are already represented in the C.F. v. Terhune matter with respect to claims related to the delivery of mental health and medical services, and general programming and conditions claims. Defendants contend the settlement agreement reached and subsequent second settlement addendum covers all of the claims brought by Plaintiffs in this matter. Defendants claim that counsel for C.F. has taken an active role in ensuring that the female inmates are confined in conditions

that will not lead to any mental health problems, and by doing so, has worked with the NJSP on the issues raised by Plaintiffs here.

However, the Court finds that the C.F. litigation does not prevent Plaintiffs from filing their class action complaint here. First, the class in C.F. and the class here are significantly different. In C.F., the class was defined as "all persons who suffer DSM IV, Axis I and/or Axis II disorders such that they are unable to meet the functional requirements of prison life without mental health treatment, who now or in the future will be confined within the facilities of the New Jersey Department of Corrections." Here, the class is defined as "all general population women prisoners who are now or in the future will be confined in New Jersey State Prison." Thus, not all of the female inmates as a part of the class here fall under the ambit of the class as certified in C.F..

Additionally, the scope of the claims in each of the cases is different. In C.F., the plaintiffs brought numerous claims under the U.S. Constitution and federal statutes, whereas here, Plaintiffs have brought claims under the New Jersey Constitution, the Civil Rights Act, and the New Jersey Law Against Discrimination. In C.F., the plaintiffs sought relief based on an alleged failure to attend and respond to the needs of special needs prisoners with mental health issues, whereas here, Plaintiffs seek relief based on an

alleged denial or deprivation of a number of their rights, including health care, legal access, exercise, basic hygiene, work allocation and privacy. Therefore, it is clear to the Court that although there may be some overlapping between the two cases, they are far from identical, and thus Plaintiffs are not precluded from filing this suit here.

For the above stated reasons, Defendants' motion for summary judgment is hereby DENIED. The Court may ultimately transfer Plaintiffs' claim that the transfer of women prisoners from the EMCF to the NJSP violated their procedural due process rights to the Appellate Division dependent on any further development that discovery may uncover.

The Court entered an Order this date in accordance with this decision.

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SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY, CHANCERY DIVISION
DOCKET NO. C-123-07

KATHLEEN JONES, et al.	:	
Plaintiff	:	**Civil Action**
v.	:	
		ORDER
GEORGE W. HAYMAN, et al.,	:	
Defendants.	:	

DENIED

THIS MATTER having been opened to the Court by Anne Milgram, Attorney General of New Jersey, by Dianne M. Moratti and Keith S. Massey, Jr., Deputy Attorneys General, appearing for defendants, and the Court having considered the briefs of the parties submitted in support herein, and the arguments of counsel; and for good cause shown;

IT IS on this 21st day of July, 2008,

ORDERED that defendants motion to dismiss the complaint for failure to state a claim on which relief can be granted pursuant to R. 4:6-2(e) is GRANTED; and,

DF

IT IS FURTHER ORDERED, that DENIED plaintiff's complaint is DISMISSED, WITH PREJUDICE AND WITHOUT COSTS; and

IT IS FURTHER ORDERED, that plaintiffs' Motion for a Preliminary Injunction and Motion for Class Certification are ~~DENIED~~ GRANTED - See Separate orders; and

IT IS FURTHER ORDERED, that the Temporary Restraining Order previously entered by the court in this matter be, and hereby is, DISSOLVED; and DENIED

IT IS FURTHER ORDERED, that a copy of this Order be served upon all parties within _____ days from receipt of this Order by the defendants.

J.S.C.

Maria Marinari Sypek, P.J.Ch.

In accordance with the required statement to R. 1:6-2(a), this Motion was ✓ opposed _____ unopposed.