

Memorandum

U.S. v. Kentucky



JI-KY-004-003



AEP:RF:WGM:RJM:KW:drb
DJ 168-31-13, DJ 168-31-14
DJ 168-30-12, DJ 168-31-11
DJ 168-31-12

Subject

Issuance of Findings Letter For Owensboro Treatment Center, Green River Boys Camp, Johnson-Breckinridge Treatment Center, Rice-Audobon Treatment Center, and Central Kentucky Treatment Center.

Date

July 27, 1995

To

From

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Arthur E. Peabody, Jr.
Chief
Special Litigation Section

RECOMMENDATION

We recommend that you sign the attached letter to the Governor of Kentucky, the Honorable Brereton C. Jones, notifying him of the results of our investigation under CRIPA and the Crime Bill of the five above-captioned facilities that are state operated juvenile treatment centers located in various areas throughout the state of Kentucky.

The letter advises the Governor that unconstitutional and unlawful conditions exist at these facilities with respect to the State's failure to provide protection from abuse and harm, improper use of isolation for punishment and convenience of staff, unsafe classification practices that mix violent and nonviolent youth with improper supervision, insufficient and poorly trained staff, and inadequate physical conditions of confinement.

The letter also details the inadequate treatment programs and aftercare services, inadequate special education, certain improper medical care practices and complete lack of mental health services for the youth. As required by CRIPA, the minimal remedial measures necessary to redress the unconstitutional and unlawful conditions described above are specified for each relevant area in this letter. We have also attached for your review and signature letters to the Departments of Health and Human Services and Education, Coordination & Review, and the Office of Juvenile Justice and Delinquency Protection advising them of our findings and enclosing a copy of our findings letter.

The Kentucky legislature meets in special session on July 31, 1995, to discuss, among other things, its juvenile justice system. We feel that having a copy of our findings letter in advance of special session would help the legislature focus on the important issues within the state's current juvenile system. We, therefore, request expedited review.

Attachments

Approved:



Disapproved:

Comments:



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

The Honorable Brereton C. Jones
Governor of Kentucky
Governor's Office
100 State Capitol
Frankfort, Kentucky 40601

July 28, 1995

Re: Notice of Findings of Investigations: Owensboro Treatment Center, Green River Boys Camp, Johnson-Breckinridge Treatment Center, Rice-Audubon Treatment Center, and Central Kentucky Treatment Center

Dear Governor Jones:

On February 9, 1995, and May 1, 1995, we notified you of our intent to investigate the five above-captioned juvenile treatment centers for the Commonwealth of Kentucky ("the treatment centers") pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et seq., and the law enforcement misconduct provisions of the Crime Bill, 42 U.S.C. § 14141. We toured the Owensboro Treatment Center ("OTC") and Green River Boys Camp ("GRBC") with expert consultants on April 26-28, 1995. We toured the Johnson-Breckinridge Treatment Center ("JBTC"), Rice-Audubon Treatment Center ("RATC") and Central Kentucky Treatment Center ("CKTC") with expert consultants on May 9-13, 1995. Consistent with the statutory requirements of CRIPA, we now write to advise you of the findings of our investigation. Throughout the course of the investigation, the Cabinet for Human Resources staff and facility personnel were fully cooperative with our investigation and provided us with substantial assistance. Our consultants express appreciation for this assistance, and we wish to join them in thanking you for your cooperation.

I. LEGAL FRAMEWORK

CRIPA gives the Department of Justice authority to investigate and take appropriate action to enforce "rights, privileges, or immunities protected by the Constitution or laws

of the United States . . . ," of the residents of facilities such as the Kentucky treatment centers. 42 U.S.C. § 1997a. Hence, CRIPA authorizes suit for violation of federal statutes and regulations as well as for constitutional violations. The Crime Bill similarly authorizes the Attorney General to obtain appropriate relief to address systemic violations of constitutional and federal statutory rights by the "officials or employees of any governmental agency with responsibility for administration of juvenile justice or the incarceration of juveniles." 42 U.S.C. § 14141.

A. Constitutional Rights

Juveniles in custody have a due process right to adequate treatment, food, clothing and shelter, as well as freedom from unnecessary bodily restraint. Youngberg v. Romeo, 457 U.S. 307 (1982). In addition, a state has the obligation to provide rehabilitative treatment to those juveniles within its institutions. Gary H. v. Hegstrom, 831 F.2d 1430 (9th Cir. 1987); Alexander S. v. Boyd, 876 F.Supp. 773, 796 (D.S.C. 1995); Morgan v. Sproat, 432 F. Supp. 1130, 1136 (S.D. Miss. 1977).

Furthermore, under the 14th Amendment, juveniles in custody have equal rights with juveniles not in custody, especially with regard to public education. Any restriction of the rights of juveniles in custody must be related to a legitimate penological interest. Donnell C. v. Illinois State Board of Education, 829 F. Supp. 1016 (N.D. Ill. 1993).

B. Federal Statutory Rights

The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., requires States receiving education funds for special education to develop individualized education plans ("IEPs") for qualifying children. Board of Education v. Rowley, 458 U.S. 176, 188-89 (1982). The IDEA applies to incarcerated juveniles. Donnell C. v. Illinois State Board of Education, 829 F. Supp. 1016 (N.D. Ill. 1993); Green v. Johnson, 513 F. Supp. 965 (D. Mass. 1981). Furthermore, the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibit discrimination on the basis of disability.

Based on our investigation, we believe that certain conditions at the treatment centers violate the constitutional and federal statutory rights of the juveniles. The facts supporting our determination of constitutional and legal violations and the necessary remedial measures to correct these violations are set forth below.

Notwithstanding our serious concerns, we believe there are several positive aspects to the care and treatment of residents at the treatment centers. Though currently inadequately implemented, to its credit the Commonwealth of Kentucky maintains small community focused facilities with a goal of providing juveniles with the treatment and education necessary to reintegrate them into the community upon release. The physical plant at Owensboro Treatment Center is well designed and modern. Although not as modern and in need of expansion, the physical plant at Rice-Audubon is well maintained and clean but inadequate for its rated bed capacity and has safety hazards as noted below.

II. FACTUAL SUMMARY

The following factual summary is derived from the reports of our experts, our inspections of the five facilities, and the documents provided by the facilities. The deficiencies discussed below are systematic and must be corrected statewide at all juvenile treatment centers.

A. Inadequate Abuse Investigations, Neglect, and Harm

1. Abuse Investigations

All Facilities

The procedures for reporting and investigating abuse and neglect are inadequate and ineffective. The abuse investigation system functions to suppress complaints. An initial abuse complaint is generated internally. In practice, to file an abuse complaint, a youth must request a form from staff and complete the form with staff assistance. Even if the youth obtains a form without staff involvement, the youth must give the completed form to staff to mail. In either situation, staff are alerted to an abuse filing. Both youth and staff report that staff pressure youth to withdraw the complaint, resulting in many complaints being withdrawn without investigation. More often, complaints are never filed because the youth fear retribution from staff. The current procedures for filing complaints are insufficient to provide adequate protection for youth.

For abuse complaints that are filed, the complaints are not processed with any sense of priority. Minor complaints and infractions receive the same level of attention as major incidents of physical and verbal abuse. Consequently, a severe backlog of abuse complaints exists and severe incidents of abuse remain uninvestigated. When finally investigated, major incidents of abuse are impossible to corroborate. Key evidence is completely outdated and often the affected youth has left the

facility. Good staff have become frustrated with the often frivolous nature of many of the complaints actually investigated and poor staff remain undisciplined within the system. Without prioritization, the log jam of complaints at the administrative level results in slow and often unsatisfactory resolutions to serious issues and allegations of abuse and neglect.

In those instances where complaints of staff misconduct are substantiated, Kentucky fails to properly discipline and remove such staff from contact with the youth. Facility superintendents do not have the authority to fire abusive staff. Consequently, a facility's staff are not truly accountable to the facility's superintendent. This lack of accountability leads to a lack of control at the facilities and prevents resolution of facility problems, thus placing residents in danger of repeated abuse. Problem staff are simply ignored or shuffled around to other facilities. Many such staff remain in contact with juveniles. Accountability within the entire Kentucky system is a severe deficiency resulting in continued abuse and harm to facility juveniles.

The above deficiencies in the system of abuse and misconduct investigations dramatically increase the likelihood of further resident abuse and severely and negatively impacts the treatment provided at the facilities.

2. Isolation Rooms

All Facilities

The use of isolation rooms at the facilities is improper and potentially abusive. Staff isolate youth far too frequently and isolation practices are generally outside the requirements of resident treatment or facility security. Due process procedures are significantly lacking and youth are isolated for extended periods of time to suit the staff. One youth was isolated for fifteen days "for acting out and planning an escape." Another youth was isolated for three days for "being sarcastic with a smart mouth." In practice, staff use the isolation rooms to excessively punish youth or simply when the staff are tired of dealing with a specific youth. With regard to JBTC specifically, the isolation rooms themselves are in such disrepair as to be unsafe and inhumane. The rooms have exposed conduits that could facilitate suicides, pass-throughs that could be used to pass contraband, and are in general disrepair. One report documented a youth pulling concrete and glass off of the damaged wall of the isolation room and throwing it at staff. Finally, the youth in isolation are not monitored every 15 minutes per facility policy. For example, at JBTC one youth was not monitored at all for over an hour on the day we toured the facility. Such lack of monitoring presents an unacceptable suicide risk.

3. Classification and Initial Screening

All Facilities

During our tours, our experts noticed many youth who were improperly placed in certain facilities. Violent and mentally disturbed youth are placed in facilities incapable of handling them. This creates a real and serious danger for both residents and staff. It also disrupts resident treatment and education. All the facilities we toured, both minimum and medium security, contained residents transferred from the closed maximum security Central Kentucky Treatment Center. This practice of transferring juveniles among facilities of different security classifications presents a danger to both residents and staff and further disrupts treatment and educational programming. The lack of proper classification is especially problematic and potentially dangerous to both residents and staff in those facilities containing non-secure dormitory style housing.

A large part of the classification problem is due to a lack of proper mental health screening before a youth is placed into a facility. Without adequate initial screening, Kentucky will remain unable to properly classify and segregate its juvenile population and to treat adequately juveniles with mental health needs, as further explained below.

4. Staffing

All Facilities

All facilities, except for GRBC, suffer from staffing shortages. At OTC and JBTC, the problem is acute. The shortage of staffing is worst among the direct care staff where sufficient staff does not exist to provide relief duties when staff are unable to attend work. The facilities often operate without an adequate complement of direct care staff. Inadequate staffing patterns negatively impact the facility by overburdening the direct care staff on duty and increasing the likelihood of physical harm to residents while decreasing the effectiveness of treatment. Overburdened staff cannot maintain security and devote adequate time to treatment programming. Staff informed us that due to lack of adequate staff and the increased numbers of more violent youth placed in the facilities, several "near-riot" situations have recently occurred, especially at JBTC. The absence of relief staff also negatively impacts staff training. Staff do not have time to attend necessary training without leaving the facility dangerously understaffed.

5. Physical Conditions of Confinement

Johnson-Breckinridge Treatment Center

Johnson-Breckinridge is too small for its rated 34 bed capacity. Many areas are dirty and in disrepair. Several areas are dangerous. For example, electrical extension cords are left all over the living unit floors. The isolation room conditions are horrendous with sharp edges, exposed conduit, and holes in the wall temporarily closed with sheets of plywood. The indoor recreation area is poorly lighted and inadequate in size. The dining room is too small and peeling paint in the kitchen food preparation area is unsanitary.

Rice Audubon-Treatment Center

The Rice-Audubon physical plant is neat and clean but inadequate in size for its rated 42 bed capacity. The sleeping area allows for little privacy, the dining area is far too small, the gym shared with JBTC needs to be replaced or renovated and enlarged, and the indoor recreation room and showers need to be enlarged. In addition, exposed lightbulbs throughout the facility create a dangerous hazard.

Central Kentucky Treatment Center

Although under renovation, several of the safety features being added to the Central Kentucky physical plant are deficient and potentially dangerous. The razor wire spiralled around the perimeter fencing is so poorly installed as to potentially assist escape. The barred gates at the entrance of both ends of the living space could render the facility a firetrap without an accompanying secondary/backup release. The entire electrical system, lighting, and fire alarm system needs to be replaced.

B. Inadequate Treatment Programming and Aftercare Services

1. Treatment Programs

All Facilities

As a general matter, the Commonwealth of Kentucky has multiple policies and procedures covering nearly every aspect of its care and treatment of the juveniles under its custody. The implementation of these policies, however, is often inadequate. Every juvenile treatment center we investigated lacks adequate individual treatment programs for the juveniles. Our consultants found most ITPs to be superficial and of little use in meaningful treatment. The ITPs are formula written and boilerplate. The ITPs do not list specific treatment goals or problem behaviors specific to the individual with defined consequences or rewards. Because the ITPs are standard formulas, they are not useful to

inform staff of the specific actions that staff should take when dealing with a particular youth. The ITPs are seldom reviewed, revised, or updated and few of the youth interviewed even understood their ITPs. Vague and inadequate ITPs also adversely affect a resident's release from a treatment center. In Kentucky, release from a treatment program depends upon successful completion of a treatment program. Without specific and identifiable treatment goals as contained in a youth's ITP, the decision to release a child has become arbitrary and capricious. Staff apply no established set of criteria for release. Release is consequently a function of arbitrary staff decisions.

Numerous policies and procedures refer to individual and group counseling. However, these services are not being adequately provided. Counseling is defined broadly to include any informal conversation with a youth at any time. Such an understanding of counseling by staff is meaningless. The formal counseling that does occur is inadequate. Individual counseling is sporadic and haphazard often involving multiple untrained staff and providing no continuity for the youth involved. Progress notes are also poorly maintained. Group counseling occurs more frequently but is inadequately documented and provided by poorly or untrained staff. Essentially, the system of treatment throughout all facilities investigated functions to maintain order and does not adequately provide for any meaningful treatment.

Finally, clinical oversight for the treatment programs is inadequate. There is an almost absolute lack of oversight of the treatment programs in the facilities by professionally trained or licensed personnel. In sum, the actual treatment is grossly inadequate, departs from generally accepted standards, and does not provide the juveniles with needed rehabilitation.

2. Aftercare

All Facilities

Kentucky facilities provide inadequate aftercare and transitional services to youth reintegrating into the community. Currently, the youth's transitional counselors meet with the specific youth and the youth's facility counselors only infrequently, if at all. Youth do not continue to receive counseling or follow-up once they have left the facility. This deficiency has a severely negative impact on the treatment provided at all the facilities.

C. Inadequate Medical and Mental Health Care Services

1. Medical Care

All Facilities

The physician and nurse staffing complement at the facilities is inadequate. Untrained direct care staff dispense medications and are unqualified to monitor for side effects of dispensed medications. Moreover, there is little uniformity in dispensing medications. We witnessed one staff member discover that the medication log for a youth had not been filled out. He called the person responsible for administering the medication and asked whether he should sign the log for him. He then signed the log for the other staff member. This kind of inexperience and lax control presents a real danger to residents receiving medications. Finally, non-medical staff routinely dispense psychotropic medication and repackage designated dosages. Such a practice is clearly improper. In sum, medication administration practices at the treatment centers depart significantly from accepted standards of care.

2. Mental Health Services

All Facilities

Kentucky fails to provide adequate mental health services to its juvenile treatment center residents. The State does not locate mental health providers on the facility campuses and does not provide regular mental health consultations. This is true even when a youth has been identified by his counselor as needing such services. Staff are not properly trained to recognize the dangerous side effects of psychotropic medications. Nor are staff adequately trained to identify youth with self-destructive or suicidal tendencies.

What mental health services are provided are inadequate. For example, the "Treatment Specialist" assigned to the Western Region is responsible for consultation to multiple programs and averages two hours per week at OTC (and these two hours are primarily spent with the residents in the Sex Offender Treatment Program). This consultant has an MSW but is not licensed in Kentucky.

The lack of adequate mental health services is a grave cause for concern given the type of youth placed in many Kentucky juvenile treatment centers. For example, two OTC youths interviewed by the consultant were seriously emotionally disturbed with histories of prior psychiatric hospitalizations. However, these two youths are not being seen by a mental health professional. At JBTC, where seven youth were on significant doses of psychotropic medications, the facility contracted a

psychiatrist for a mere four hours a month. A similar situation exists at RATC.

The lack of mental health services results in situations that are potentially dangerous to the health and safety of both residents and staff. The absence of adequate mental health services also negatively impacts the treatment programs for the youth.

D. Education

Johnson-Breckinridge Treatment Center

The Individualized Education Plans ("IEPs") required under the IDEA at JBTC are inadequate. The IEPs are primitive and lacking in detail. They do not adequately identify the youth's educational goals and methods of achieving these goals. Additionally, the IEPs are not integrated with the treatment plans.

Rice-Audubon Treatment Center

Although the vocational and regular education program at RATC are good, the IEPs as required under the IDEA are deficient. The IEPs are lacking in detail and overly generalized. There is little evidence of follow-up, monitoring, and revision of the IEPs. The juveniles' educational programs are not integrated into their treatment programs.

III. Minimally Required Remedies

Remedial measures must be taken to ensure that the juveniles confined in these facilities are not further deprived of their constitutional and statutory rights. These measures include, at a minimum, the following remedies:

1. Kentucky must provide adequate abuse investigation procedures for all facilities. Adequate abuse investigation procedures must include the following measures:

- a. Staff must not be involved in filing complaints.
- b. Investigations must be prioritized and conducted promptly.
- c. The abuse investigation process must be adequately monitored with proper quality assurance external oversight.

d. Abusive staff must be appropriately and promptly disciplined.

2. Kentucky must adequately protect its facility youth from neglect and harm. To protect its residents from neglect and harm, the State must implement the following remedial measures:

a. Ensure that all youth entering the system are adequately evaluated with current and relevant information and properly classified and placed within appropriate juvenile facilities.

b. Immediately cease inappropriately using isolation rooms for punishment and convenience of staff.

c. Only use isolation rooms where placement meets treatment goals or is necessary for the immediate and short term security of the facility.

d. Further revise and enhance due-process protections for isolation placements.

e. Regularly monitor all youth placed in isolation.

f. Maintain properly trained and adequate staffing and increase line staffing to levels that allow for staffing relief and attendance at staff training.

3. Kentucky must provide its confined juveniles with safe conditions of confinement. To this end, the State must initiate the following measures:

a. Immediately remove all safety hazards.

b. Remove all fire and safety hazards.

c. Provide for adequate exercise opportunities.

d. Renovate isolation rooms where unsafe.

e. Reduce overcrowding.

4. Kentucky must provide adequate treatment plans and after care services to its juveniles. To this end, the State must initiate the following measures:

a. Develop and implement meaningful ITPs.

b. Monitor, evaluate, and revise ITPs as necessary.

c. Ensure that the ITPs are used and understood by staff and residents and train staff accordingly.

d. Adequately define the concept of counseling and maintain sufficient and qualified juvenile counselors.

e. Provide transitional counseling services and aftercare to all residents for whom such treatment is needed.

5. Kentucky must provide adequate medical and mental health care to protect the health and safety of the juveniles.

a. Provide appropriate medical services including maintaining sufficient qualified medical staff to safely dispense medication and provide adequate clinical oversight.

b. Maintain sufficient qualified mental health staff to evaluate and monitor all juveniles for mental health problems, develop and implement an adequate mental health care delivery system of individualized treatment, and provide adequate clinical oversight.

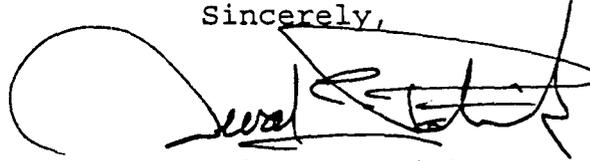
6. Kentucky must develop and implement meaningful IEPs, integrate IEPs with ITPs, and monitor, evaluate, and revise IEPs as necessary.

You may wish to contact the regional offices of the United States Departments of Health and Human Services and Education as well as the National Institute of Corrections and the Office of Juvenile Justice and Delinquency Protection to ensure that Commonwealth officials have taken full advantage of any federal financial assistance which may be available to assist in the correction of the above listed deficiencies. If we can assist you in this regard, please contact us.

We appreciate the assistance and cooperation that representatives of the Commonwealth and the facilities extended to us during this investigation. My staff will contact appropriate officials in the next two weeks to discuss this matter further. It is our intent to work cooperatively with

State officials by entering into a consent decree to remedy the deficiencies we have outlined herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", written over a rectangular box. The signature is stylized and somewhat cursive.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: The Honorable Chris Gorman
Attorney General

Mr. Masten Childers, II
Secretary
Cabinet for Human Resources

Mr. Leon Farley
Supervising Director
Rice-Audubon

Mr. Richard Barnes
Director
Green River Boys Camp

Ms. Carol A. Isham
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Michael Troop, Esquire
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