

# Memorandum



DLP:AEP:RF:VH:WGM:CA:drb  
DJ 168-11-35  
DJ 168-11-36

MR-CA-0002-0004

Subject

Sonoma Developmental Center  
Agnews Developmental Center  
Supplemental Findings Letter

Date

February 24, 1995

To Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

From <sup>AEP</sup><sub>RF</sub> Arthur E. Peabody, Jr.  
Chief  
Special Litigation Section

Attached for your approval is a proposed supplemental findings letter advising the Governor of California of our intention to add federal statutory claims to the findings of our investigations of the Sonoma Developmental Center ("SDC"), and the Agnews Developmental Center ("ADC"), two state-operated residential mental retardation facilities in California. Since 1992 we have been investigating conditions at the two facilities pursuant to our authority under the Civil Rights of Institutionalized Persons Act.

By letters dated December 3, 1992 and May 6, 1994, we informed State officials that conditions at ADC and SDC, respectively, violated the constitutional rights of their residents. The SDC letter also included a claim that SDC was failing to provide its school-age residents with special education services in accordance with the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. § 1400 et seq. Copies of both findings letters are attached.

In September 1994, we met with California state officials to begin consent decree negotiations. By letter dated January 17, 1995, the State rejected our proposal of settling these investigations through consent decrees. Therefore, in accordance with our statutory responsibilities, we have drafted the attached letter which delineates the federal statutes that we will include in any complaint filed with regard to these two facilities. Specifically, we are adding to our findings at the facilities that conditions at ADC and SDC are violating the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 et seq., Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794 et seq., and the substantive provisions of Title XIX of the Social Security Act ("Medicaid"), 42 U.S.C.

§ 1396 et seq. 1/ Our review also indicates that state law created liberty interests are being violated at both facilities. 2/

The two previous findings letters are quite detailed in describing the conditions at the facilities that give rise to the constitutional and federal statutory violations and the supporting facts which give rise to those conditions. The letters also set forth the remedial measures necessary to correct those conditions. The conditions and supporting facts set forth in the previous findings letters are also the conditions and facts used to support the statutory allegations contained in the supplemental findings letter.

Given the State's rejection of our settlement proposal, we believe it will be necessary to file a lawsuit against the State to correct the institutional conditions at ADC and SDC as well as to address the State's failure to provide alternative, less-restrictive treatment settings for the residents of ADC and SDC. CRIPA requires we provide the State at least 49-days notice of the unlawful conditions existing at a facility, supporting facts of those conditions, and remedial measures necessary to correct those conditions before filing suit. We therefore request your signature on the attached supplemental findings letter in order that we may include the further statutory claims in any subsequent complaint.

If you approve, please sign the attached notice letter.

Attachments

Approved:  \_\_\_\_\_

Disapproved: \_\_\_\_\_

Comments:

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1/ The ADA and Section 504 claims are based on the State's failure to provide alternative, less-restrictive treatment settings for ADC and SDC residents. Title XIX claims are based on the State's failures to meet Medicaid standards within the institutions.

2/ See Welfare and Institutions Code § 4500 et seq. ("The Lanterman Act"). The Lanterman Act mandates that services to persons with developmental disabilities be provided in "natural community settings."