

WBR:AEP:BPS:CAS:drb
DJ 168-41-92



MAR 25 1986

Honorable Bill Allain
Governor, State of Mississippi
New Capitol Building
3rd Floor
Jackson, Mississippi 39201

Re: Ellisville State School

Dear Governor Allain:

On September 11, 1985, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. §1997, we wrote you to let you know of our intention to investigate conditions at Ellisville State School (ESS), Ellisville, Mississippi. An attorney from the Department of Justice met shortly thereafter with representatives of your office, the Department of Mental Health, the Bureau of Mental Retardation, and the State Attorney General's office to discuss our investigation.

Our activities since that time have consisted of five days of tours of the facility by our attorneys, a psychologist, and a psychopharmacologist. During these tours, we observed residents, interviewed many ESS staff, and reviewed records and documents. Throughout the investigation, the Department of Mental Health, the Bureau of Mental Retardation, the newly-appointed leadership at ESS and the staff at the facility provided substantial assistance, and we join our consultants in expressing our appreciation for their efforts.

Based on our investigation, we believe that the conditions at ESS deprive residents of their constitutional rights. Mentally retarded persons have constitutional rights to adequate medical care, reasonably safe conditions of confinement, and such training as would ensure that they are not exposed to unreasonable risks to their personal safety and are free from undue bodily restraint. Youngberg v. Romeo, 457 U.S. 307, 324 (1982). Decisions reasonably calculated to protect those rights must be made through the

exercise of professional judgments by professionals qualified to make such judgments. Id. at 321-325. Accordingly, we will summarize below those patterns and practices at ESS that deprive the residents of those rights enunciated in Youngberg.

I. Staffing

a) Psychologists: There is an insufficient number of qualified psychologists at ESS to provide minimally adequate care and training for the resident population or to render professional judgments with respect to such care and training. Consequently, ESS residents are not receiving the care and training necessary to protect them from unreasonable risks to their personal safety and to assure freedom from undue bodily restraint.

There are over 700 residents at ESS, yet there is only one doctorate-level psychologist at the school. Although he appears well-qualified, he alone is unable to provide such direct supervision of the psychology staff as is necessary to ensure that the residents receive care consistent with the exercise of professional judgment. His administrative duties as chief psychologist further dilute his ability to undertake these responsibilities.

There are 10 masters-level and three bachelors-level persons on the psychology staff. They lack the education and experience necessary to enable them, without appropriate supervision, to adequately develop and implement training programs for the residents or to supervise the direct care staff responsible for implementing training programs and monitoring residents' progress. This inadequate staffing results in a failure to provide residents the training that is constitutionally required to facilitate their freedom from undue bodily restraints and to prevent unreasonable risks to their personal safety.

b) Psychiatrists: Current psychiatric coverage at ESS is not adequate to assure that professional judgments are rendered in diagnosing disorders, prescribing psychotropic medications, or monitoring the use of such medications. All psychiatric services at ESS are provided by two part-time consultants who are residents-in-training at the university medical center in Jackson, Mississippi. Each spends about 4 hours per week at the institution. Our consultant determined that these two psychiatrists were knowledgeable but that the minimal amount of time they spent at ESS precluded the exercise of professional judgments necessary to provide minimally adequate

medical care to the 700 ESS residents, approximately 240 of whom were on one or more psychotropic medications. This inadequate coverage exposes ESS residents to unreasonable risks to their personal safety due to inappropriate or unnecessary administration of potent medications and failure to adequately monitor side effects of these drugs.

II. Training

The Supreme Court in Youngberg, supra, specifically held that mentally retarded individuals are constitutionally entitled to such training as an appropriate professional would consider reasonable to assure their safety and freedom from undue bodily restraint. ESS fails to provide such training for its residents.

At the Mainstreet Unit there was no training at all for children who exhibited dangerously aggressive behavior. Assaultive and self-injurious residents at other ESS units frequently were not provided training that might have reduced or eliminated such behavior and the need for the use of restraints. Even where individual training programs had been prepared, they were often inappropriate to the extent that professional judgments did not appear to have been exercised in the development or implementation of the programs. These deficiencies in training have resulted in the undue use of restraints and pose a serious threat to the safety of residents.

III. Medication Practices

Approximately 34 percent of the residents of ESS receive at least one psychotropic drug. The prescription and monitoring of such medication at the institution represent significant departures from accepted medical practice and create an unacceptable risk of harm to these residents.

Our psychopharmacology consultant noted that residents of ESS were frequently administered multiple psychotropic drugs from the same drug class. Such intraclass polypharmacy is dangerous and almost always constitutes a departure from accepted medical practice. The records our consultant reviewed indicated no justification whatsoever for the practice, which increases dramatically the risk of drug side effects and overmedication. A significant number of residents whose records he reviewed were receiving excessively high anti-psychotic drug doses, both from the prescription of large amounts of a single medication and from the combined prescription of two or more of such drugs. These medically inappropriate practices present a clear and unreasonable risk to resident safety.

In addition, ESS has no written policies regarding maximum daily drug doses, and there is no monitoring program to ensure that clients do not receive excessive daily doses of anti-psychotic agents. Further, ESS performs no regular examinations on those residents who are at risk for parkinsonism, tardive dyskinesia or other serious side-effects that can result from the use of such drugs. Clients receiving long-term treatment on lithium should be closely monitored for both kidney and thyroid damage. ESS does not require such monitoring. The failure to properly monitor the use and effects of psychotropic medication at ESS poses a serious threat to the safety of the residents.

IV. Recordkeeping

Medical recordkeeping can be of constitutional significance in that inaccurate or incomplete records can present an active danger to residents by depriving professional staff of information necessary to make professional judgments regarding medical care and training. One concern is that the risk of unjustifiable or inappropriate drug therapy is significantly increased where records lack the necessary information upon which to base treatment decisions. Another is that residents will not receive the medical treatment or training to which they are constitutionally entitled.

The records reviewed by our psychopharmacology consultant all lacked adequate diagnostic assessments. In most cases, it was difficult to discern why the resident was being medicated and whether training had been tried unsuccessfully. As a result, potentially dangerous anti-psychotic drug therapy was frequently instituted or modified in the absence of professional judgment. In addition, the records lacked information necessary for professional review of individual training and, in many cases, reflected the absence of any coordination between training and medication programs. Because of these recordkeeping deficiencies, the staff at ESS does not have available information necessary to make professionally-based decisions, thus creating a serious risk to the health and safety of the residents.

V. Physical Plant

The physical plant at ESS does not unreasonably threaten the safety of the residents with the exception of the six time-out rooms at Mainstreet. These rooms contained holes in the floors for toileting in which pipes had been broken revealing sharp jagged edges. In addition, there were holes in the room walls from which light switches had been torn and sharp, ripped wire mesh in viewing slots in the doors were exposed. These conditions pose serious safety hazards to agitated residents who may be placed in the time-out rooms.

VI. Minimum Remedial Measures

The aforementioned conditions, which have existed at least since 1983, result in the deprivation of ESS residents' constitutional rights. To rectify the deficiencies at ESS and to ensure that constitutionally adequate conditions are established there, we propose to enter into a legally binding and judicially enforceable agreement with the State of Mississippi, providing at a minimum the following remedies:

1. Residents must be provided with adequate medical care;
2. Recordkeeping and administrative practices must be implemented to ensure that residents' treatment and training are based on or consistent with judgments of qualified professionals;
3. Medication practices must be modified, as necessary, to ensure that they comport with accepted professional medical standards;
4. Training programs must be professionally designed for those residents for whom such training can reduce or eliminate unreasonable risks to their personal safety and/or the use of undue bodily restraint. Residents with self-injurious, physically abusive and other destructive behaviors must be identified immediately and provided training to reduce or eliminate such behaviors. The practice of using restraints in lieu of training must cease immediately. Restraints may be employed only pursuant to the exercise of professional judgment by a qualified professional;
5. ESS must hire and deploy a sufficient number of qualified professional staff necessary to provide residents with minimally adequate medical care and the training described in paragraph 4 above;
6. The use of time-out rooms that pose undue risks to the personal safety of ESS residents must cease immediately.

Information about federal financial assistance which may be available to assist with the remediation process can be obtained through the United States Department of Health and Human Services' Regional Office (Director, Intergovernmental and Congressional Affairs, 404-221-2227) and through the United States Department of Education by contacting individuals listed in the attached information guide.

Our attorneys will be contacting your Attorney General's office shortly to arrange for a meeting to discuss this matter in greater detail. We seek to resolve these matters in a reasonable manner and in the spirit of cooperation intended by the Civil Rights of Institutionalized Persons Act, and we look forward to working with state officials toward that end.

Sincerely,

Mr. Bradford Reynolds
Assistant Attorney General
Civil Rights Division