



Office of the Assistant Attorney General

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Honorable Ray Mabus
Governor
State of Mississippi
State Capitol Building
Jackson, Mississippi 39201

U.S. v. Mississippi



MR-MS-002-002

Re: Boswell Retardation Center

Dear Governor Mabus:

On July 23, 1990, we notified you of our intention to investigate conditions at the Boswell Retardation Center (Boswell) in Sanatorium, Mississippi pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. As contemplated by the statute, we are now writing to inform you of the findings of our investigation and to outline the minimum measures necessary to remedy the unconstitutional conditions at Boswell.

As part of our investigation, attorneys from the Department of Justice toured Boswell for three days in November 1990 with two consultant psychologists. We observed residents, interviewed staff, and reviewed records and documentation. Throughout the investigation, representatives of both the Department of Mental Health and the facility were helpful and cooperative. We appreciate their efforts.

Our investigation reveals that conditions at Boswell exist which deprive residents of their constitutional rights. Institutionalized 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). Conditions at Boswell contravene the residents' constitutional rights in a manner far more egregious than encountered in our investigation of the Ellisville State School.

Set out below are our findings and recommendations. The unconstitutional conditions revealed by our investigation include Boswell's failure to provide minimally adequate training programs sufficient to ensure that residents are free from undue

restraint, insufficient numbers and training of staff, inadequate psychiatric care and recordkeeping, and a physical environment which threatens the health and safety of residents.

Notwithstanding these findings, we wish to acknowledge Boswell's vocational rehabilitation programs which were noteworthy for those residents served in terms of their structure, management and efficacy.

I. Inadequate Training Programs

Our consultants considered Boswell's training programs to be totally inadequate and failing to meet acceptable professional standards. One consultant, Dr. Johnny Matson, rated the programs "as among 5% of the poorest I have seen at facilities around the country in the last 10 years."

Boswell fails to provide professionally designed and implemented individualized training programs that are sufficient to ensure that residents are not subjected to unreasonable restraints. Following a careful review, our consultant psychologists concluded that Boswell's staff are using restraints, isolation and punishment to control the behavior of residents in lieu of necessary training programs.

Boswell's staff fail to identify and eliminate circumstances which provoke problem behaviors in residents. After the onset of a maladaptive episode, staff intervention is focused solely on restraining the resident or using aversives without resorting to alternatives. Our consultants noted that these procedures are a substantial departure from accepted professional practice.

Current behavior programs are not data based and thereby do not meet professional standards. For example, Boswell has no adequate facility-wide behavioral observation system that is used consistently and reliably by all staff to collect behavioral data. In addition, because staff fail to provide behavioral data to the consultant psychiatrist for evaluation of the need for continued medication, he is accordingly limited in his ability to determine whether medication may be tapered or withdrawn which places residents at risk of undue chemical restraint.

There is also inadequate behavioral programming for residents taking psychotropic medication. What programming does exist, moreover, is not integrated with the use of psychotropic medication which places residents at risk of undue chemical restraint.

The psychology policy manual appears to have been adapted from several sources and is internally inconsistent. In addition, interviews with the psychology staff strongly suggested that they do not understand some of the basic concepts in the

manual, such as reliability, and that they routinely fail to follow its guidelines.

II. Insufficient Numbers and Training of Staff

There is an insufficient number of qualified medical and psychology staff at Boswell to provide minimally adequate care and training for the resident population or to render professional judgments with respect to such care and training. Consequently, Boswell's residents are not receiving the care and training necessary to protect them from unreasonable risks to their personal safety and to ensure freedom from undue bodily restraint.

The most glaring staffing deficiency is in the area of psychology. The psychology department's current 1:70 staff-to-resident ratio is totally inadequate given the behavioral programming that is necessary with this resident population. The absence of a departmental supervisor responsible for all staff psychologists further contributes to programmatic incoherence and disjointedness.

Psychology staff suffer from lack of training in basic behavioral psychology. This educational deficit greatly undermines the quality of the behavior reduction programs currently in place at Boswell. Until training is provided to instruct psychologists how to gather and process data linking assessment to treatment, the facility's behavior programs will not meet professional standards.

In addition, the 3-hour orientation which direct care staff receive in behavior management is totally inadequate. Not only is three hours insufficient to teach basic behavioral skills and theory, it sends the wrong signal to staff who receive a full ten hours of instruction in how to restrain clients. Inasmuch as this structure suggests to personnel that restraint is more important than active programming in the area of life skills, it jeopardizes the adequacy of resident care and poses an unreasonable risk to their freedom from bodily restraint.

III. Inadequate Psychiatric Care

The prescription and monitoring of psychotropic medications at Boswell represent significant departures from accepted medical practice and fail to protect residents from serious risks of harm.

Our consultants concluded that drugs were often randomly given, with no rationale offered to justify their prescription. In several instances, individuals were taken off one psychotropic medication and placed on another without proper documentation to justify the change in prescription.

Once a resident is placed on psychotropics, there is no systematic monitoring of the side-effects of the medication by qualified staff. Moreover, the direct care staff, who spend the most time with residents and would therefore be the first to notice side effects, receive no training whatsoever in this area and do not take part in the monitoring process. There is, in addition, no systematic, facility-wide procedure to ensure that each resident's medication is evaluated on a timely basis.

While medication dosage levels do not appear to present a problem, our consultants found evidence of improper polypharmacological practices at Boswell. Of particular concern was the inattention paid to the use of anticholinergics and the heavy use of inter-class polypharmacy.

Finally, while it appears that some effort is being made to reduce the medication of certain residents, there is no policy in place providing for regular trial withdrawals and drug holidays for all residents. This omission contravenes standards of professional clinical practice.

IV. Inadequate Recordkeeping

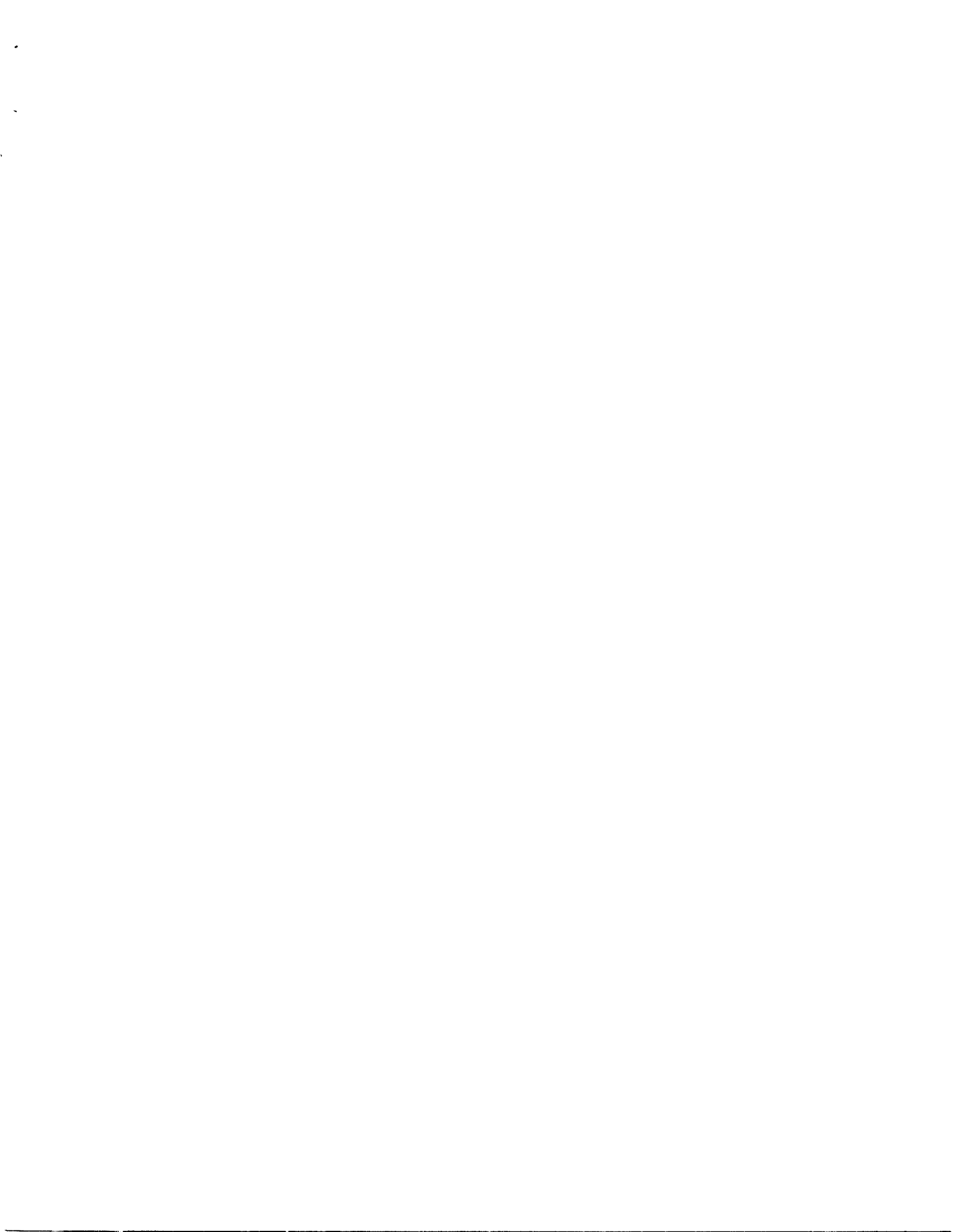
Boswell lacks a data gathering system sufficient to provide information upon which professional decisions may be based regarding all aspects of training programs for residents.

The ability of Boswell to deliver adequate care to its residents is hindered by the inadequate recordkeeping practices at the facility. A resident's diagnosis and the reasons for prescribing certain procedures and medications are seldom written into a resident's record. When changes are made, there is little indication in the record as to the basis for such a change. Without this information, professional care and treatment decisions cannot be made.

Boswell's practice of keeping medical and training records separately poses a risk to resident safety. Keeping medical records in a central location where they are not readily accessible to direct care staff is potentially dangerous in that it renders staff unable to check drug data when necessary. In addition, without the benefit of a comprehensive record, it is difficult to assess the interaction of drugs and behavioral interventions which is necessary in evaluating treatment effects.

V. Inadequate Physical Environment

Boswell's physical environment is grossly out-of-date, having been originally designed to serve as a tuberculosis hospital, and contravenes health and safety standards.



Boswell's physical environment threatens the safety of residents. For example, sharp metal pieces were observed protruding from the walls of many rooms. These fixtures, part of intercom and heating/air systems which are no longer functional, are dangerous to residents. Similarly, rubber gloves found lying on a bathroom floor and window ledge are cause for concern in light of the presence of patients with pica behavior, i.e., ingesting foreign objects. These same residents are also at risk of ingesting used paper towels, soda pop lids and metal coat hangers which were also discovered on the wards within their reach.

The facility also suffers from a general state of disrepair and lack of adequate sanitation. For example, curtains and curtain rods were observed to be missing in some of the residential living areas, and bathroom fixtures such as soap dispensers and faucets did not always function properly. Some of the floors and toilet areas were also in serious need of cleaning, as was illustrated by the foul odor emanating from certain bathrooms. These conditions present an unreasonable risk to the health and safety of residents.

VI. Minimal Remedial Measures

The aforementioned conditions result in the deprivation of Boswell residents' constitutional rights. To rectify the conditions at Boswell 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, for the following remedies:

1. Boswell must provide conditions of confinement that protect residents from undue risks to personal safety;
2. Medication practices must be modified to ensure that they comport with accepted professional medical standards;
3. 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 or other destructive behaviors must be identified immediately and provided training to reduce or eliminate such behaviors;
4. Boswell must hire and employ a sufficient number of qualified professional staff to provide residents with minimally adequate training, as described in paragraph 3 above;

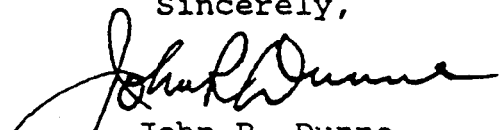
5. Staff must receive instruction in behavior therapy and methodology sufficient to provide Boswell's residents with minimally adequate training, as described in paragraph 3 above;

6. Recordkeeping and administrative practices must be implemented to ensure that residents' treatment and training are based on or consistent with judgments of qualified professionals.

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.

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 most ably demonstrated in our recent negotiations with respect to Ellisville State School. We look forward to working with state officials toward a similarly satisfactory resolution of this matter.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Mike Moore
Attorney General
State of Mississippi

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Director, Boswell Retardation Center

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