



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20535

February 8, 1995

The Honorable George Allen  
Governor  
Commonwealth of Virginia  
State Capitol  
Richmond, Virginia 23219

U.S. v. Virginia



MR-VA-002-004

Re: Northern Virginia Training Center

Dear Governor Allen:

My staff and I appreciated the opportunity to meet with your Deputy Attorney General, William Hurd, and his staff on January 31, 1995, to discuss our investigations pursuant to the Civil Rights of Institutionalized Persons Act of three institutions (Northern Virginia Training Center, Eastern State Hospital, and Northern Virginia Mental Health Institute) operated by the Commonwealth. We have agreed to meet again on or before February 10, 1995, in order to determine whether we can come to some agreements in these matters.

Prior to that meeting, we thought it appropriate to further apprise you of our most recent findings and our determination that federal statutory violations exist at the Northern Virginia Training Center ("NVTC"). Our investigation of NVTC was initiated in May 1990 and has been pending absent any resolution for a protracted period of time.

Following a full evaluation of conditions at NVTC, we most recently advised Commonwealth officials of our findings of continuing constitutional violations at the facility in a letter dated May 31, 1994, addressed to Attorney General Gilmore. In summary, our consultants found numerous dangerous conditions at the facility. More specifically, they found deficiencies in resident assessment, the design and implementation of training programs, excessive and unjustifiable use of physical restraints, inadequate numbers of direct care and professional staff, inadequate medical care, including medication practices, and improper feeding of physically disabled residents. A copy of our letter to Mr. Gilmore is attached for your further information.

In addition, our review of this matter has led us to determine that the federal statutory rights of residents are being violated. More specifically, residents' rights pursuant to 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 provisions of Title XIX of the Social Security Act ("Medicaid"), 42 U.S.C. § 1396 et seq. are being violated by various acts, practices, and conditions at NVTC. Our review also indicates that the rights of the residents guaranteed by Virginia state law are also being violated. See, e.g., Va. Code Ann. § 37.1 - 84.1 (Mitchie 1994).

NVTC fails to provide an environment which meets the needs of residents, promotes their growth, development, and social well-being and permits contact with mainstream social institutions. By design and function, residents are separated from society. Where residents can benefit from placement in community based programs and facilities, and especially where professionals have determined that such placement is appropriate, this unnecessary segregation of the developmentally disabled violates both the ADA and Section 504. Moreover, we note that many of the residents at NVTC have behavior problems or medical needs which have been used to justify their continued confinement at the facility. Justifying continued confinement on such grounds, particularly where services ostensibly designed to treat such problems are so inadequate, constitutes the very discrimination both the ADA and Section 504 are designed to prohibit. Justifying confinement at NVTC on the basis of the severity of handicap is likewise discriminatory absent a professional determination that such confinement is essential to the care of an individual resident.

Many of the areas identified during our investigation of NVTC as constituting constitutional violations also are substantive violations of the Social Security Act and regulations implementing the Medicaid program. Deficiencies in the areas of training and medical care are the clearest examples.

As we have specified in other correspondence, we believe that remedies are necessary to eliminate continuing constitutional violations as well as the federal statutory violations set forth here. More specifically, the Commonwealth should implement the following remedies:

- 1) Provide for each resident a professionally designed and implemented training program that will teach new skills, foster growth and development, and permit each resident to exercise independence. Such programs must be designed and implemented by sufficient numbers of appropriately qualified and trained staff,

including both direct care and professional staff. Immediate attention should be given to those residents exhibiting the most dangerous behaviors and behaviors presently being managed by the use of restrictive measures, including physical restraints.

2) Staffing at all levels should be enhanced to provide necessary care, treatment, and training, and to ensure the personal safety of all residents.

3) Assessment and evaluation of the individual needs of residents must be improved to reflect consistent compliance with generally accepted professional standards.

4) Medical care must be significantly improved.

5) Physical restraints should be phased out to be used only in case of genuine emergency; the elimination of the facility's chronic over-reliance on the use of physical restraints will require a complete review of the facility's psychology department, adherence to generally accepted professional standards emphasizing positive reinforcement techniques, and the appointment of facility leadership committed to restructuring the facility's overall approach to training programs, especially programs designed to address behavior problems.

6) Medication and medical charting practices must be revised to conform with generally accepted medical standards.

7) Feeding practices should be revised to ensure the safety and well-being of physically disabled residents who are fed by staff. To achieve this goal, it will be necessary to fully evaluate present feeding techniques, evaluate each physically disabled resident to identify safe feeding procedures, train staff in such procedures, and carefully monitor their implementation as residents are actually being fed by staff. This evaluation process should include assessments both for proper nutritional management and other needed therapies, e.g., physical therapy.

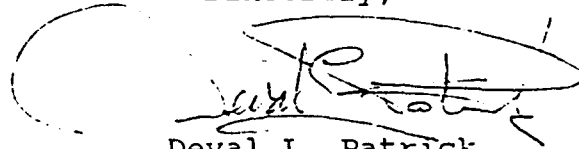
8) Commonwealth officials need to expand community based programs to meet the individualized needs of NVTC residents who should be served in community programs. All residents should be evaluated for community placement by an inter-disciplinary team, including appropriately trained professionals who have experience in operating community programs. No resident should be precluded from community placement based on their degree of disability or other handicapping condition.

9) Commonwealth officials need to develop an overall plan to eliminate all of the deficiencies identified in the course of this investigation and communicated to such officials, including

necessary steps to achieve substantive compliance with federal and state law.

In closing, I can only express my hope that we can work together to resolve this long outstanding matter to the benefit of the developmentally disabled and mentally retarded residents of the Northern Virginia Training Center.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", is written over a large, faint circular stamp or watermark.

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

Enclosure

cc: Ms. Kay Coles James  
Secretary  
Department of Health and  
Human Resources

Dr. Timothy Kelly  
Commissioner  
Department of Mental Health and  
Mental Retardation

Ms. Janet Hill  
Director  
Office of Mental Retardation

Mr. David H. Lawson  
Director  
Northern Virginia Training Center

Helen Fahey, Esquire  
United States Attorney  
Eastern District of Virginia