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DJ 168-44-10

FEB 26 1993

REGISTERED MAIL  
RETURN RECEIPT REQUESTEDThe Honorable Marc Racicot  
Governor  
State of Montana  
State Capitol  
Helena, Montana 59620Re: Mountain View School for Girls  
Helena, Montana

Dear Governor Racicot:

By letter dated June 30, 1992, we advised then Governor Stan Stephens that we were initiating an investigation of the Mountain View School for Girls (Mountain View), Helena, Montana, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997. Consistent with statutory requirements, we are now writing to advise you of our findings. I regret to advise you that our investigation identified conditions at the facility that deprive juveniles confined there of their constitutional and federal statutory rights. The remedial measures necessary to correct these violations are set forth below.

We have assessed the constitutionality of conditions at this juvenile facility in light of a narrow constitutional standard. Institutional administrators are granted wide discretion in the operation of the facility; only those restrictions on juveniles which do not further or are not reasonably related to the legitimate governmental objectives of rehabilitation, safety and internal security violate constitutional standards. Bell v. Wolfish, 441 U.S. 520, 539 (1979). Conditions have also been evaluated for compliance with federal statutory standards.

Based on our investigation, we have concluded that the following conditions violate the constitutional or federal statutory rights of juveniles confined at Mountain View:

1. Mental health services, including measures to protect and treat juveniles posing the risk of suicide, are not adequate to meet the serious mental health needs of juveniles.

cc: Records Chrono Peabody Nelson Stern Weinstein Ryan

2. Services for juveniles with disabilities do not meet the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

3. Disciplinary measures, including the use of seclusion and mechanical restraints, are imposed arbitrarily and without penological justification in violation of constitutional standards.

4. Unsafe and unsanitary conditions exist throughout the facility.

5. Professional resources at Mountain View, including competent and qualified staff, are inadequate.

The Attachment to this letter sets forth the facts supporting the findings of constitutional and statutory violations.

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

1. A mental health care delivery system designed to meet the serious mental health needs of juveniles must be developed and implemented.

2. Juveniles evaluated as being handicapped within the meaning of the Individuals with Disabilities Education Act must receive services consistent with statutory requirements.

3. Disciplinary policies and procedures must be modified, as appropriate, to comply with constitutional standards.

4. Unsafe and unsanitary conditions must be eliminated.

5. Enhanced professional resources, including the provision of competent and qualified staff as well as mandatory staff training programs, are required.

You may wish to contact the regional offices of the Department of Health and Human Services and the Department of Education, as well as the National Institute of Corrections and the Bureau of Justice Assistance, with regard to any federal financial assistance which may be available to assist you in the correction of these deficiencies. If we can assist you in this regard, please let us know.

We appreciate the assistance and cooperation of State and institutional officials extended to us during the course of this investigation. My staff will contact appropriate officials in the near future to discuss this matter further. If, in the

meantime, you or any member of your staff has any questions, please feel free to contact Arthur E. Peabody, Jr., Chief, Special Litigation Section, at (202) 514-6255.

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

Enclosure

cc: The Honorable Joseph Mazurek  
Attorney General  
State of Montana

Mr. Henry Hudson  
Director  
Department of Family Services

Mr. Al Davis  
Department of Family Services  
Juvenile Corrections Division

The Honorable Doris Poppler  
United States Attorney  
District of Montana

ATTACHMENT

FACTS SUPPORTING FINDINGS OF CONSTITUTIONAL  
AND STATUTORY VIOLATIONS

As part of our investigation, attorneys from this Division toured the Mountain View School for Girls on November 9-10, 1992, with consultants in the areas of psychiatry, sanitation and juvenile justice. We observed conditions in the various buildings constituting the facility, spoke to juveniles, interviewed staff and reviewed a variety of institutional records.

At the outset, we should note that our juvenile justice consultant stated that many of the deficient conditions referenced in this attachment are the result of "years of neglect." He observed that while many of the professional staff associated with the facility were undoubtedly committed to a high level of professional performance, they were being asked to do too large a job with too few resources. He indicated that the facility has no defined operational mission inside the State's juvenile justice system to provide guidance to the management team at Mountain View. Various conditions at the facility were characterized by him as unsafe, indiscriminate and "insidious." We bring these severe criticisms and the findings set forth below to your specific attention here in order that you may be aware of the dimension of the deficiencies at Mountain View.

1. Mental Health Services

In critical areas, mental health services intended to serve juveniles with serious mental health needs are grossly deficient. The system currently in place to evaluate the needs of juveniles committed to the facility is badly fragmented, disorganized, and does not allow for the timely identification of juveniles with serious mental health problems. Our consultant determined that professionals at the facility either do not identify juveniles with psychiatric problems or, if such problems are identified, fail to take steps to provide adequate treatment.

Specifically, our consultant found that the sporadic efforts to determine the mental status of juveniles by the administration of a mental status examination were generally untimely. As a result, individuals at risk of suicide or those with other clearly identifiable mental health problems, including depression, hallucinations, delusions, or paranoia, are not diagnosed or afforded treatment consistent with generally accepted medical standards.

Further, our consultant found serious problems in the use of psychotropic and other controlled drugs at the facility. There is no professionally based system in place for monitoring the potentially dangerous side-effects of psychotropic medication on juveniles, including policies and procedures to monitor for tardive dyskinesia, a potentially irreversible side effect of such medication. In addition, our consultant specifically noted the lack of adequate monitoring of numerous individuals who have been prescribed anti-depressant medication. The failure to monitor these medications in these individuals places them at great risk of serious, indeed, life-threatening side effects. Remarkably, records indicated that control drugs are, at times, reported as "missing."

Due to the absence of adequate nursing staff, cottage staff routinely dispense medication. The use of untrained staff to dispense medication is a serious deficiency. Cottage staff are in no position to monitor for drug reactions or other side effects and cannot exercise professional judgment in this clearly medically related area.

## 2. Juveniles with Disabilities

Based upon a review of records and observation of juveniles at the facility, our consultant concluded that juveniles with disabilities are neither properly evaluated or, when identified, provided with appropriate educational services as mandated by the Individuals with Disabilities Education Act (IDEA). For example, records reviewed indicated that juveniles with identified symptoms of learning disabilities on psychological testing, were neither referred for nor provided any special education services.

A review of the individual education plans for those individuals who had been identified as being handicapped within the meaning of the statute indicates that such plans do not contain many of the elements required by the statute's implementing regulations. For example, none of the plans contained a "special needs" section; others lacked behavioral observations, statements of goals, and assessment information. Indeed, the deficiencies in such plans were so severe that our consultant described them as "primitive."

The failure to evaluate school aged juveniles to determine their disability, if any, and to provide appropriate educational services as defined in implementing regulations violates IDEA.

## 3. Discipline

The current "system" in place at Mountain View for the administration of discipline fails to meet any known professional standard. Cottage staff are essentially afforded total discretion in administering discipline to juveniles.

Consequently, most measures they employ are arbitrary. Further, institutional administrators have neither developed nor implemented any behavior management program for the juveniles, a program by which juveniles are rewarded for appropriate behavior and appropriately disciplined for unacceptable behavior. The absence of such a program in a juvenile facility represents a substantial departure from generally accepted professional standards for the operation of such a facility.

Due to the lack of a professionally based system for discipline, most cottage staff simply resort to placing disturbed youth alone in a locked room, i.e., seclusion, without consideration of other alternatives. This practice is especially dangerous for juveniles exhibiting self destructive behaviors. Our juvenile justice consultant specifically noted that, in his opinion, the frequency and duration of seclusions are "extreme." Moreover, he determined that not all occurrences of seclusion are recorded, individuals in seclusion are not monitored at timely intervals, and that on too frequent occasions seclusion is employed outside the scope of existing policy and procedure. Our consultant went so far as to characterize the use of seclusion at Mountain View as "routinely excessive" and "dehumanizing." In sum, imposition of discipline at Mountain View is arbitrary, capricious and a substantial departure from professional standards.

Our consultant also found that mechanical restraints, including handcuffs and leg irons, are routinely used in circumstances which cannot be justified by any rationale for control, order, or safety. Furthermore, such restraints are utilized absent documentation, without proper authorization of institutional administrators, and without proper controls. In brief, our consultant characterized the use of mechanical restraints at Mountain View as "insidious" and "egregious" and a complete departure from applicable professional standards.

#### 4. Unsafe and Unsanitary Environment

Our consultants uniformly agreed that the physical structures constituting Mountain View are in serious disrepair and its preventive maintenance program is inadequate. Several cottages had broken windows which represent a safety and security threat. Others lack ventilation. Some shower areas have decaying walls. Exposed lightbulbs, non-secure fixtures, and grossly inadequate lighting present security and safety hazards. Seclusion rooms present similar hazards and contain blind spots.

Fire safety risks of a serious dimension are also present throughout the facility. The almost wholly wooden structures lack sprinklers, fire resistant doors and safety glass. The key system presents a particularly dangerous hazard. During a fire drill conducted during part of our tour, juveniles were unable to

exit from a cottage because no one present had the key to the door. The absence of any secondary door lock release system poses severe fire safety risks at Mountain View. In addition, proper egress is impeded by doors which open inward. Further, there are an insufficient number of smoke detectors throughout the facility. Combustible materials are present in great number in all cottages and range from combustible curtains and drapes to flammable mattresses. Poor and exposed electrical wiring was identified in most buildings. Furthermore, each cottage requires evaluation to ensure proper smoke compartmentation and other necessary fire safety precautions.

Although we found the food service to be generally adequate, "hot" food served to juveniles was so cold that it constituted a threat of food borne illness. Further, individuals using dishwashing facilities failed to employ proper sanitizing agents, e.g., soap, thereby presenting similar risks. Other chemical and cleaning agents are not properly stored.

#### 5. Inadequate Resources

While some additional professional staff are required at Mountain View, e.g., nurses and special education teachers, our consultants determined a far greater need to adequately train the present staff. Many of the deficiencies identified above, e.g., use of seclusion and mechanical restraints, are attributable, in large part, to the lack of knowledge by staff as to how to fulfill their overall job responsibilities and how to interact and handle juveniles of the kind found at Mountain View. Present staff training, including training for professional staff, is grossly inadequate.

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Mountain View School for Girls  
Proposed Findings Letter

FEB 3 1993

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

Arthur E. Peabody, Jr.  
Chief  
Special Litigation Section

Recommendation

We recommend that you sign the attached findings letter to Marc Racicot, Governor of Montana, informing him and other appropriate State officials that our investigation of the Mountain View School for Girls pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA) has disclosed the existence of unconstitutional conditions and other violations of federal law at this facility.

Background

The Mountain View School for Girls, Helena Montana, was opened in 1921 and has a present bed capacity of approximately 60 girls. The School is a juvenile detention facility operated by the Montana Department of Family Services, and is one of two juvenile detention facilities operated by the State. The other is the Pine Hills School for Boys in Miles City which, as you are aware, has also recently been investigated by our office. <sup>1/</sup> Indeed, information acquired during the investigative tour of the Pine Hills facility contributed to the decision to proceed likewise with an investigation of conditions at Mountain View.

On June 30, 1992, we notified State officials of our intention to initiate this investigation. In the first half of November 1992, a team of expert consultants accompanied by attorneys conducted a thorough investigative tour of the facility. The consultants utilized were Ronald Stepanik, a penologist with expertise in juvenile detention, Dr. Pam McPherson, a psychiatrist with expertise in child psychiatry, and James Balsamo, an expert in environmental health and safety. The tour included observation of conditions, interviews with staff and residents, and extensive review of documents.

As contained in the attached findings letter, our investigation uncovered conditions which, in our assessment, violate constitutional requirements and federal statutory

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<sup>1/</sup> The findings letter in that action was forwarded to the State last September.

cc: Records Chrono Peabody Nelson Stern Weinstein Ryan Hold

standards for juvenile detention facilities. 2/ Briefly, they are outlined as follows.

First, Mountain View is failing to provide adequate mental health services to juvenile detainees with serious mental health needs. Mentally ill juveniles are not identified or, if identified, fail to receive treatment. In these circumstances, juveniles are subjected to unreasonable risks of harm. There are additional, significant deficiencies in medication practices.

Second, the facility is failing to provide services for handicapped juveniles with special education needs as required under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

Third, Mountain View is failing to meet acceptable standards in its imposition of disciplinary measures against juveniles, including its use of seclusion and restraints. Such measures are being imposed arbitrarily, excessively and without penological justification.

Fourth, Mountain View is grossly deficient in terms of environmental and fire safety. The buildings are in disrepair and seriously hazardous.

Significantly, our juvenile justice consultant described many of these conditions as the result of "years of neglect." Moreover, he characterized various conditions as "insidious," very serious criticisms which aptly describe the seriousness of the identified violations. While many personnel at Mountain View are making efforts to conduct their duties in a professional manner, resources are inadequate. Staff need significant training to permit professional performance.

#### Conclusion

Transmission of the attached findings letter is necessary to satisfy our obligations under CRIPA with regard to notifying the State of Montana of the unconstitutional conditions existing at the Mountain View School for Girls. See 42 U.S.C. § 1997b. For all of the foregoing reasons, we recommend your approval of and signature on the attached letter regarding this facility.

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2/ The letter is consistent with the legal standards utilized recently in the Pine Hills and Central Alabama Youth Services juvenile matters. As such, no lengthy legal analysis is provided.

Attachment

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

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

Comments: