



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

U.S. v. Puerto Rico

SEP 14 1994



Jl-PR-004-004

The Honorable Pedro J. Rossello
Governor
Commonwealth of Puerto Rico
La Fortaleza
San Juan, Puerto Rico 00901

Re: Investigation of Juvenile Facilities
in the Commonwealth of Puerto Rico

Dear Governor Rossello:

I am writing in reference to our ongoing investigation into conditions within juvenile facilities in Puerto Rico pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. §1997 et seq. As you know, we notified your predecessor in December 1992 of unconstitutional conditions in seven Commonwealth facilities -- the Juvenile Detention Center of San Juan in Hato Rey, the Industrial School of Mayaguez, the Juvenile Detention Center of Ponce (now a training center called "LaVictoria"), the Center for Social Treatment of Ponce, the Industrial School for Boys and Girls in Ponce, the Juvenile Detention Center in Humacao, and the Central Treatment Center in Guaynabo. We notified then Governor Hernandez-Colon of fire safety hazards in all of the above-mentioned facilities. In addition, we notified Governor Hernandez-Colon that in all facilities except the Central Treatment Center in Guaynabo, unconstitutional conditions included: lack of adequate medical care and mental health services; the presence of unsanitary and unsafe conditions throughout the facilities; the absence of sufficient beds and/or mattresses for juveniles to sleep on; the lack of proper mechanisms to identify, investigate, and implement remedial measures, if necessary, regarding abuse of juveniles and sufficient security measures to control institutional violence among juveniles; and the absence of constitutionally-required periods of exercise.

In May and June of this year, we re-toured all of the above-named facilities (except, of course, the facility in Hato Rey, which was closed in April 1994). In May and June, we also toured a detention center that did not exist when we conducted our

earlier tours, the Cabo Rojo Detention Center, as well as the facility to which the Hato Rey juveniles were transferred, Centro Juvenil Metropolitano in Bayamon. Consistent with the requirements of CRIPA, we now write to advise you of our further findings, the facts supporting our determination of constitutional and legal violations, and the necessary remedial measures to correct these violations with respect to the Cabo Rojo Detention Center and additional problems at other facilities not covered by our previous letter which implicate the constitutional and legal rights of confined juveniles.

I. LEGAL FRAMEWORK

A. CRIPA

CRIPA gives the Department of Justice standing to bring actions against facilities such as Commonwealth juvenile facilities over "rights, privileges, or immunities protected by the Constitution or laws of the United States ..." CRIPA § 3, 42 U.S.C. § 1997a (emphasis added). Hence, CRIPA authorizes suit for violation of federal statutes and regulations as well as for constitutional violations.

B. Juvenile Detainee Constitutional Rights

1. Substantive Due Process Juveniles in custody have a constitutional right to adequate basic care, medical care, and protection from harm. Youngberg v. Romeo, 457 U.S. 307 (1982). Courts recognize that there are clear differences between the rights of juveniles held in custody and the rights of incarcerated adults. Conditions of confinement for youth in custody -- who have not been convicted of a crime -- are governed by the Due Process Clause of the Fourteenth Amendment, and not the less protective Eighth Amendment. Santana v. Collazo, 714 F.2d 1172, 1179 (1st Cir. 1983), cert. denied, 466 U.S. 974 (1984); see also Gary H. v. Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987); H.C. by Hewett v. Jarrard, 786 F.2d 1080, 1084-85 (11th Cir. 1986); Milonas v. Williams, 691 F.2d 931, 942 & n.10 (10th Cir. 1982), cert. denied, 460 U.S. 1069 (1983).¹

¹ Even under the more restrictive Eighth Amendment, the constitutionality of conditions of confinement is not assessed on an item by item basis, rather, courts assess the totality of circumstances present at an institution to determine whether those conditions as a whole violate the constitution. See Tillery v. Owens, 907 F.2d 418, 426-27 (3d Cir. 1990) ("in determining whether conditions of confinement violate the Eighth Amendment we must look at the totality of conditions within the institution factors to be considered includ[e] food, medical care, sanitation ... ventilation, bedding, furniture, education
(continued...)

2. Equal Protection Incarcerated juveniles do not lose their rights to equal protection under the law guaranteed by the 14th Amendment simply by virtue of their incarceration. Any disparity in treatment with non-incarcerated juveniles -- such as provision of educational services -- must be rationally related to a legitimate penological interest. Donnell C. v. Illinois State Board of Education, 829 F. Supp. 1016 (N.D. Ill. 1993).

C. Juvenile Detainee Federal Statutory Rights

1. IDEA The Individuals with Disabilities Education Act ("IDEA") (formerly, the Education of the Handicapped Act), 20 U.S.C. § 1400 et seq., was enacted to ensure that children with disabilities receive a free appropriate public education which "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." Board of Education v. Rowley, 458 U.S. 176, 188-89 (1982). The IDEA applies to the provision of educational services to incarcerated juveniles. Donnell C. v. Illinois State Board of Education, 829 F. Supp. 1016 (N.D. Ill. 1993); Green v. Johnson, 513 F. Supp. 965 (D. Mass. 1981).

2. Rehabilitation Act Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits discrimination on the basis of handicap by any recipient of federal financial assistance. Section 504 applies to the provision of educational services to incarcerated juveniles. Donnell C. v. Illinois State Board of Education, 829 F. Supp. 1016 (N.D. Ill. 1993).

II. FACTUAL SUMMARY

The following factual summary is based upon our inspections in May and June 1994.

A. Education

1. General Education Except for juveniles confined at La Victoria, the juveniles in Commonwealth facilities are getting little or no education at all. The three detention facilities (Humacao, Cabo Rojo, and Ponce Detention Center for Girls) provide absolutely no education services at all, although juveniles spend many months in these institutions awaiting placement in one of the training centers. In the training centers (Bayamon, Mayaguez, Ponce Industrial, Guaynabo, and Ponce

¹(...continued)
and rehabilitation programs, safety and security and staffing."); Young v. Quinlan, 960 F.2d 351, 359, n.20 (3d Cir. 1992) (same).

CTS), juveniles attend classes one or two days a week -- at most -- for a few hours. There is no reading material or educational material of any kind available in the living areas, where juveniles spend roughly 22 out of 24 hours a day. The educational evaluation of the juveniles, if one is ever done, is not available to facility staff. Students do not have individualized plans. In fact, educational problems, goals, interventions, and progress are not recorded in the juveniles' records.

2. Special Education Except for a few residents at La Victoria, not a single resident was receiving appropriate special education services. In none of the records reviewed was there any documentation of educational special needs which are so prevalent in this population.² All of the juveniles reviewed were markedly delayed in their educational achievement. None of the facilities had developed mechanisms to identify juveniles in need of special education assistance. Assessments that might reveal the reasons for truant behavior, such as the presence of Attention Deficit Hyperactivity Disorder, the presence of a receptive and/or expressive language disorder, the presence of visual-perceptual skills deficits, or intellectual limitations, are never done. None of the facilities had developed individualized education plans for juveniles with disabilities. None of the facilities had developed individualized curricula designed for youths with special education needs.

B. Cabo Rojo Detention Center

1. Medical and Mental Health Care The medical and mental health care provided to juveniles in Cabo Rojo is as deficient as the medical and mental health care provided at other Commonwealth facilities. Suicidal and/or self-mutilating youths are harming themselves without staff intervention or psychiatric treatment. One youth who had attempted suicide by hanging on a number of occasions while detained in Cabo Rojo was allowed to walk around the facility with a sheet around his neck. There are no suicide resistant areas to house these youths and an insufficient number of staff to supervise them. There are no psychiatrists, psychologists, or counsellors to provide therapy to juveniles with mental health problems. Psychotropic medications are not used in accordance with accepted professional practices. The physician who is supposed to care for the medical needs of the youths at Cabo Rojo does not visit Cabo Rojo, and there are not sufficient staff to bring Cabo Rojo youths with

² The Department of Justice understands from conversations with its expert consultants that typically 30-40% of juveniles in detention and/or training centers require some special educational services.

medical needs to the physician. The youths are covered with contagious skin infections.

2. Unsafe and Unsanitary Conditions Juveniles confined in Cabo Rojo are subjected to unsanitary and unsafe conditions. The center is dangerously overcrowded. For instance, we found five youths confined in a one person cell where they spent 23 out of 24 hours sharing three filthy foam mattresses on the floor. Rats, insects and other vermin crawl over the juveniles in the night. The youths only get out of their cells to exercise once or twice a week for short periods of time. Water is not available for large portions of the day. Living areas are unventilated and very hot.

III. CONSTITUTIONAL AND LEGAL VIOLATIONS

These conditions violate the constitutional and statutory rights of the juveniles confined in Commonwealth facilities. The Commonwealth's failure to provide incarcerated juveniles with educational services similar to the educational services provided to children in the community violates the incarcerated juveniles' rights under the Equal Protection clause of the Constitution. Further, the Commonwealth's failure to provide special educational services to juveniles with educational disabilities violates rights established by the IDEA and Section 504 of the Rehabilitation Act. Finally, at Cabo Rojo, the Commonwealth's failure to provide adequate basic, medical, and mental health care in unsafe and unsanitary conditions violates the juveniles' due process rights under the Fourteenth Amendment to the Constitution.

IV. REMEDIAL MEASURES

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

1) The Commonwealth must provide educational services to each resident in its juvenile facilities, including vocational services that expose students to a range of different, realistic occupations. Meaningful and specific educational goals and objectives must be devised and implemented for each resident. Students must attend several hours of classes five days a week. Reading and educational materials must be available on the living units. Under the IDEA and Section 504 of the Rehabilitation Act, the Commonwealth must identify all youths in need of special education services and then provide quality, individualized special educational services to all who need them. Juveniles with educational deficits should not be penalized or left out of the educational process simply to avoid being labeled as needing special attention.

2) A medical and mental health care delivery system must be developed and implemented at Cabo Rojo. The health care system must be able to identify, treat, and manage the acute, serious and chronic medical and mental health care needs of juveniles. This system may include the reliance on outpatient care facilities, inpatient facilities, or both. If outpatient facilities are to be utilized in a significant manner, the Commonwealth must ensure that such facilities can meet the medical and mental health care needs of juveniles identified by Commonwealth officials to be met by such facilities. In particular, Cabo Rojo must hire adequate numbers of staff to properly supervise the youths, and then train the staff to recognize and effectively intervene in suicidal behaviors. Suicide resistant areas must be developed.

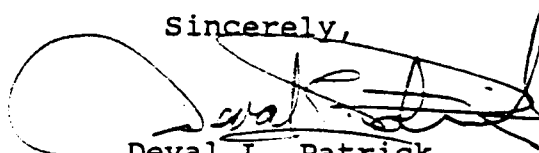
3) At Cabo Rojo, dangerous overcrowding must be eliminated. Each juvenile must have his own bed and mattress. Vermin must be exterminated. Living areas must be adequately ventilated. Potable drinking water must be available to the juveniles at all times. The youths must be allowed at least one hour of outdoor exercise each day.

You may wish to contact the regional offices of the Department of Health and Human Services and Education as well as the National Institute for Corrections to ensure that Commonwealth officials have taken full advantage of any available federal financial assistance which may be available to assist in the correction of these deficiencies. If we can assist you in this regard, please contact us.

We appreciate the assistance and cooperation that representatives of the Commonwealth and the facilities have extended to us during this investigation. My staff will contact appropriate officials in the near future to discuss this matter further. In the meantime, should you or your staff have any

questions regarding this matter, please feel free to call Judy Preston, Senior Trial Attorney, Special Litigation Section, at (202) 514-6258.

Sincerely,



Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Mr. Pedro Pierluisi
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Ms. Francisca Aponte
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La Victoria Ponce Training Center

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Mr. Julio Cualio Bonet
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