

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

E.W., by and through her next friend,)	
Kendra Watts; J.A., by and through her)	
next friend, Linda Alford; C.M., by and)	
through his next friend, Lena Clark; on)	
behalf of themselves and all persons)	
similarly situated; DISABILITY RIGHTS)	
MISSISSIPPI,)	
)	
Plaintiffs,)	Case No. 4:09 CV 137 TSL-LRA
)	
v.)	AMENDED COMPLAINT
)	
LAUDERDALE COUNTY, MISSISSIPPI,)	
)	
Defendant.)	
)	

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is a civil action pursuant to 42 U.S.C. § 1983 to vindicate the rights of children imprisoned in the Lauderdale County Juvenile Detention Center (“Juvenile Detention Center”) under the First, Eighth and Fourteenth Amendments to the United States Constitution. The Plaintiffs represent a class of children who have suffered physical and mental abuse and live in unsafe and unsanitary conditions at the Juvenile Detention Center. The Juvenile Detention Center’s inhumane and unconstitutional practices include regularly locking children in dark, unsanitary cells for 23 hours a day and denying children access to mental health and rehabilitative care. Juvenile Detention Center staff members also employ a deliberately cruel use of chemical restraints (also known as mace or pepper spray). Staff frequently torment children by spraying them in the face and other body parts with a substance that causes an excruciating burning sensation on the skin and in the eyes and restricts youths’ ability to breathe. Children

are subject to this punishment for minor infractions such as “talking too much” or failing to sit in the “back of their cells.” Staff frequently spray all of the youth on a living unit with this substance when only one resident has disobeyed an order.

2. On behalf of themselves and all similarly situated children, the named Plaintiffs seek declaratory, preliminary and permanent injunctive relief requiring that the Defendant cease its unconstitutional policies and practices at the Juvenile Detention Center and to provide class members with constitutionally required care and living conditions.

3. The children are joined in this action by Disability Rights Mississippi (“DRMS”), a non-profit agency with a federal mandate to protect the rights of children with disabilities who are confined in the Juvenile Detention Center. DRMS asserts its right to meet with children who are confined in the Juvenile Detention Center and to conduct regular monitoring and investigations in the Juvenile Detention Center. Plaintiff DRMS seeks declaratory and preliminary and permanent injunctive relief to prevent Defendant from denying DRMS, as authorized by its federal enabling statutes, full, complete, timely and unaccompanied access to the Juvenile Detention Center, its staff, and youthful residents, as well as full, complete, and timely access to records.

PARTIES

4. E.W. is a sixteen-year-old girl with learning disabilities and serious mental illnesses who is currently imprisoned in the Juvenile Detention Center. On behalf of herself and all similarly situated children, she brings this action by and through her next friend and mother, Kendra Watts. She has not been adjudicated delinquent by the youth court, and is detained while she awaits her court date. For the past two weeks, E.W. has been confined to her cell for 23 hours a

day, denied mental health and rehabilitative services, forced to live in unsanitary and unsafe conditions, and repeatedly threatened with mace by Juvenile Detention Center staff.

5. J.A. is a seventeen-year-old girl with learning disabilities and a history of receiving treatment for mental illness who is currently imprisoned in the Juvenile Detention Center. On behalf of herself and all similarly situated children, she brings this action by and through her next friend and mother, Linda Alford. She is confined at the Juvenile Detention Center as a post-adjudication disposition entered by the Lauderdale County Youth Court. For the past three weeks, E.W. has been confined to her cell for 23 hours a day, denied mental health and rehabilitative services, forced to live in unsanitary and unsafe conditions, and repeatedly threatened with mace by Juvenile Detention Center staff.

6. C.M. is a fourteen-year-old boy with learning disabilities and a history of receiving treatment for mental illness who is currently imprisoned in the Juvenile Detention Center. On behalf of himself and all similarly situated children, he brings this action by and through his next friend and mother, Lena Clark. He is confined at the Juvenile Detention Center as a post-adjudication disposition entered by the Lauderdale County Youth Court. For the past two weeks, C.M. has been forced to live in filthy conditions, confined to his cell for excessive periods of time, denied mental health and rehabilitative services, and arbitrarily subjected to mace by Juvenile Detention Center staff.

7. The named Plaintiffs' plight echoes the stories of many youth interviewed by attorneys. All of these children uniformly describe the Juvenile Detention Center as a squalid facility, where jail officials frequently resort to the abusive, arbitrary use of chemical restraints. These conditions violate the constitutional rights of the named Plaintiffs and all similarly situated

children, all of whom are entitled to reasonably safe and sanitary conditions of confinement, freedom from unreasonable bodily restraint, and protection from harm.

8. Plaintiff Disability Rights Mississippi (“DRMS”) is a nonprofit organization with a federal mandate to protect and advocate for the rights of persons with disabilities in Mississippi. Federal law extends this mandate to children with disabilities who are confined to juvenile detention centers. Through a contracted agent, DRMS devotes significant resources to investigating conditions of confinement and advocating on behalf of youth housed in juvenile facilities across the state of Mississippi. DRMS and its contracted agent, the Mississippi Youth Justice Project, have made considerable efforts to gain access to the children with disabilities who are confined in the Juvenile Detention Center in Lauderdale County and have been denied this access by the Defendant.¹ On November 11, 2009, this Honorable Court entered an Agreed Order negotiated by the parties that sets forth a tentative plan of access. Despite this tentative Agreed Order, DRMS requires a permanent injunction to ensure its access rights are protected. DRMS recently changed its name from Mississippi Protection and Advocacy Services, Inc. to Disability Rights Mississippi. Incorporated in 1976, DRMS has over thirty years of experience protecting the rights of children with disabilities throughout the state of Mississippi. DRMS files this complaint in its own name to redress injuries to itself and to the children DRMS is mandated to serve.

9. Defendant Lauderdale County is the governmental entity with responsibility to “establish and maintain detention facilities, shelter facilities,...or any other facility necessary to carry on

¹ Federal law permits DRMS to designate agents with whom it contracts to assist in carrying out its responsibilities under federal law. 42 U.S.C. § 10804(a)(1)(A-B); 42 C.F.R. § 51.42(a). Pursuant to this authority, DRMS has contracted with the Mississippi Youth Justice Project (MYJP) to conduct monitoring activities in juvenile justice and mental health facilities throughout the state of Mississippi. When conducting monitoring under the P & A Acts, MYJP is an agent of DRMS and thus has the same access authority under federal law. *See* Exhibit 2 (Memorandum of Cooperation between MYJP and DRMS).

the work of the youth court.” Miss. Code Ann. § 43-21-19. Lauderdale County is the entity with ultimate responsibility to secure and protect the rights of children held in the Juvenile Detention Center.

10. The Defendant ignores well-established law and acts with deliberate indifference by subjecting the named Plaintiffs and all similarly situated children to shockingly inhumane conditions of confinement, physical abuse, and inadequate mental health care.

JURISDICTION AND VENUE

11. The named Plaintiffs’ cause of action arises under the First, Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

12. Plaintiff DRMS’s cause of action arises under the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (“PAIMI Act”), 42 U.S.C. §§ 10801 *et seq.*; the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (“PADD Act”), 42 U.S.C. §§ 15001 *et seq.*; the Protection and Advocacy of Individual Rights Program (“PAIR Act”), 29 U.S.C. §§ 794e *et seq.* (these three laws are hereafter collectively referred to as “The P & A Acts”); and 42 U.S.C. § 1983.

13. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1331.

14. Venue in this Court is proper under 28 U.S.C. § 1391(b). Defendant resides in this district, and the events and omissions complained of occurred in this district.

CLASS ACTION ALLEGATIONS

15. The named Plaintiffs bring this suit on their own behalf and on behalf of all children who are, or will in the future be, incarcerated at the Lauderdale County Juvenile Detention Center.

16. The class is so numerous that joinder of all members is impractical. The Juvenile Detention Center has the capacity to house 30 youth at one time and well over 100 youth pass

through the facility in a one-year time period. The Defendant has subjected literally hundreds of children to abusive conditions in the Lauderdale County Juvenile Detention Center. Children remain in the Juvenile Detention Center for varying lengths of time, and the population changes on a daily basis. The class also includes future members whose names are not known. Fed. R. Civ. P. 23(a)(1).

17. There are questions of law and fact common to all class members, including but not limited to the Defendant's failure to protect class members from harm, the Defendant's failure to provide class members with constitutionally safe and humane conditions of confinement and the Defendant's failure to ensure class members' meaningful, effective and adequate access to the courts. Fed. R. Civ. P. 23(a)(3).

18. Because the policies, practices, and customs challenged in this Complaint apply with equal force to the named Plaintiffs and the other members of the class, the claims of the named Plaintiffs are typical of the class in general. Fed. R. Civ. P. 23(a)(3).

19. The named Plaintiffs will fairly and adequately represent the interests of the class. They possess a strong personal interest in the subject matter of the lawsuit and are represented by experienced counsel with expertise in class action litigation in federal court. Counsel have the legal knowledge and resources to fairly and adequately represent the interests of all class members in this action. Fed. R. Civ. P. 23(a)(4).

20. The Defendant has acted and refuses to act on grounds generally applicable to the class in that Defendant's policies and practices of violating the Plaintiffs' constitutional rights has affected all class members. Accordingly, final injunctive and declaratory relief is appropriate to the class as a whole. Fed. R. Civ. P. 23(b)(2).

STATEMENT OF FACTS

21. The Lauderdale County Juvenile Detention Center is a 30-bed facility that holds children awaiting adjudication and disposition by the Lauderdale County Youth Court. It may also house youth for up to 90 days as a post-adjudication disposition. Miss. Code Ann. § 43-21-605(1)(k). Youth are regularly incarcerated at the Juvenile Detention Center both before and after disposition.

Protection from Harm Violations: Physical Abuse by Staff and Excessive Use of Restraints

22. Defendant has a custom and/or practice of acting with deliberate indifference to the constitutional rights of youth in its custody which manifest in egregious abuses like the excessive use of chemical restraints.

23. During the first week in November in 2009, Plaintiff C.M. was sprayed with a chemical agent (also known as mace) by a guard while he was in his cell. The guard stood outside of C.M.'s cell door and sprayed mace indiscriminately into the cell. The mace struck C.M. on his body, constricting his breathing and causing severe irritation. The mace also hit the sole blanket that C.M. was allowed to have in his cell. C.M. was not allowed to shower until the following morning and was not provided with a new blanket. C.M. did nothing to justify the chemical restraint—indeed he was confined to his small jail cell during the time while the staff sprayed him with mace. At no time immediately prior to the application of mace did C.M. engage in an act of violence or aggression. Upon information and belief, staff sprayed C.M. and all of the other youth in the boys unit with mace in an attempt to punish every child for the actions of one youth who allegedly threw toilet paper out of his cell. There was absolutely no security or other penological or rehabilitative justification for this application of mace.

24. Upon information and belief, and based on interviews with youth who were recently held in the Juvenile Detention Center, staff members regularly spray putative class members with mace in an arbitrary and abusive manner. This use of mace significantly departs from reasonable professional judgment and violates clearly established law.

Protection from Harm Violations: Inadequate Mental Health and Rehabilitative Treatment

25. Defendant has a custom and/or practice of being deliberately indifferent to the serious mental health and rehabilitative needs of the youth confined at the Juvenile Detention Center.

26. Plaintiffs E.W., J.A., and C.M. all live with serious mental health needs and each youth received treatment for these mental health needs prior to their detention. Given each of the Plaintiffs' past history of mental health treatment, each youth requires regular mental health counseling, assessment and evaluation. The Defendants deny the Plaintiffs each of these requirements. Further, C.M. requires medications to modify his behavior, and the Defendants fails to ensure that he is provided with an appropriate medication distribution system, medication monitoring, evaluations or assessments related to their medications.

27. The Defendant fails to provide minimally adequate mental health services for the children in its custody. The Defendant has a policy and practice of denying the Plaintiffs access to mental health counseling, medication monitoring, and the staff fail to distribute and/or monitor children's medications in compliance with professionally accepted standards of care.

28. Defendant fails to assure adequate psychological assessments of children upon admission to the Juvenile Detention Center, resulting in under-identification of and inadequate treatment for children with serious mental illnesses, developmental disabilities or other disabilities.

29. None of the named Plaintiffs received the rehabilitative treatment to which they are entitled under federal law. The Defendants fail to provide the Plaintiffs with any sort of

programming, services, or interventions that could be reasonably related to their treatment or rehabilitation. Youth are not given adequate individualized counseling services to assess and meet their rehabilitative goals and needs. Youth do not receive adequate transitional services to assist their reintegration into the community and to help reduce potential recidivism.

30. Youth imprisoned in the Juvenile Detention Center spend the majority of their time locked-down in their cells. Recreation is inadequate and often nonexistent. Many youth sit or lie idle in rooms for extended periods of time. Youth confined in this manner suffer deteriorating physical and mental health.

31. Upon information and belief, and based on interviews with youth who were recently held in the Juvenile Detention Center, other putative class members are regularly denied adequate mental health care and rehabilitative services.

Protection from Harm Violations: Dangerous, Unsanitary and Deficient Conditions

32. The Defendant has a custom and/or practice of failing to provide sanitary facilities for the children in its care. Staff do not clean the living facilities regularly. Toilets and walls are stained with mold, rust and human excrement. The Plaintiffs are frequently bit by various insects. Dust commonly covers the living areas. The children, including the Plaintiffs, have to sleep on mats that often smell of urine and use stained, torn sheets. Youth often have to eat in their cells, and due to the small size of the cells, this means that they are forced to eat in close proximity to their filthy toilet facilities.

33. The Defendant has a custom and/or practice of failing to provide adequate living quarters for the children in its care. Youth are forced to live in extremely small, dark cells that contain only a toilet, sink and bunk bed. Girls, including Plaintiff J.A., who have not displayed any suicidal tendencies and have not voiced any suicidal thoughts or inclination are made to sleep in

the “suicide cell” when there are not enough other cells available to keep one girl in each cell.

When a girl is placed in the suicide cell, she is forced to sleep on the floor, with only her sleeping mat, sheet and thin blanket.

34. The Defendant has a custom and/or practice of failing to provide for the appropriate hygiene for the children in its custody. Defendant does not provide youth with adequate personal hygiene items. Youth, including the Plaintiffs, are not provided soap to wash their hands after they use the toilet, and they are only allowed to brush their teeth once a day. Children are required to share certain personal items, such as combs, without sterilization, endangering their health.

35. The Defendant has a custom and/or practice of failing to provide adequate clothing and shoes for children in its custody. Youth are not allowed to wear shoes. Defendant does not provide youth with underwear, and youth must wear the same underwear during their confinement. When their underwear is taken to be washed in the morning after a shower, youth, including menstruating girls, are not given another pair of underwear and must remain without underwear until the following morning. This forces girls who are menstruating to try to use maxi-pads in the over-sized uniforms issued by Defendants.

Protection from Harm Violations: Excessive Room Confinement

36. Defendant has a custom and/or practice of confining children for 23-24 hours per day in oppressively small cells that contain nothing but a toilet, sink and bunk bed. The cells are kept dark almost all of the time. Youth are only permitted to have a sleeping pad, sheet, thin blanket and plastic cup with them in their cells. Youth are denied any type of reading or writing materials in their cells.

37. Defendant has a custom and/or policy of failing to provide children with access to regular physical exercise, recreation or any other rehabilitative programming. Youth are occasionally permitted to exercise for thirty minutes, but generally youth are denied the opportunity to engage in any large muscle exercise for weeks at a time. Female youth are given even fewer opportunities for recreation than male youth.

Protection from Harm Violations: Inadequate Training and Supervision of Staff

38. The Defendant has a custom and/or practice of failing to ensure the proper training and supervision of Juvenile Detention Center staff. Consequently, the safety and security of youth at the Juvenile Detention Center is constantly threatened by the extreme incompetence of staff and the lack of adequate supervision and oversight. Staff frequently resort to physical violence and respond to youths' requests for help or assistance with taunts, profanity, and indifference.

Due Process Violations: Arbitrary and Punitive Disciplinary Practices

39. The Defendant has a custom and/or practice of subjecting youth to arbitrary and excessive discipline that is designed to punish and cause discomfort rather than maintain and restore discipline. Defendant has an unlawful pattern and practice of spraying children—including children with disabilities who may have challenges moderating their behavior—with mace for minor infractions like talking too loudly or failing to sit in the “back of their cells.” Staff do not inform youth of the facility’s rules upon intake, and as a result, children often unknowingly violate rules, resulting in the use of mace. Staff spray mace directly inside the children’s cells and sometimes directly on their skin—causing an excruciating burning sensation. Youth who have been maced are frequently not allowed to bathe until the following morning, forcing them to remain in discomfort for an extended period of time.

40. The use of mace is purely punitive and arbitrary. Staff frequently spray all the youth on a living unit with mace when only one resident disobeys an order. As a result of this practice, youth live constantly with the threat of being sprayed with mace—even when they themselves comply with all directives. The use of mace is not tailored to respond to the alleged rule violation or threat, if there is one, and is not limited to situations where it is necessary to restore or maintain order.

41. During the first week in November in 2009, Plaintiff C.M. was sprayed with mace by a guard while he was in his cell, after another youth threw a tissue out of his cell. Because the guard could not determine which child had thrown the tissue, the guard sprayed all of the boys at the Juvenile Detention Center at the time with mace as a punishment while the boys were secured in their cells.

42. Guards frequently threaten youth with mace for minor rule infractions or for behavior that is not prohibited. Guards have threatened Plaintiffs E.W., J.A., and C.M. with mace on numerous occasions for reasons including talking too loudly, spending more than 2-3 minutes in the shower, and speaking with Plaintiff DRMS about conditions in the facility.

Due Process Violations: Inadequate Family Unification and Community Reintegration

43. Defendants' continuing practices and policies place unreasonable and unnecessary burdens on youth and their ability to maintain contact with their families. This communication is essential for children's treatment and rehabilitation and for their eventual reintegration into the community, to ensure that the facility's policies and practices do not substantially depart from accepted professional judgment.

44. In-person visitation hours are held at times when many parents or guardians are working and are therefore unable to visit their children. When family members do visit, they are forced to

communicate with the children through a door, while a guard stands next to the youth, monitoring what the youth says. This surveillance often prevents youth from reporting any institutional or treatment deficiencies to their parent or guardian.

45. Youth are not allowed to use the telephone to communicate with their family. Access to the telephone is especially important for children with limited reading and writing skills in maintaining contact with family, as well as for children whose families are unable to visit during in-person visitation hours due to work or other conflicts.

Due Process Violations: Unlawful retaliation

46. The Defendant and its agents have subjected the Plaintiffs to unlawful harassment, taunting, and threats as a result of the Plaintiffs' participation in DRMS's investigation. The Defendant and its agents have threatened youth with mace, longer stays in detention and physical abuse in an effort to discourage the Plaintiffs from revealing the conditions inside the Lauderdale County Juvenile Detention Center to legal advocates.

47. On November 9-11, 2009, advocates from DRMS conducted visits with the Plaintiffs and other putative class members in the Lauderdale County Juvenile Detention Center.

48. Plaintiff J.A. was subjected to repeated and continuous threats and harassment by the guards simply because she spoke with DRMS advocates. For example, Female Guard 1 called her a "bitch" for speaking with DRMS agents and took a business card that a DRMS agent had given J.A. and threw it away. The same guard threatened that "she would light [J.A.] up with a can of mace" and stated that if she used mace on J.A., J.A.'s release date would be delayed. Female Guard 2 accused J.A. of lying to DRMS advocates in an attempt to be released early. Female Guard 3 also accused J.A. of lying and told J.A. that she should not trust the DRMS agents, saying that "they don't care if we talk to [the DRMS agents] 'cause [the DRMS agents]

will not be there for us.” The harassment continued after J.A. spoke with DRMS a second time. Plaintiff J.A. has suffered extreme emotional distress as a result of this unlawful retaliation.

49. After boys at the Juvenile Detention Center spoke with legal advocates from DRMS on November 9, 2009, the male staff also pressured the youth to not speak with DRMS agents. Male staff members discussed the prospect of losing their jobs due to DRMS investigations in front of the boys, including Plaintiff C.M., and spoke negatively about the youth who talked to DRMS.

50. After Plaintiff E.W. met with DRMS agents on November 9-10, 2009, female guards intensified their threats of force and subjected her to taunts and harassment.

51. The Defendant has a pattern and practice of intimidating, harassing and threatening the children in its custody who seek to enforce their rights inside the Juvenile Detention Center. The Defendant’s actions have a chilling effect on children’s rights to seek redress from the Defendant and discourage children from accessing the courts to remedy their unconstitutional conditions of confinement.

Plaintiff DRMS’s Access Authority

52. Congress established Protection and Advocacy (“P & A”) systems in 1975 to protect and advocate for the rights of persons with developmental disabilities, and reauthorized these systems in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (“PADD Act”). 42 U.S.C. §§ 15001 *et seq.* Congress provided P & A systems with the authority to investigate incidents of abuse and neglect against individuals with developmental disabilities and pursue legal, administrative, and other remedies on their behalf. 42 U.S.C. § 15043(a). Congress has expanded the scope of the P & A system to provide protection and advocacy services to all persons with disabilities. The Protection and Advocacy for Individuals with

Mental Illness Act of 1986 (“PAIMI Act”) provides for the protection of rights of individuals with mental illness, 42 U.S.C. §§ 10801 *et seq.*; and the Protection and Advocacy of Individual Rights Program (“PAIR Act”) was created to protect the rights of all other individuals with disabilities who are not covered under the PADD and PAIMI Acts. 29 U.S.C. §§ 794e *et seq.*

53. Pursuant to federal law, DRMS has rights to:

- a. reasonable unaccompanied access, for monitoring and investigatory purposes, to public and private areas of the detention facility in the Juvenile Detention Center, 42 C.F.R. § 51.42(b); 42 C.F.R. § 51.42(c); 45 C.F.R. § 1386.22(f); 45 C.F.R. § 1386.22(g);
- b. interview facility service recipients, staff and other persons as part of an abuse and neglect investigation when DRMS determines it has probable cause to believe an incident has occurred, 42 C.F.R. § 51.42(b);
- c. provide information and training on individual rights and services provided by the P & A system, 42 C.F.R. § 51.42(c); 45 C.F.R. § 1386.22(g);
- d. communicate privately with facility residents, 42 C.F.R. § 51.42(d); 45 C.F.R. § 1386.22(h);
- e. access to records of facility residents, 42 C.F.R. § 51.41; 45 C.F.R. § 1386.22(a)-(e); and
- f. access to facility incident reports and investigatory findings, 42 C.F.R. § 51.41(c)(2); 45 C.F.R. § 1386.22(b)(1)-(2).

54. Because Mississippi receives federal funding under the P & A Acts, the state must have an effective P & A system. DRMS is the designated Mississippi P & A System. (*See Mississippi Protection & Advocacy v. Cotten*, 929 F.2d 1054, 1055-56 (5th Cir. 1991). Federal law permits DRMS to designate agents with whom it contracts to assist in carrying out its responsibilities under federal law. 42 U.S.C. § 10804(a)(1)(A-B); 42 C.F.R. § 51.42(a).

55. To effectuate the Congressional mandate to protect and advocate for the rights of individuals with disabilities, the P & A Acts require that a P & A system and its authorized agents have physical access to individuals with disabilities, access to individuals’ records, and

physical access to the facilities housing these individuals. 42 U.S.C. § 15043(a)(2)(H)-(J); 42 U.S.C. § 10805(a)(3)-(4); 45 C.F.R. § 1386.22; 42 C.F.R. § 51.42(a)-(c). This access includes the right “to meet and communicate privately” with residents “both formally and informally, by telephone, mail and in person.” 45 C.F.R. § 1386.22(h); 42 C.F.R. § 51.42(d).

56. Under the PAIMI Act, “any public or private residential setting that provides overnight care accompanied by treatment services” is a facility that a P & A is authorized to access and monitor. These “[f]acilities include... juvenile detention facilities.” 42 C.F.R. § 51.2. *See also* 45 C.F.R. § 1386.19 (specifying that facilities covered under the PADD Act include juvenile detention facilities).

57. The detention center at the Lauderdale County Juvenile Detention Center is a covered “facility” as defined under the PAIMI Act and the PADD Act. 42 U.S.C. § 10802(3); 42 C.F.R. 51.2; 45 C.F.R. § 1386.19.

58. A significant number of the youths who are detained at the Lauderdale County Juvenile Detention Center live with disabilities—including various forms of mental illness and learning disabilities. The Director of the Juvenile Detention Center has previously estimated that 60% of the youth held at the facility require mental health services. *See* Angela A. Robertson & R. Gregory Dunaway, *Juvenile Detention Monitoring in Mississippi: Report on Facility Compliance with Section 5 of the Juvenile Justice Reform Act of 2005 (Senate Bill 2894)* (Jan. 2006), <http://www.ssrc.msstate.edu/publications/jdmm.pdf>. This estimate is consistent with mental illness prevalence rates reported for incarcerated youth throughout the state of Mississippi and the country as a whole. *See* Angela Robertson & Jonelle Husain, Mississippi State University, *Prevalence of Mental Illness & Substance Abuse Disorders Among Incarcerated Juveniles* (July 2001), <http://www.ssrc.msstate.edu/publications/Prevalence%20of%20Mental>

%20Illness.PDF (finding that 66% to 85% of incarcerated juveniles in Mississippi suffer from at least one diagnosable mental disorder, compared to only 14% to 20% of youth in the state's general population); Thomas Grisso, *Adolescent Offenders with Mental Disorders*, 18 THE FUTURE OF CHILDREN 143, 150 (2008), http://futureofchildren.org/futureofchildren/publications/docs/18_02_07.pdf (estimating that about one-half to two-thirds of youth in various juvenile justice settings meet criteria for one or more mental disorders, compared to about 15 to 25 percent of youth in the U.S. general population).

59. Under the P & A Acts, Congress designated two distinct bases for access to facilities and residents: (1) access for the purpose of investigating allegations of abuse and/or neglect, 42 U.S.C. § 15043(a)(2)(B), 42 U.S.C. § 10805(a)(1)(A), 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b); and (2) access for the purpose of monitoring the facility and the treatment of its residents, 42 U.S.C. § 15043(a)(2)(H), 42 U.S.C. § 10805(a)(3), 45 C.F.R. § 1386.22(g), 42 C.F.R. § 51.42(c).

60. To carry out its mandate to investigate incidents of abuse and neglect, DRMS is entitled to “reasonable unaccompanied access . . . to all areas of the facility which are used by residents or are accessible to residents . . . [and] shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect.” 42 C.F.R. § 51.42(b). *See also* 45 C.F.R. § 1386.22(f).

61. To carry out its monitoring duties, DRMS is entitled to reasonable unaccompanied access to all residents of a facility at reasonable times to provide P & A services and contact information, rights information, monitor compliance with respect to the rights and safety of service recipients, and to view and photograph all areas of the facility which are used by residents or are accessible to residents. 42 C.F.R. § 51.42(c); 45 C.F.R. § 1386.22(g).

62. The PAIMI Act states that DRMS has the right of access to all residents of a facility “despite the existence of any State or local laws or regulations that restrict informal access to minors and adults with legal guardians or conservators.” 42 C.F.R. § 51.42(e).

63. The PAIMI and PADD Acts provide DRMS with access to records of individuals who are in the custody of the state and with respect to whom a complaint has been received by DRMS or with respect to whom there is probable cause to believe that such individual has been subjected to abuse or neglect. 42 C.F.R. § 51.41(b)(2)(ii)-(iii); 45 C.F.R. § 1386.22(a)(2)(ii)-(iii).

64. The PAIMI regulations also require the Defendant to provide DRMS:

Reports prepared by an agency charged with investigating abuse, neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that describe any or all of the following: (i) Abuse, neglect, or injury occurring at the facility; (ii) The steps taken to investigate the incidents; (iii) Reports and records, including personnel records, prepared or maintained by the facility, in connection with such reports of incidents; or (iv) Supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect or injury such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings. 42 C.F.R. § 51.41(c)(2).

65. The access provisions of the P & A Acts are interrelated and it is clear that Congress intended for the provisions to be applied in a consistent manner, and the PAIR Act expressly incorporates by reference, at 29 U.S.C. § 794e(f), the authority regarding access to facilities and records set forth in the PADD Act.

Denial of Access

66. Plaintiff DRMS has made numerous attempts in the past to explain DRMS’s federal P & A access rights to Defendant and to gain access to the Juvenile Detention Center to exercise

these access rights. Defendant and its agents have repeatedly rejected or ignored DRMS's requests for access.

67. Between September 11, 2008 and the present, DRMS exchanged letters and telephone calls with Defendant regarding P & A access to the Juvenile Detention Center. *See* Exhibit 1 (Correspondence between DRMS and County Officials). On several occasions, DRMS provided Defendant with a detailed research memorandum explaining the legal basis and scope of DRMS's P & A authority. DRMS also made multiple offers to meet with County officials to explain DRMS's P & A rights, and to provide information about DRMS's P & A activities in juvenile justice facilities throughout Mississippi.

68. Despite DRMS's numerous efforts to assert its P & A access rights through informal, collaborative means, County officials consistently barred DRMS from accessing the Juvenile Detention Center and expressed serious misreading of the applicable law. On October 5, 2009, in a telephone conversation with a DRMS representative, a Lauderdale County official erroneously stated that DRMS was not permitted to speak with eligible youth in the Juvenile Detention Center because these conversations would violate the Mississippi Rules of Professional Conduct.

69. On October 6, 2009, Mississippi Youth Justice Project attorneys Bear Atwood and Poonam Juneja, acting as agents of DRMS, arrived at the Lauderdale County Juvenile Detention Center to conduct monitoring and investigation activities as required by the P & A Acts. DRMS provided County Officials with ample notice of the date and time of the intended visit and had rescheduled this visit once at Defendant's request. Upon their arrival at the Juvenile Detention Center, Lauderdale County Deputy Sheriffs Siciliano and Richardson informed Ms. Atwood and Ms. Juneja that they were not allowed on the premises and escorted them away from the facility.

70. As detailed above, Defendant has repeatedly precluded DRMS from exercising its Congressionally-mandated duties of protecting and advocating for the youth held at the Juvenile Detention Center, and has deprived these children of their rights to DRMS's services.

71. On November 11, 2009, this Honorable Court entered an Agreed Order negotiated by the parties that sets forth a tentative plan of access. Despite this tentative Agreed Order, DRMS requires a permanent injunction to ensure its access rights are protected.

NECESSITY FOR INJUNCTIVE RELIEF

72. The Defendant has acted and continues to act in violation of the law as explained above. The named Plaintiffs and the class they seek to represent do not have an adequate remedy at law. As a result of the policies, practices, acts and omissions of the Defendant, the named Plaintiffs, and the class they seek to represent, have suffered serious, imminent, irreparable physical, mental and emotional injuries.

73. Plaintiff DRMS does not have an adequate remedy at law and will be irreparably harmed if the Defendant is permitted to continue prohibiting DRMS and its agents from:

- a. having reasonable unaccompanied access, for monitoring and investigatory purposes, to public and private areas of the detention facility at the Lauderdale County Juvenile Detention Center;
- b. interviewing youth, staff and other persons as part of its duty to monitor the facility and investigate incidents of abuse and neglect;
- c. providing information and training on individual rights and services provided by the P & A system;
- d. communicating privately with facility residents;
- e. accessing facility incident reports and investigatory findings; and
- f. accessing residents' records.

EXHAUSTION

74. The named Plaintiffs have exhausted all available administrative remedies.

CAUSES OF ACTION

75. Plaintiff incorporates by reference all of the above factual allegations to support the following claims:

Count I

76. The conditions of confinement at the Juvenile Detention Center and the Defendant's deliberate indifference to those conditions, considered both individually and in their totality, constitute cruel and unusual punishment and a denial of due process in violation of Plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Count II

77. Defendant's refusal to protect children from harm, otherwise keep them physically safe and secure and free from unconstitutional practices like excessive room confinement, arbitrary and punitive disciplinary practices and excessive use of restraints violates Plaintiffs' constitutional rights under the Eighth Amendment and the Fourteenth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Count III

78. Defendant's deliberate indifference to the children's serious mental health needs and their right to rehabilitative services violates the Plaintiffs' constitutional rights under the Eighth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Count IV

79. Defendant's policy and practice of harassing, intimidating and threatening Plaintiffs who seek to enforce their constitutional and statutory rights, violates the Plaintiffs' First and Fourteenth Amendment rights to the United States Constitution, and to due process of law, as enforced through 42 U.S.C. § 1983.

Count V

80. The policies, procedures, regulations, practices and customs of the Defendant violate and continue to violate the rights of the Plaintiff DRMS to full, complete, timely and meaningful access to the Detention Center, staff, residents and their records, in violation of the PAIMI, PADD and PAIR Acts, and under color of law in violation of the Civil Rights Act of 1871, 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Honorable Court grant the following relief:

- a. Declare that the acts and omissions of the Defendant violate the federal law;
- b. Enter a preliminary and permanent injunction requiring the Defendant, its agents, employees and all persons acting in concert with the Defendant to cease their unconstitutional and unlawful practices;
- c. Grant injunctive relief enjoining the Defendant and its agents and employees from denying DRMS and its contracted agent immediate, full, complete, meaningful and unaccompanied access to the staff, residents, records and facilities at the Juvenile Detention Center to conduct monitoring activities and abuse and neglect investigations without advance notice and at any reasonable time, including business and visiting hours, in violation of the PAIMI, PADD and PAIR Acts;
- d. Issue a declaratory judgment that the Defendant's policies, regulations, and practices of denying DRMS and its contracted agent immediate, full, complete, meaningful, and unaccompanied access to the staff, residents, records and facilities at the Juvenile Detention Center to monitor and to conduct abuse and neglect investigations, without advance notice and at any reasonable time, including during business and visiting hours, violate the PAIMI, PADD and PAIR Acts;

- e. Award to the Plaintiff reasonable costs and attorney's fees; and
- f. Grant the Plaintiff such other relief as the Court deems just.

Respectfully submitted,

s/PoonamJuneja

Poonam Juneja, Miss. Bar No. 103181
Vanessa Carroll, Miss. Bar No. 102736
Sheila A. Bedi, Miss. Bar No. 101652
Mississippi Youth Justice Project
A Project of the Southern Poverty Law Center
921 N. President St., Suite B
Jackson, Mississippi 39202
601-948-8882 (telephone)
601-948-8885 (fax)

Robert B. McDuff, Miss. Bar No. 2532
767 North Congress Street
Jackson, Mississippi 39202
601-969-0802 (telephone)
601-969-0804 (fax)

Kimalon Melton, Miss. Bar No. 99466
Disability Rights Mississippi
5305 Executive Place
Jackson, Mississippi 39206
601-981-8207 (telephone)
601-981-8313 (fax)

Counsel for Plaintiffs

Certificate of Service

I hereby certify that on November 12, 2009, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by email to all parties by the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

Dated: November 12, 2009

/s/ Sheila A. Bedi, Miss. Bar. No. 101652
Mississippi Youth Justice Project
A Project of the Southern Poverty Law Center
921 N. President St., Suite B
Jackson, Mississippi 39202
601-948-8882 (phone)
601-948-8885 (fax)

EXHIBIT 1

EXHIBIT 1

Exhibit #	Date of Letter	Sender(s)	Recipient(s)
1-A	10/08/2009	Attorneys Bear Atwood, Sheila Bedi, and Poonam Juneja, MYJP, Counsel for Plaintiff	The Honorable Frank Coleman, Lauderdale County Youth Court; Attorney Lee Thaggard, Lauderdale County Board Attorney
1-B	10/01/2009	Attorney Bear Atwood, MYJP, Counsel for Plaintiff	Attorney J. Richard Barry, Lauderdale County Board Attorney
1-C	09/30/2009	Attorney J. Richard Barry, Lauderdale County Board Attorney	Attorney Bear Atwood, MYJP, Counsel for Plaintiff
1-D	09/30/2009	Attorneys Bear Atwood, Sheila Bedi, and Poonam Juneja, MYJP, Counsel for Plaintiff	Attorney J. Richard Barry, Lauderdale County Board Attorney
1-E	09/29/2009	Attorney J. Richard Barry, Lauderdale County Board Attorney	Attorney Bear Atwood, MYJP, Counsel for Plaintiff
1-F	09/28/2009	Attorneys Bear Atwood, Sheila Bedi, and Poonam Juneja, MYJP, Counsel for Plaintiff	Attorney J. Richard Barry, Lauderdale County Board Attorney
1-G	09/24/2009	Attorneys Bear Atwood, Sheila Bedi, and Poonam Juneja, MYJP, Counsel for Plaintiff	Attorney J. Richard Barry, Lauderdale County Board Attorney
1-H	12/08/2008	Attorney Bear Atwood, MYJP, Counsel for Plaintiff	The Honorable Frank Coleman and the Honorable Veldore Young, Lauderdale County Youth Court
1-I	10/28/2008	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	The Honorable Frank Coleman and the Honorable Veldore Young, Lauderdale County Youth Court
1-J	09/26/2008	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	Al Moore, Administrator, Lauderdale County Juvenile Center
1-K	09/11/2008	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	Al Moore, Administrator, Lauderdale County Juvenile Center

EXHIBIT 1-A

October 8, 2009

VIA EMAIL AND FAX

The Honorable Frank Coleman
County Judge
500 Constitution Avenue, 3rd Floor
Meridian, MS 39301
Fax: (601) 484-4940
countycourt@lauderdalecounty.org

Lee Thaggard, Esq.
410 Constitution Avenue, 11th Floor
Meridian, MS 39301
Fax: (601) 693-0226
thaggard@bourdeauxandjones.com

Re: Protection and Advocacy Visit at the Lauderdale County Juvenile Detention Center

Dear Judge Coleman and Attorney Thaggard:

I am writing in regard to access at the Lauderdale County Juvenile Detention Center (Detention Center) for the purpose of a protection and advocacy visit. It continues to be my hope that MYJP can work with the Youth Court and the County Board of Supervisors (Board) for the benefit of youth in Lauderdale County.

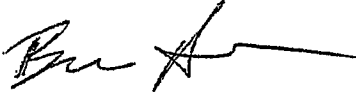
Over the last few days I have talked to both of you regarding access at the Detention Center. Based on my conversation with Judge Coleman, I understood that he and the County Board President had spoken, and that the Board President had said MYJP could not visit the Detention Center. Mr. Thaggard has informed me that the Board does not have the authority to grant or deny us access.

I am hoping that it is the confusion over who makes this decision that resulted in my being turned away from a visit on October 6, 2009. However, regardless of this confusion, MYJP takes the position that the Detention Center is a County facility and that the County is ultimately responsible for ensuring that their facilities are in compliance with all laws, including the federal P&A laws. As I told Mr. Thaggard, I would be more than happy to meet with both of you to discuss P&A access and resolve this matter.

MYJP does not want to pursue costly litigation needlessly. Therefore, we will not file a complaint prior to next week in order to work with you to resolve the access issue by this Friday, October 9, 2009. If we are unable to reach an agreement that permits MYJP to immediately provide protection and advocacy services at the Detention Center by Friday, we will have no choice but to file suit next week.

Please let me know when would be convenient time for us to meet to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bear Atwood', with a long horizontal stroke extending to the right.

Bear Atwood, Esq.
Sheila Bedi, Esq.
Poonam Juneja, Esq.

Cc. Lauderdale County Board of
 Supervisors
 Mike Sumrall, County
 Administrator

Rick Barry, Esq.
Judge Young
Kimalon Melton, Disability
Rights Mississippi

EXHIBIT 1-B

SPLC



Mississippi Youth Justice Project

A Project of the Southern Poverty Law Center

921 North President Street, Suite B
Jackson, MS 39202
T 601.948.8882 F 601.948.8885
www.splcenter.org

October 1, 2009

VIA FACSIMILE AND E-MAIL
(Hard Copy to follow via U.S. Mail)

Rick Barry, Esq., Board Attorney
Lauderdale County Board of Supervisors
410 Constitution Avenue, 11th Floor
Meridian, MS 39301
Fax: (601) 482-9744
Fax (601) 693-0226
barry@bourdeauxandjones.com

Re: Protection and Advocacy (P&A) Monitoring Visit

Dear Mr. Barry:

Thank you for calling me this morning. As we discussed, MYJP will make a P&A visit to the Lauderdale Juvenile Detention Center on Tuesday, October 6, 2009 at 10:00 a.m. I am sending a copy of this letter to the detention center Director so that he can arrange for us to have a tour of the facility and to meet privately with eligible youth under the P&A statutes. This includes any youth with a mental, physical or educational illness.

As always, please feel free to contact me at my office or my cell phone:
(601-519-5871.)

Sincerely,

Ms. Bear Atwood, Esq.

Cc. Lauderdale County Board of Supervisors
Al Moore, Director, Lauderdale County Juvenile Center
Mike Sumrall, County Administrator
Kimalon Melton, Disability Rights Mississippi

EXHIBIT 1-C

Bourdeaux & Jones, LLP

Post Office Box 2009

Meridian, Mississippi 39302

Telephone: (601) 693-2393

Facsimile: (601) 693-0226

DATE: September 30, 2009

TO: Ms. Bear Atwood

FAX NO.: 601-948-8885

FROM: J. Richard Barry

NUMBER OF PAGES INCLUDING COVER PAGE: 2

(If you do not receive all the pages of this fax, please call (601) 693-2393.)

MESSAGE: Transmitting letter of September 30, 2009

- ☐ Original will not follow
- ☒ Original will follow by U.S. Mail
- ☐ Original will follow by Federal Express

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS LEGALLY PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, DISCLOSURE, COPYING OR USE OF THE CONTENTS OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE SO WE MAY ARRANGE TO RETRIEVE THIS TRANSMISSION AT NO COST TO YOU. THANK YOU.

LAW OFFICES OF
BOURDEAUX & JONES, LLP505 CONSTITUTION AVENUE
(21ST AVENUE)
MERIDIAN, MISSISSIPPI 39301WILLIAM C. HAMMACK
J. RICHARD BARRY
WILLIAM T. MAY
LEE THAGGARD
KACEY GUY BAILEY
ROBERT T. BAILEY

September 30, 2009

AREA CODE 601
TELEPHONE 601-2383
FAX 601-693-0225
P.O. BOX 2009
MERIDIAN, MISSISSIPPI
39302-2008
THOMAS D. BOURDEAUX
(1925-1995)**VIA FACSIMILE NO. 601-948-8885**

(Hard copy to follow via U.S. Mail)

Bear Atwood, Director
SPLC Mississippi Youth Justice Project
921 North President Street, Suite B
Jackson, MS 39202**RE: Lauderdale County Juvenile Detention Center**

Dear Ms. Atwood:

I received your letter of September 30. I think the proper procedure would be that you call the Lauderdale County Administrator, Mike Sumrall, at 601-482-9751 and get on the Board's work session for Thursday, October 15, at 9:00 a.m. If you then feel you want to be on the Board's meeting agenda, you will need to get on that agenda for the meeting on Monday, October 19, which begins at 5:00 p.m.

I think it is premature for you to appear at a meeting of the Board until after you come to a work session. If you will, please give Mr. Sumrall a call and get on the agenda for the work session on October 15.

Sincerely,

BOURDEAUX & JONES, LLP


J. Richard Barryjr
18120/1108c: All Members of Board of Supervisors
Mike Sumrall, County Administrator
Honorable Frank Coleman
Honorable Vel Young

EXHIBIT 1-D

TRANSACTION REPORT

P.01/01

SEP/30/2009/WED 11:17 PM

FAX(TX)

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	SEP/30	11:14PM	16014829744	0:03:03	20	OK	SG3 3094



A Project of the Southern Poverty Law Center

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Jackson, MS 39202
T 601.948.8882 F 601.948.8885
www.splcenter.org

FAX COVER SHEET

DATE: September 30, 2009

TO: Rick Barry, Esq., Board Attorney
Each member of the Lauderdale County Board of Supervisors
Mike Sumrall, County Administrator

FROM: Bear Atwood

FAX: 601-482-9744

NO. PAGES: 20

RE: Request for a Protection and Advocacy Visit

Please deliver a copy of this letter, including the attachments, to each of the individuals listed above. If you would like me to fax additional copies of this letter, please let me know. You can reach me at 601-948-8882, ext. 28.

TRANSACTION REPORT

P.01/01

SEP/30/2009/WED 11:14 PM

FAX(TX)

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	SEP/30	11:08PM	16016930226	0:05:41	20	OK	ECM 3093

SPLC



Mississippi Youth Justice Project

A Project of the Southern Poverty Law Center

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www.splcenter.org

September 30, 2009

VIA FACSIMILE AND E-MAIL
(Hard Copy to follow via U.S. Mail)

Rick Barry, Esq., Board Attorney
Lauderdale County Board of Supervisors
410 Constitution Avenue, 11th Floor
Meridian, MS 39301
Fax: (601) 482-9744

Bordeaux & Jones, LLP
505 Constitution Avenue
P.O. Box 2009
Meridian, MS 39301
Fax (601) 693-0226
barry@bourdeauxandjones.com

Re: Protection and Advocacy (P&A) Monitoring Visit

Dear Mr. Barry:

I received your correspondence dated September 29, 2009 last night. I look forward to a productive relationship with you and the Lauderdale Board of Supervisors. To that end, I would ask that you put the Mississippi Youth Justice Project (MYJP) on the agenda for the Board meeting on October 5, 2009, so that we can make a presentation to the Board regarding the federal P&A laws and our role as a P&A agency.

Based on your September 29, 2009 letter, we will postpone our planned P&A visit until after Monday's Board of Supervisors meeting. However, our access under P&A law is clear, and we have provided ample notice of our intent to visit under the statutes. Please be advised that we will make a P&A visit to the Lauderdale detention facility on Tuesday, October 6, 2009 at 10:00 a.m. MYJP has negotiated P&A access with several state and county facilities. Our goal is to ensure that the detention center meets constitutional, state, and federal law for detained youth. As an example of our access in another county, I am attaching a copy of the Settlement Agreement that we negotiated with Harrison County. I am also attaching a copy of the memorandum we sent you on September 24, 2009 with our first visit request, detailing our authority under the federal P&A laws.

Please ask the Detention Center Director to arrange a tour of the entire detention facility for us on October 6, 2009. We will also need a private space where we can meet with eligible youth under P&A statute.

I hope that we can work together to both protect the children in Lauderdale County's custody and to insulate the County from legal liability for a failure to provide access for a P&A visit and for conditions at Lauderdale County's juvenile detention center.

As always, please do not hesitate to contact me with any questions. You can contact me at 601-948-8882 ext. 28 or bear.atwood@spicenter.org. I look forward to meeting you at the Board of supervisors meeting on Monday, and to visiting the Juvenile Center next week.

Sincerely,



Ms. Bear Atwood, Esq.

Ms. Sheila Bedi, Esq.

Ms. Poonam Juneja, Esq. Law Fellow

Cc. Lauderdale County Board of Supervisors
Al Moore, Director, Lauderdale County Juvenile Center
Mike Sumrall, County Administrator
Kimalon Melton, Disability Rights Mississippi

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

D.W., by and through his next friend;
Devonsha Fairley, K.V. by and through her
next friend Sina Matheny; A.R., by
and through her next friend Laura Reed;
J.P., by and through his next friend Theresa
Pope; A.B., by and through her
next friend Bernadette Brossett; W.R. by
and through his next friend, Calista
Blackmon; on behalf of themselves and all
persons similarly situated; MISSISSIPPI
PROTECTION AND ADVOCACY
SYSTEM, INC.,

Plaintiffs,

HARRISON COUNTY, MISSISSIPPI,

Defendant.

Case No. 1:09 cv 267 LG-RHN

SETTLEMENT AGREEMENT

On April 20, 2009 Plaintiffs filed suit challenging conditions in the Harrison County Juvenile Detention Center. Plaintiffs and the Defendant, without any admission on behalf of either, agree that it is in the best interests of all parties to resolve this matter amicably without further litigation and cost to the taxpayers of Harrison County, Mississippi. Therefore, the parties by and through their respective counsel, stipulate and agree to the following provisions to resolve this litigation. This settlement agreement is not to be construed as an admission of any liability or violation of law by the Defendant. Harrison County, Mississippi has contracted with Mississippi Security Police, Inc.(hereinafter MSP) and Health Assurance, LLC to provide services to the Harrison County Juvenile Detention Center in accordance with their contracts and

within the law, both State and Federal. While this agreement references these current contractors, the agreement and its specific requirements shall apply fully to the Defendant and to any contractors that may provide services to the Harrison County Juvenile Detention Center in the future. The term "Harrison County Juvenile Detention Center" hereinafter refers collectively to Harrison County, its Board of Supervisors, and all independent contractors who provide or who will provide services to the Harrison County Juvenile Detention Center.

I. OVERCROWDING

1.1. The Harrison County Juvenile Detention Center shall operate with direct care staff to youth ratio of 1:8 from the hours of 6:00 am until 10:00 pm and 1:10 from the hours of 10:00 pm to 6:00 am. Direct care staff shall be stationed on the living units, engaged in the active supervision of youth.

1.2. If the Harrison County Juvenile Detention Facility exceeds 90% of its full capacity for longer than two (2) days Harrison County Detention Center staff shall immediately notify the Harrison County Youth Court in writing and request an emergency release for youth charged with non-violent offenses who are eligible for less restrictive alternatives to secure detention. However, the parties recognize that the Harrison County Youth Court must make the ultimate decision as to the release of any youth. Full capacity shall be calculated by determining how many youth can be held in the facility when no more than two youth are assigned to two-person cells, and no more than one youth is assigned to a one-person cell. A two-person cell is a cell that contains two built-in permanent bunks. A one-person cell is a cell that contains one built-in, permanent bunk. The capacity calculation shall not include cells that are regularly used for intake or observation, nor shall it include beds that are placed in common areas, like day rooms.

1.3. No more than two youth shall share a two-person cell, and no more than one youth shall be placed in a one-person cell.

1.4. No youth shall be forced sleep on the floor whether on a mattress or not or in common areas, like day rooms. In case of a public safety emergency, youth may temporarily be placed on the bunk beds in the day room, while the Juvenile Detention Center complies with the requirements of ¶ 1.2. Staff shall make every effort to ensure that no youth is forced to sleep in the day room because of over-crowding for longer than 48 hours.

1.5 Every two weeks, the Harrison County Juvenile Detention Center shall provide the Youth Court with a list of 1) any youth who are not scheduled for adjudicatory hearing within (21) twenty-one days of their admission to the detention center and 2) any youth who are not scheduled for a dispositional hearing within (14) fourteen days of their adjudicatory hearing. The Harrison County Juvenile Detention Center shall request that these youth be scheduled for the appropriate hearings as soon as possible.

II. INTAKE

2.1 All youth admitted to the Harrison County Juvenile Detention Center shall receive a health screening, if possible, within 1 hour of admission, as required by Miss. Code Ann. § 43-21-321.

2.2 All youth shall receive a MAYSI-2 mental health screening immediately upon admission, as required by Miss. Code Ann. § 43-21-321. If the screening indicates that the youth has urgent mental health issues including but not limited to depression, suicidal ideation, withdrawal from drugs or alcohol, or trauma, the youth shall be immediately evaluated by a mental health professional or taken to the local emergency room.

2.3 During intake, youth shall not be automatically placed on 24 hour lock-down.

2.4 Prescription medications will be secured for all youth within 8 hours of admission if possible, but not longer than within 24 hours of admission, including weekends and holidays. The Harrison County Juvenile Detention Center shall purchase all prescription medications provided to detained youth.

III. STRUCTURED PROGRAMMING

3.1 The Harrison County Juvenile Detention Center's contractor, MSP shall provide or assign a Director of Programming, who will be responsible for establishing a structured program for detained youth.

3.2 The Director of Programming will establish and administer a daily program (including weekends and holidays) of structured educational, rehabilitative and recreational programs for youth. Particular attention shall be paid to the hours of 3-9 pm. The Director of Programming will also coordinate school, mental health services, religious activities, family engagement efforts, recreation and volunteer activities within the Juvenile Detention Center.

3.3. The Harrison County Juvenile Detention Center's contractor, MSP, shall develop policies, procedures and practices to ensure that youth participate in at least 15 hours of structured programming daily (including weekends and holidays).

IV. MENTAL HEALTH CARE

4.1 The Harrison County Juvenile Detention Center's contractor, Health Assurance, LLC, shall provide adequate mental health services to all detained youth pursuant to its contract. This shall include, but is not limited to, the provision of individual and group counseling sessions upon the request of a youth or the youth's parent/guardian, access to a psychiatrist at the detention center, and the distribution and medical monitoring of psychotropic medications.

4.2 Youth who are prescribed psychotropic medications shall be evaluated by a psychiatrist every (30) thirty days.

4.3 Individual mental health treatment plans shall be developed for youth who are under the care of a mental health provider. Treatment plans shall emphasize continuity of care and shall ensure that whenever possible, youth are transported to appointments with their regular mental health provider, whether the appointments are standing or made after the youth's initial detention.

V. MEDICAL CARE

5.1 The Harrison County Juvenile Detention Center's contractor, Health Assurance, LLC, shall provide youth with adequate medical care, including prompt screenings, a full physical exam as soon as possible after admission, (ideally within 72 hours but in no circumstances longer than 7 days), access to medical professionals upon request, prescription medications when needed, and prompt transportation to a local hospital in the case of a medical emergency.

5.2 The Harrison County Juvenile Detention Center's contractor, Health Assurance, LLC, shall ensure that a medical doctor and/or nurse practitioner are available to examine youth at the facility to identify and treat medical needs.

5.3 The Harrison County Juvenile Detention Center's contractor, Health Assurance, LLC, shall develop a sick call policy and practice which ensures that youth who request non-emergency medical attention are examined by a medical professional within 24-hours, excepting weekends and holidays. All youth who request non-emergency medical care on holidays and weekends shall be examined by a medical professional within 72 hours.

5.4 Prescription medications shall only be distributed by staff who have received training from a medical professional.

5.5. Medical and mental health services shall be provided in a manner that ensures the confidentiality of youth's health information.

VI. CELL CONFINEMENT

6.1. Youth shall be engaged in structured, rehabilitative and educational programming outside of their cells during the hours of 7:00am to 10:00 pm each day, including weekends and holidays. During shift change, youth may be placed in their cells for no longer than 30 minutes.

6.2 Youth who pose an immediate, serious threat of bodily injury to others may be confined in their cells for up to 12 hours at a time without administrative approval. Cell confinement for longer than 12 hours must be approved by the Detention Center Director. Youth who are placed on cell confinement for this reason shall be released from their cells daily to maintain appropriate personal hygiene and to engage in one hour of large muscle exercise. Staff must perform visual checks on youth who are subject to cell confinement every 15 minutes.

VII. DISCIPLINARY PRACTICES AND PROCEDURES

7.1. The Harrison County Juvenile Detention Center's contractor, MSP, shall develop a discipline policy and practice that incorporates positive behavior interventions and supports. This policy shall include guidelines for imposing graduated sanctions for rule violations, and positive incentives for good behavior.

7.2 Youth who violate major rules may be subject to room or cell confinement for up to 48 hours. No youth shall be confined to a room for longer than 24 hours without written notification of the alleged rule violation and a disciplinary hearing before a staff member who was not involved in the alleged incident. Under no circumstances shall youth be subject to involuntary cell confinement for longer than 48 hours. Youth who are placed on cell confinement shall be released from their cells daily to maintain appropriate personal hygiene and

to engage in one hour of large muscle exercise. Staff must perform visual checks on youth who are subject to cell confinement every 15 minutes.

VIII. USE OF RESTRAINTS

8.1. By April 1, 2010 the Harrison County Juvenile Detention Center staff shall cease the practice of regularly carrying chemical restraints while on the living units. The Harrison County Juvenile Detention Center shall establish policies and procedures to limit the use of chemical restraints.

8.2 Mechanical and/or chemical restraints shall not be used to punish youth or for the convenience of staff.

8.3 Under no circumstances shall restraints be used to secure youth to a fixed object.

8.4 Under no circumstances shall youth be subjected to "hogtying," which is the practice of placing a youth face down on a bed, floor or other surface, and securing the youth's hands to his feet.

8.5 The Harrison County Juvenile Detention Center shall develop a policy and procedure to ensure that restraints are only used when a resident presents a threat of serious bodily injury to himself or others.

8.6 No youth shall be restrained for longer than 15 minutes, unless restraints are approved by a mental health professional. Under no circumstances should a youth be restrained for longer than 25 minutes.

8.7 Nothing in this provision shall prohibit restraints from being placed on youth during transportation, if staff have reason to believe that a youth presents a flight risk or will engage in violent behavior during transport.

8.8 Restraints will not be used on youth who are deemed to be suicidal unless a licensed mental health professional deems humane restraints necessary to prevent a youth from harming himself or herself. If a youth must be restrained for longer than 25 minutes in order to prevent self-harm, that youth shall, as quickly as possible, be evaluated by a mental health professional or transported to a mental health facility or to the emergency room of a local hospital.

8.9 When a child is placed in mechanical restraints, staff must provide one-on-one supervision for the duration of the restraint.

8.10 Harrison County Juvenile Detention Center's contractor, MSP, shall notify a medical professional whenever a resident is restrained for reasons other than transportation. A medical professional shall examine a youth as soon as possible after restraints are removed.

IX. USE OF FORCE

9.1 Physical force shall not be used to punish youth. MSP's Staff shall not "slam," "take down" or "secure youth to the floor" as a form of control or a control technique. MSP's Staff shall only use physical force to stop youth from causing serious physical injury to self or others or to prevent an escape. If physical force is necessary, MSP's staff must use the minimum amount required to safely contain the youth. No youth shall be subject to physical force until staff have first attempted verbal de-escalation techniques.

9.2 By December 31, 2009 staff will phase out the use of pressure point holds and other pain aversion behavior management techniques.

9.3 Harrison County Juvenile Detention Center's contractor, MSP, shall notify a medical professional whenever physical force is used against a resident. A medical professional shall examine a youth as soon as possible after the use of force.

X. SUICIDE PREVENTION

10.1 Harrison County Juvenile Detention Center's contractors, MSP and Health Assurance, LLC shall develop a multi-tiered suicide prevention policy that has at least three stages of suicide watch.

10.2 Any resident placed on the highest level of suicide watch shall be evaluated by a mental health professional ideally, within 12 hours but not longer than 24 hours of his or her placement on suicide watch. If a resident on the highest level of suicide watch is not evaluated by a mental health professional within 24 hours, the resident shall be immediately transported to a local mental health facility or emergency room for evaluation and/or treatment.

10.3 Youth on suicide watch shall participate in recreation, school, and other structured activities. Youth shall not be required to wear a "suicide gown" unless locked in a cell. Staff shall closely supervise youth on suicide watch by logging activities every 10 minutes.

10.4 When a resident is placed on any level of suicide watch, within 24-hours a report shall be made to the youth court, as well as to the resident's guardian and his or her attorney.

XI. HYGIENE AND SANITATION

11.1. Youth shall be provided with the means to maintain appropriate hygiene, including soap and shampoo for showers, which will occur at least once daily, soap for washing hands after each time the youth use the toilet, and tooth paste and a tooth brush for tooth brushing, which will occur at least twice daily.

11.2. Youth shall be provided with sleeping mats and blankets that are clean and odorless.

11.3. Under no circumstances shall youth be deprived of mats and blankets.

11.4. Youth shall be provided with a clean, sanitary environment.

11.5. Harrison County shall develop policies and practices to ensure that the Juvenile Detention Center complies with relevant law regarding fire safety, hurricane preparedness, sanitation practices, food safety and the elimination and management of environmental toxins.

XII. MISCELLANEOUS PROVISIONS

12.1. Male and female youth shall be provided with equal access to educational services, medical care, and indoor and outdoor recreation.

12.2. Contractor's Staff are prohibited from having inappropriate contact with youth. Inappropriate contact includes, but is not limited to conversations of a sexual nature, verbal sexual harassment, dissemination of sexually explicit materials inside the detention center, and sexual acts or touching.

12.3. Harrison County Juvenile Detention Center will collaborate with the Plaintiffs to develop a comprehensive policy that will address cross-gender supervision, sexual harassment and gender discrimination.

12.4. All youth shall have the opportunity to engage in at least one hour of large muscle exercise a day.

12.5. Harrison County will incorporate the terms of this settlement into any relevant contracts and/or requests for proposals. The County will further ensure that all contractors revise and update standard operating procedures in compliance with this Agreement.

12.6. Youth shall have access to an adequate grievance system that is accessible to all youth regardless of literacy levels, and that provides youth with the opportunity to appeal facility-level determinations.

12.7. All staff working at the Harrison County Juvenile Detention Center shall receive training on their obligation under state law to report child abuse and neglect.

XII. STAFF TRAINING

13.1. Harrison County shall collaborate with the Plaintiffs to design and implement a comprehensive training for detention center staff. Training shall include, but is not limited to, the mandatory reporting requirements for direct care workers, the requirements of the Prison Rape Elimination Act, verbal de-escalation techniques, adolescent brain development and developmental issues, effective communication with adolescents, effective documentation, appropriate use of force and restraint, and best practices for detention center administration.

XIV. ENFORCEMENT, MONITORING AND DISMISSAL

14.1 The Harrison County Juvenile Detention Center agrees that, for the purpose of monitoring compliance with this agreement, the Plaintiffs will have full access to the juvenile detention center, its residents and relevant records, including but not limited to institutional files, medical files, mental health files, educational files, videotapes, and all informational and other reports by staff, grievances, incident reports, and other relevant documents and files maintained by the Harrison County Juvenile Detention Center. Plaintiffs agree to indemnify the County for any liability it incurs as a result of Plaintiffs' actions or inactions related to the monitoring of this agreement. Plaintiffs further agree to comply with all state and federal confidentiality requirements regarding youth court, education and/or medical care.

14.2 The Harrison County Juvenile Detention Center will collaborate with the Plaintiffs to develop a report format to track compliance with the terms of this settlement. For a period of three years from the date of this agreement, the Plaintiffs will submit quarterly reports to the Harrison County Board of Supervisors regarding the juvenile detention center's compliance with the terms of this agreement. At least three times a year, the Plaintiffs may provide in-person briefings to the Harrison County Board of Supervisors on the status of this settlement.

14.3 All of the Plaintiffs attorneys fees, expenses and costs incurred in connection with this agreement will be borne by the Plaintiffs and no claim for reimbursement from the County will be made unless counsel for the Plaintiffs are forced to return to court to enforce this agreement during a period of one year following the effective date of the agreement and the Plaintiffs prevail before the Court. It will then be up to the Court to decide whether any attorneys fees, costs or expenses should be paid by the Defendant, with each party having whatever rights of appeal exist under the law.

14.4. For the purpose of settlement only, the Defendant does not object to class certification. The settlement class is defined as "of all children who are currently or will in the future be confined at the Harrison County Juvenile Detention Center."

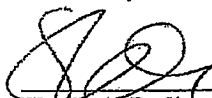
14.5. This Settlement Agreement is not a consent decree, and is not enforceable in federal court. In the event of non-compliance with any of the terms in this Settlement Agreement, the plaintiffs may only enforce the Settlement Agreement in state court, pursuant to 18 U.S.C. § 362(c)(2)(B).

14.6 The Plaintiffs are not precluded from bringing a new action in federal court in the event of non-compliance with the terms of this Settlement Agreement, however this Settlement Agreement or the terms hereof cannot be used against or as an admission of any parties hereto.


14.7 If the Court approves this Settlement Agreement, the current case will be dismissed without prejudice from federal court.

15. Harrison County's contractors, MSP and Health Assurance, LLC, shall sign this Agreement acknowledging their understanding and obligations pursuant to the contracts each currently have with Harrison County, Mississippi and this agreement.

This the 10th day of August, 2009.




Sheila A. Bedi
Vanessa Carroll
Counsel for Plaintiffs

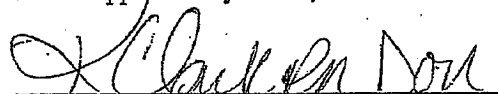


Tim C. Holleman
Counsel for Defendant

Acknowledged:



Tommy Best
Mississippi Security Police, Inc.



X Charles M. Don
Health Assurances, LLC.

TO: RICK BARRY, ESQ., BOARD ATTORNEY
CC: LAUDERDALE COUNTY BOARD OF SUPERVISORS
BARBRA VANZANT, DIRECTOR, LAUDERDALE COUNTY JUVENILE
CENTER
MIKE SUMRALL, COUNTY ADMINISTRATOR

FROM: THE MISSISSIPPI YOUTH JUSTICE PROJECT

SUBJECT: OVERVIEW OF PROTECTION & ADVOCACY AUTHORITY TO
ACCESS YOUTH IN JUVENILE DETENTION CENTERS

DATE: SEPTEMBER 24, 2009

The Mississippi Youth Justice Project (MYJP) and Disability Rights Mississippi (DRMS) provide protection and advocacy services to eligible youth at many facilities in Mississippi. We have worked with the Department of Corrections, the Department of Human Services and the Department of Mental Health to access disabled youth at Walnut Grove Correctional Facility, Columbia Training School (while it was still in operation), Specialized Treatment Facility, and Juvenile Rehabilitation Facility. Additionally MYJP has negotiated access to youth at the detention centers in Hinds, Harrison and Forrest Counties. MYJP provides services pursuant to a contract with DRMS to provide Protection & Advocacy services to eligible youth in Mississippi facilities.

Congress created protection and advocacy systems ("P&As") with the passage of the Developmental Disabilities Assistance and Bill of Rights Act of 1975; and P&A services have since been expanded to provide legal representation and other advocacy services on behalf of all persons with disabilities.¹ The PADD Act provides for a P&A to protect the legal and human rights of individuals with developmental disabilities. 42 U.S.C. § 15041. The PAIMI Act recognizes that "individuals with mental illness are vulnerable to abuse and serious injury ... [and] subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning." 42 U.S.C. § 10801(a). PAIMI requires the P&A system to ensure that the rights of individuals with mental illness are protected by monitoring facilities and investigating incidents of abuse and neglect of the mentally ill. 42 U.S.C. § 10801(b). Finally, the PAIR Program was created to protect the rights of all other individuals with disabilities who are not covered under the PADD and PAIMI Acts—including, but not limited to youth with special education needs. 29 U.S.C. § 794e.

In order to carry out the congressional mandate to protect the rights of individuals with disabilities, the P&A Acts provide that the state's protection & advocacy system, and its authorized agents like MYJP, must have physical access to facilities housing individuals with disabilities. The P & A Statutes apply with full force to The Lauderdale County Juvenile Center because both PAIMI and PADD include "juvenile detention centers" in the definition of facilities covered by P&A authority. 42 C.F.R. § 51.2; 45 C.F.R. § 1386.19.

¹ The "P&A Acts" consists of the following: Part C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the "PADD Act"), 42 U.S.C. §§ 15041-15045; the Protection & Advocacy for Individuals with Mental Illness Act of 1986 (the "PAIMI Act"), 42 U.S.C. §§ 10801 *et seq.*; and the Protection and Advocacy of Individual Rights ("PAIR") Program of the Rehabilitation Act of 1973, 29 U.S.C. § 794e.

Under the PADD Act, MYJP "shall have unaccompanied access to all residents of a facility [providing care, support, and services to individuals with developmental disabilities] at reasonable times ..." 45 C.F.R § 1386.22(g) and this "shall include the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person." 45 C.F.R §1386.22(h). P&As have access to facilities for the purpose of:

(1) Providing information and training on, and referral to, programs addressing the needs of individuals with developmental disabilities, and the protection and advocacy services available from the system., including the name, address, and telephone number of the system and other information and training about individual rights; and

(2) Monitoring compliance with respect to the rights and safety of service recipients.

45 C.F.R § 1386.22(g).

The PAIMI Act similarly provides that MYJP must have reasonable access to facilities that provide care or treatment to individuals with mental illness. 42 U.S.C. § 10805(a)(3). *See also* 42 C.F.R § 51.42(a) ("Access to facilities and residents shall be extended to all authorized agents of a P&A system."). P&As are entitled to "reasonable unaccompanied access to facilities [which render care and treatment for people with mental illness] including all areas which are used by residents, are accessible to residents and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours. 42 C.F.R § 51.42(c). The purpose of this access is providing residents with educational programming on mental health, individual rights, and protection and advocacy services; "monitoring compliance with respect to the rights and safety of residents; and ... inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents." 42 C.F.R § 51.42(c) (1)-(3).

Congress intended that the respective access authorities under the three protection and advocacy programs be applied in a consistent manner, and the PAIR program expressly incorporates by reference (at 42 U.S.C. 794e(f)(2)) the authority regarding access to facilities and records (as well as the other general authorities granted protection and advocacy systems) set forth in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (PADD). Specifically, the PAIR statutory language provides that protection and advocacy systems under the PAIR Program "have the same general authorities, including access to records ... as set forth" in PADD. 29 U.S.C. § 794e(f)(2). Thus, PADD's access authority applies with equal force under the PAIR Program.

The population served under the PAIR program includes all individuals who have a physical or mental impairment that substantially limits one or more major life activity. 29 U.S.C. § 705(9)(B). Major life activities include learning, and thus individuals with learning disabilities who receive services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401(3), are also entitled to receive P&A services.

Under both the PADD Act and the PAIMI Act, Congress designated two distinct sources for access to facilities: 1) access for the purpose of investigating allegations of abuse and/or neglect, 42 U.S.C. § 15043(a)(2)(B), 42 U.S.C. § 10805 (a) (1) (A), 45 C.F.R § 1386.22(f), 42 C.F.R § 51.42(b); and 2) access for the purpose of monitoring the facility and the treatment of residents. 42 U.S.C. § 15043(a)(2)(H), 42 U.S.C. § 10805(a)(3), 45 C.F.R § 1386.22(g), 42 C.F.R § 51.42 (c). Federal courts in the 5th Circuit have recognized both types of P&A access authority. *See*

Miss. Protection & Advocacy System v. Cotton, 1989 U.S. Dist. LEXIS 17075 (S.D. Miss. 1989); *aff'd*, 929 P.2d 1054 (5th Cir. 1991).

A facility must grant a P&A investigatory access when the P&A receives a complaint or allegation of abuse, 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b)(1); or when the P&A has probable cause to believe that an incident of abuse has occurred. 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b)(3). A complaint includes any formal or informal communication alleging abuse, 42 C.F.R. § 51.2; and the P&A is responsible for making the probable cause determination. *See* 42 C.F.R. § 51.31(g) ("Determination of 'probable cause' may result from P&A system monitoring or other activities, including observation by P&A system personnel"). Further, when investigating allegations of abuse, a P&A "shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect." 42 C.F.R. § 51.42(b).

P&As also have authority to access a facility and its residents for the purpose of monitoring conditions – even absent a report of an incident of abuse or neglect or probable cause to believe that such an incident has occurred. *Michigan Protection and Advocacy, Inc. v. Miller* 849 F. Supp. 1202 (W.D. Mich. 1994) (holding that beyond allowing the investigation of specific complaints, the state must also provide P&A with reasonable access to juvenile facility so that P&A may engage in monitoring activities). In addition to access for investigating suspected incidents of abuse and neglect, P&As are also entitled to "reasonable unaccompanied access to facilities including all areas which are used by residents, are accessible to residents and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours." 42 C.F.R. § 51.42 (c); *see also* 45 C.F.R. § 1386.22(g). The purpose of this access is providing residents with educational programming on mental health, individual rights, and protection and advocacy services; "monitoring compliance with respect to the rights and safety of residents; and ... inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents." 42 C.F.R. § 51.42(c)(1) – (3); *see also* 45 C.F.R. § 1386.22(g).

The P&A is not required to furnish a facility with the name or other identifying information regarding the resident(s) with whom it plans to meet, or of the individuals that reported incidents of abuse or neglect. *See Cotton*, 929 F.2d at 1056–57. Similarly, the P&A does not need to justify or explain its contacts with residents to the facility. *See Cotton*, 929 F.2d at 1056–1057. Indeed, federal courts widely recognize that a P&A is "the final arbiter of probable cause" for the purpose of investigating abuse or neglect. *See Arizona Ctr. For Disability Law v. Allen*, 197 F.R.D. 689, 693 (D.Ariz. 2000); *see also Office of Prot. & Advocacy for Persons with Disabilities v. Armstrong*, 266 F. Supp. 2d 303, 321–22 (D. Conn. 2003) (holding that P&A is entitled to make its probable cause determination independent of any other agency or third party review).

It is entirely possible that there are some youth housed at the Juvenile Justice Center who the facility has not yet identified as disabled. A P&A's right to access these youth is similarly well established. *See Michigan Protection & Advocacy Services v. Miller*, 849 F.Supp. 1202 (W.D. Mich. 1994) (finding that denying P&A full access prevents the advocacy organization from bringing in their own mental health professionals to ascertain whether the residents suffer from mental illness when studies showed the prevalence of mental illness in training schools and detention centers).²

² *See also Connecticut P&A v. Hartford Board of Education*, 355 F. Supp. 2d 649 (D. Conn. 2005) (stating the purpose of PALMI and PADD to provide protection and advocacy services is defeated if P&A is not allowed to ascertain whether students have a mental illness); *Georgia Advocacy Office Inc. v. Camp*, 172 F.3d 1294 (11th

As a P&A, it is not our mission or objective to interview youth about their pending youth court case, or to provide them with legal information, advice, or representation on their pending youth court matter. In fact, to do so would go beyond the federal P&A mandate, which authorizes a P&A to monitor juvenile facilities in order to ensure that youth with disabilities receive the care, treatment, and services to which they are entitled under state and federal law. If a represented youth raises any questions or concerns about their youth court case, MYJP will refrain from offering information or advice, and will instead direct the youth to consult with their attorney. MYJP is also happy to contact a youth's attorney following a monitoring visit to pass on any questions or concerns raised by youth that need to be addressed by that child's defense attorney.

Finally, with regard to any concerns about confidentiality and parental consent, these matters are also addressed by the P&A Acts. The PAIMI Act specifically states that:

The right of access ... shall apply despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators. The system shall make every effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian.

42 C.F.R. § 51.42(e). To the extent that Mississippi state law protects the identities of minors and requires parental consent, this confidentiality is preempted by federal authority to monitor these facilities.

Cir. 1999) (finding that a facility that offered the services of a psychiatrist and psychologist as well as mental health screenings, evaluations, counseling, medication supervision, and education may have residents who were "mentally ill" under the PAIMI Act.); *Georgia Advocacy Office v. Borison*, 520 S.E.2d 701 (Ga. Ct. App. 1999) (holding P&A could have access to records of subjects of fraudulent drug studies even though P & A did not have knowledge of whether any particular individual had a disability.)

EXHIBIT 1-E

LAW OFFICES OF
BOURDEAUX & JONES, LLP
505 CONSTITUTION AVENUE
(21ST AVENUE)
MERIDIAN, MISSISSIPPI 39301

WILLIAM C. HAMMACK
J. RICHARD BARRY
WILLIAM T. MAY
LEE THAGGARD
KACEY GUY BAILEY
ROBERT T. BAILEY

September 29, 2009

AREA CODE 601
TELEPHONE 601-693-0226
FAX 601-693-0226
P.O. BOX 2009
MERIDIAN, MISSISSIPPI
39302-2009
THOMAS D. BOURDEAUX
(1925-1995)

VIA FACSIMILE NO. 601-948-8885
(Hard copy to follow via U.S. Mail)

Bear Atwood, Director
SPLC Mississippi Youth Justice Project
921 North President Street, Suite B
Jackson, MS 39202

RE: Lauderdale County Juvenile Detention Center

Dear Mr. Atwood:

I received your letter dated September 24, 2009, yesterday. In regard to a visit to the Lauderdale County Juvenile Detention Center, I will have to get with the Board of Supervisors at their meeting next week to discuss the matter.

In the meantime, if you have questions, please do not hesitate to contact me.

Sincerely,


BOURDEAUX & JONES, LLP

J. Richard Barry

pak
18120/1108

c: All Members of Board of Supervisors

EXHIBIT 1-F

SPLC



Mississippi Youth Justice Project

A Project of the Southern Poverty Law Center

921 North President Street, Suite B
Jackson, MS 39202
T 601.948.8882 F 601.948.8885
www.splcenter.org

FAX COVER SHEET

DATE: September 28, 2009
TO: Rick Barry, Board Attorney
Lauderdale County Board of Supervisors
Mike Sumrall, County Administrator
FROM: Bear Atwood, Director
FAX: 601-482-9744 NO. PAGES: 2

Re: Protection & Advocacy Visit

Please deliver a copy to each of the above people. If you prefer we can fax a copy to each of them individually. Please let us know if you would like us to fax individual copies. You can reach me at 601-948-8882 ext. 28

September 28, 2009

VIA FACSIMILE AND E-MAIL

Rick Barry, Esq., Board Attorney
Lauderdale County Board of Supervisors
410 Constitution Avenue, 11th Floor
Meridian, MS 39301
Fax: (601) 482-9744

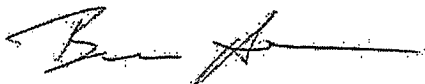
Re: Protection and Advocacy Monitoring Visit on Wednesday, September 30, 2009

Dear Mr. Barry:

We are following up on MYJP's September 24, 2009 letter. We plan to conduct a Protection and Advocacy visit with eligible youth at the Lauderdale County Juvenile Center and tour the facility on Wednesday, September 30, 2009, pursuant to our authority under federal law as an agent of Disability Rights Mississippi. As we outlined in our earlier letter, as an agent of a federally-mandated protection and advocacy system, MYJP has both the authority and obligation under federal law to access youth with disabilities in detention centers in order to monitor their conditions of confinement and provide them with protection and advocacy services. Under this responsibility, we plan to arrive at the Juvenile Center at 10:00 A.M. on Wednesday, September 30, 2009 to meet with youth and tour the facility. We can arrive earlier if that would be more convenient for the detention center staff.

We are sending a copy of this letter to the Director of the Juvenile Center, so that she can make arrangements for us to tour the facility and arrange a private space where we can meet with eligible youth. As always, please do not hesitate to contact us with any questions. You can contact our Director, Bear Atwood, at 601-948-8882 ext. 28 or bear.atwood@splcenter.org. We look forward to visiting the Juvenile Center later this week.

Sincerely,



Bear Atwood, Director
Sheila Bedi, Esq.
Poonam Juneja, Law Fellow

Cc. Lauderdale County Board of Supervisors
Al Moore, Director, Lauderdale County Juvenile Center
Mike Sumrall, County Administrator
Kimalon Melton, Disability Rights Mississippi

SPLC



Mississippi Youth Justice Project

A Project of the Southern Poverty Law Center

921 North President Street, Suite B
Jackson, MS 39202
T 601.948.8882 F 601.948.8885
www.splcenter.org

FAX COVER SHEET

DATE: September 28, 2009
TO: Rick Barry, Esq.
FROM: Bear Atwood, Director
FAX: 601-693-0226 NO. PAGES: 2
Re: Protection & Advocacy Visit

Attached please find a letter regarding the MYJP Protection and Advocacy visit to the
Lauderdale Detention Center.

SPLC



Mississippi Youth Justice Project

A Project of the Southern Poverty Law Center

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Jackson, MS 39202
T 601.948.8882 F 601.948.8885
www.splcenter.org

September 28, 2009

VIA FACSIMILE AND E-MAIL

Rick Barry, Esq., Board Attorney
Lauderdale County Board of Supervisors
410 Constitution Avenue, 11th Floor
Meridian, MS 39301
Fax: (601) 482-9744

Re: Protection and Advocacy Monitoring Visit on Wednesday, September 30, 2009

Dear Mr. Barry:

We are following up on MYJP's September 24, 2009 letter. We plan to conduct a Protection and Advocacy visit with eligible youth at the Lauderdale County Juvenile Center and tour the facility on Wednesday, September 30, 2009, pursuant to our authority under federal law as an agent of Disability Rights Mississippi. As we outlined in our earlier letter, as an agent of a federally-mandated protection and advocacy system, MYJP has both the authority and obligation under federal law to access youth with disabilities in detention centers in order to monitor their conditions of confinement and provide them with protection and advocacy services. Under this responsibility, we plan to arrive at the Juvenile Center at 10:00 A.M. on Wednesday, September 30, 2009 to meet with youth and tour the facility. We can arrive earlier if that would be more convenient for the detention center staff.

We are sending a copy of this letter to the Director of the Juvenile Center, so that she can make arrangements for us to tour the facility and arrange a private space where we can meet with eligible youth. As always, please do not hesitate to contact us with any questions. You can contact our Director, Bear Atwood, at 601-948-8882 ext. 28 or bear.atwood@splcenter.org. We look forward to visiting the Juvenile Center later this week.

Sincerely,

Bear Atwood, Director
Sheila Bedi, Esq.
Poonam Juneja, Law Fellow

Cc. Lauderdale County Board of Supervisors
Al Moore, Director, Lauderdale County Juvenile Center
Mike Sumrall, County Administrator
Kimalon Melton, Disability Rights Mississippi

EXHIBIT 1-G

FAX COVER SHEET

DATE: September 24, 2009

TO: Rick Barry, Board Attorney
Lauderdale County Board of Supervisors
Mike Sumrall, County Administrator

FROM: Bear Atwood, Director

FAX: 601-482-9744

Re: Request for a Protection and Advocacy Visit

NO. PAGES: 9

Please deliver a copy to each of the above people. If you prefer we can fax a copy to each of them individually. Please let us know if you would like us to fax individual copies. You can reach me at 601-948-8882 ext. 28

September 24, 2009

VIA FACSIMILE & ELECTRONIC MAIL

Rick Barry, Esq., Board Attorney
Lauderdale County Board of Supervisors
410 Constitution Avenue, 11th Floor
Meridian, MS 39301
Fax: (601) 482-9744

Re: Request for Protection and Advocacy Monitoring Visit

Dear Mr. Barry:

We are writing to make arrangements for the Mississippi Youth Justice Project ("MYJP") to visit the Lauderdale County Juvenile Detention Center in order to conduct a protection and advocacy visit with eligible youth at the Juvenile Center, pursuant to our authority under federal law as an agent of Disability Rights Mississippi ("DRMS"). We would like to arrange a visit to the Juvenile Center that will include a tour of the facility, meeting with all eligible youth housed there, and conducting individual meetings with youth who wish to speak with us privately.

MYJP is authorized to tour the Juvenile Center and meet with youth under the Protection and Advocacy Acts – the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. §§10801 *et seq.*; the Developmental Disabilities Assistance and Bill of Rights Act of 2000 ("DD Act"), 42 U.S.C. §§15001, *et seq.*; and the Protection and Advocacy of Individual Rights Program ("PAIR Act"), 29 U.S.C., §§794e, *et seq.* In order to carry out the congressional mandate to protect the rights of individuals with disabilities, the Protection and Advocacy Acts provide that the state's protection and advocacy system, and its authorized agents, like MYJP, must have physical access to facilities housing individuals with disabilities and must be able to speak to the individuals about protection and advocacy services. For your information, we have attached a more detailed memorandum explaining our authority to access youth in juvenile detention centers in Mississippi under these Acts, as well as a copy of our contract with DRMS.

If you have any questions about MYJP's authority to tour the Juvenile Center and talk with youth, we would be happy to meet with you to discuss the issue. We are available on Tuesday, September 29, 2009 and Wednesday, September 30, 2009 to meet with you, tour the

facility, and visit with youth. You can contact Bear Atwood at 601-948-8882 ext 28 or bear.atwood@splcenter.org. We look forward to hearing from you soon.

Sincerely,



Bear Atwood, Director
Sheila A. Bedi, Esq.
Poonam Juneja, Law Fellow

Enclosures (2)

Cc. Lauderdale County Board of Supervisors
 Barbra Vanzant, Director, Lauderdale County Juvenile Center
 Mike Sumrall, County Administrator
 Kimalon Melton, Disabilities Rights Mississippi

TO: RICK BARRY, ESQ., BOARD ATTORNEY
CC: LAUDERDALE COUNTY BOARD OF SUPERVISORS
BARBRA VANZANT, DIRECTOR, LAUDERDALE COUNTY JUVENILE
CENTER
MIKE SUMRALL, COUNTY ADMINISTRATOR

FROM: THE MISSISSIPPI YOUTH JUSTICE PROJECT

SUBJECT: OVERVIEW OF PROTECTION & ADVOCACY AUTHORITY TO
ACCESS YOUTH IN JUVENILE DETENTION CENTERS

DATE: SEPTEMBER 24, 2009

The Mississippi Youth Justice Project (MYJP) and Disability Rights Mississippi (DRMS) provide protection and advocacy services to eligible youth at many facilities in Mississippi. We have worked with the Department of Corrections, the Department of Human Services and the Department of Mental Health to access disabled youth at Walnut Grove Correctional Facility, Columbia Training School (while it was still in operation), Specialized Treatment Facility, and Juvenile Rehabilitation Facility. Additionally MYJP has negotiated access to youth at the detention centers in Hinds, Harrison and Forrest Counties. MYJP provides services pursuant to a contract with DRMS to provide Protection & Advocacy services to eligible youth in Mississippi facilities.

Congress created protection and advocacy systems ("P&As") with the passage of the Developmental Disabilities Assistance and Bill of Rights Act of 1975; and P&A services have since been expanded to provide legal representation and other advocacy services on behalf of all persons with disabilities.¹ The PADD Act provides for a P&A to protect the legal and human rights of individuals with developmental disabilities. 42 U.S.C. § 15041. The PAIMI Act recognizes that "individuals with mental illness are vulnerable to abuse and serious injury ... [and] subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning." 42 U.S.C. § 10801(a). PAIMI requires the P&A system to ensure that the rights of individuals with mental illness are protected by monitoring facilities and investigating incidents of abuse and neglect of the mentally ill. 42 U.S.C. § 10801(b). Finally, the PAIR Program was created to protect the rights of all other individuals with disabilities who are not covered under the PADD and PAIMI Acts—including, but not limited to youth with special education needs. 29 U.S.C. § 794e.

In order to carry out the congressional mandate to protect the rights of individuals with disabilities, the P&A Acts provide that the state's protection & advocacy system, and its authorized agents like MYJP, must have physical access to facilities housing individuals with disabilities. The P & A Statutes apply with full force to The Lauderdale County Juvenile Center because both PAIMI and PADD include "juvenile detention centers" in the definition of facilities covered by P&A authority. 42 C.F.R. § 51.2; 45 C.F.R. § 1386.19.

¹ The "P&A Acts" consists of the following: Part C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the "PADD Act"), 42 U.S.C. §§ 15041-15045; the Protection & Advocacy for Individuals with Mental Illness Act of 1986 (the "PAIMI Act"), 42 U.S.C. §§ 10801 *et seq.*; and the Protection and Advocacy of Individual Rights ("PAIR") Program of the Rehabilitation Act of 1973, 29 U.S.C. § 794e.

Under the PADD Act, MYJP "shall have unaccompanied access to all residents of a facility [providing care, support, and services to individuals with developmental disabilities] at reasonable times ..." 45 C.F.R § 1386.22(g) and this "shall include the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person." 45 C.F.R §1386.22(h). P&As have access to facilities for the purpose of:

(1) Providing information and training on, and referral to, programs addressing the needs of individuals with developmental disabilities, and the protection and advocacy services available from the system., including the name, address, and telephone number of the system and other information and training about individual rights; and

(2) Monitoring compliance with respect to the rights and safety of service recipients.

45 C.F.R § 1386.22(g).

The PAIMI Act similarly provides that MYJP must have reasonable access to facilities that provide care or treatment to individuals with mental illness. 42 U.S.C. § 10805(a)(3). *See also* 42 C.F.R § 51.42(a) ("Access to facilities and residents shall be extended to all authorized agents of a P&A system."). P&As are entitled to "reasonable unaccompanied access to facilities [which render care and treatment for people with mental illness] including all areas which are used by residents, are accessible to residents and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours. 42 C.F.R § 51.42(c). The purpose of this access is providing residents with educational programming on mental health, individual rights, and protection and advocacy services; "monitoring compliance with respect to the rights and safety of residents; and ... inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents." 42 C.F.R § 51.42(c) (1)-(3).

Congress intended that the respective access authorities under the three protection and advocacy programs be applied in a consistent manner, and the PAIR program expressly incorporates by reference (at 42 U.S.C. 794e(f)(2)) the authority regarding access to facilities and records (as well as the other general authorities granted protection and advocacy systems) set forth in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (PADD). Specifically, the PAIR statutory language provides that protection and advocacy systems under the PAIR Program "have the same general authorities, including access to records ... as set forth" in PADD. 29 U.S.C. § 794e(f)(2). Thus, PADD's access authority applies with equal force under the PAIR Program.

The population served under the PAIR program includes all individuals who have a physical or mental impairment that substantially limits one or more major life activity. 29 U.S.C. § 705(9)(B). Major life activities include learning, and thus individuals with learning disabilities who receive services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401(3), are also entitled to receive P&A services.

Under both the PADD Act and the PAIMI Act, Congress designated two distinct sources for access to facilities: 1) access for the purpose of investigating allegations of abuse and/or neglect, 42 U.S.C. § 15043(a)(2)(B), 42 U.S.C. § 10805 (a) (1) (A), 45 C.F.R § 1386.22(f), 42 C.F.R § 51.42(b); and 2) access for the purpose of monitoring the facility and the treatment of residents. 42 U.S.C. § 15043(a)(2)(H), 42 U.S.C. § 10805(a)(3), 45 C.F.R § 1386.22(g), 42 C.F.R § 51.42 (c). Federal courts in the 5th Circuit have recognized both types of P&A access authority. *See*

Miss. Protection & Advocacy System v. Cotton, 1989 U.S. Dist. LEXIS 17075 (S.D. Miss. 1989); *aff'd*, 929 P.2d 1054 (5th Cir. 1991).

A facility must grant a P&A investigatory access when the P&A receives a complaint or allegation of abuse, 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b)(1); or when the P&A has probable cause to believe that an incident of abuse has occurred. 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b)(3). A complaint includes any formal or informal communication alleging abuse, 42 C.F.R. § 51.2; and the P&A is responsible for making the probable cause determination. *See* 42 C.F.R. § 51.31(g) ("Determination of 'probable cause' may result from P&A system monitoring or other activities, including observation by P&A system personnel"). Further, when investigating allegations of abuse, a P&A "shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect." 42 C.F.R. § 51.42(b).

P&As also have authority to access a facility and its residents for the purpose of monitoring conditions – even absent a report of an incident of abuse or neglect or probable cause to believe that such an incident has occurred. *Michigan Protection and Advocacy, Inc. v. Miller* 849 F. Supp. 1202 (W.D. Mich. 1994) (holding that beyond allowing the investigation of specific complaints, the state must also provide P&A with reasonable access to juvenile facility so that P&A may engage in monitoring activities). In addition to access for investigating suspected incidents of abuse and neglect, P&As are also entitled to "reasonable unaccompanied access to facilities including all areas which are used by residents, are accessible to residents and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours." 42 C.F.R. § 51.42 (c); *see also* 45 C.F.R. § 1386.22(g). The purpose of this access is providing residents with educational programming on mental health, individual rights, and protection and advocacy services; "monitoring compliance with respect to the rights and safety of residents; and ... inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents." 42 C.F.R. § 51.42(c)(1)–(3); *see also* 45 C.F.R. § 1386.22(g).

The P&A is not required to furnish a facility with the name or other identifying information regarding the resident(s) with whom it plans to meet, or of the individuals that reported incidents of abuse or neglect. *See Cotton*, 929 F.2d at 1056–57. Similarly, the P&A does not need to justify or explain its contacts with residents to the facility. *See Cotton*, 929 F.2d at 1056–1057. Indeed, federal courts widely recognize that a P&A is "the final arbiter of probable cause" for the purpose of investigating abuse or neglect. *See Arizona Ctr. For Disability Law v. Allen*, 197 F.R.D. 689, 693 (D.Ariz. 2000); *see also Office of Prot. & Advocacy for Persons with Disabilities v. Armstrong*, 266 F. Supp. 2d 303, 321–22 (D. Conn. 2003) (holding that P&A is entitled to make its probable cause determination independent of any other agency or third party review).

It is entirely possible that there are some youth housed at the Juvenile Justice Center who the facility has not yet identified as disabled. A P&A's right to access these youth is similarly well established. *See Michigan Protection & Advocacy Services v. Miller*, 849 F.Supp. 1202 (W.D. Mich. 1994) (finding that denying P&A full access prevents the advocacy organization from bringing in their own mental health professionals to ascertain whether the residents suffer from mental illness when studies showed the prevalence of mental illness in training schools and detention centers).²

² *See also Connecticut P&A v. Hartford Board of Education*, 355 F. Supp. 2d 649 (D. Conn. 2005) (stating the purpose of PAIMI and PADD to provide protection and advocacy services is defeated if P&A is not allowed to ascertain whether students have a mental illness); *Georgia Advocacy Office Inc. v. Camp*, 172 F.3d 1294 (11th

As a P&A, it is not our mission or objective to interview youth about their pending youth court case, or to provide them with legal information, advice, or representation on their pending youth court matter. In fact, to do so would go beyond the federal P&A mandate, which authorizes a P&A to monitor juvenile facilities in order to ensure that youth with disabilities receive the care, treatment, and services to which they are entitled under state and federal law. If a represented youth raises any questions or concerns about their youth court case, MYJP will refrain from offering information or advice, and will instead direct the youth to consult with their attorney. MYJP is also happy to contact a youth's attorney following a monitoring visit to pass on any questions or concerns raised by youth that need to be addressed by that child's defense attorney.

Finally, with regard to any concerns about confidentiality and parental consent, these matters are also addressed by the P&A Acts. The PAIMI Act specifically states that:

The right of access ... shall apply despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators. The system shall make every effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian.

42 C.F.R. § 51.42(e). To the extent that Mississippi state law protects the identities of minors and requires parental consent, this confidentiality is preempted by federal authority to monitor these facilities.

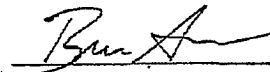
Cir. 1999) (finding that a facility that offered the services of a psychiatrist and psychologist as well as mental health screenings, evaluations, counseling, medication supervision, and education may have residents who were "mentally ill" under the PAIMI Act.); *Georgia Advocacy Office v. Borison*, 520 S.E.2d 701 (Ga. Ct. App. 1999) (holding P&A could have access to records of subjects of fraudulent drug studies even though P & A did not have knowledge of whether any particular individual had a disability.)

COOPERATIVE AGREEMENT

This is a contract between Disability Rights Mississippi (DRMS) formerly known as Mississippi Protection and Advocacy Systems, Inc., and the Mississippi Youth Justice Project, a project of the Southern Poverty Law Center (MYJP). This contract is intended to provide MYJP with access to detention centers, correctional and mental facilities in Mississippi housing individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21. Pursuant to federal law and this agreement, MYJP will have all of the access rights and privileges afforded to DRMS, subject only to the limitations explained below.

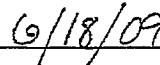
1. Pursuant to 42 U.S.C. §10804(a)(1)(A-B), DRMS has the authority to contract with non-profit organizations that: 1) operate throughout the state of Mississippi; 2) are independent of any agency that provides treatment or services to individuals with disabilities; and 3) have the capacity to protect and advocate for the rights of individuals with disabilities. MYJP operates throughout the state of Mississippi, does not provide treatment services to individuals with disabilities, has demonstrated experience in working with individuals with mental illness, and has the capacity to protect and advocate for the rights of all individuals with disabilities.
2. Pursuant to the above and 42 C.F.R. §51.21(3)(i), MYJP is authorized to provide the following protection and advocacy services: to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities who are incarcerated at the Walnut Grove Youth Correctional Facility, any county jail, detention center or juvenile detention center housing children under the age of 21 and the Oakley Training School; to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21 committed to any facility operated by the Department of Mental Health, including, but not limited to the Juvenile Rehabilitation Facility and the Specialized Treatment Facility for Youth with Emotional Disturbances; and to monitor the above mentioned facilities for compliance with respect to the rights and safety of service recipients as outlined in 45 C.F.R. §1386.22(g) and 42 C.F.R. §51.42(c)(2).
3. Pursuant to 42 U.S.C. §10806, this contract authorizes MYJP to have access to all records of any person with a disability who resides in any facility in which MYJP conducts monitoring visits, as well as all facility records to which DRMS is authorized access.
4. MYJP is authorized to pursue administrative, legal and other appropriate remedies to ensure the protection of individuals with mental illness, developmental disabilities, and/or other disabilities in the above-mentioned facilities. MYJP will provide notice to DRMS before it initiates any formal legal action.
5. MYJP will establish a schedule of monitoring visits and will provide DRMS with a written report of each visit within one week of the visit.

6. Pursuant to 42 C.F.R. §51.21, MYJP affirms that: MYJP attorneys, community advocates, and interns routinely advocate for children with mental illness, developmental disabilities, and/or disabilities and their families and conduct investigations on their behalf. 42 C.F.R. §51.21(b)(3)(ii). In the course of monitoring and/or investigation, MYJP will conduct interviews with clients and facility staff and review the relevant records. 42 C.F.R. §51.21(b)(3)(iii). While there is no deadline for this contract, it may be cancelled by either party upon written notification of cancellation provided two weeks in advance. 42 C.F.R. §51.21(b)(3)(iv). MYJP will use its own resources to fulfill the contract and will not seek monetary support from DRMS. 42 C.F.R. §51.21(b)(3)(v).
7. MYJP will abide by the federal law that establishes DRMS and will meet all applicable terms and conditions of DRMS's grant of authority. 42 C.F.R. §51.21(vi). All work conducted pursuant to this contract will be executed under the supervision of the Director of MYJP who is an attorney. MYJP affirms that it carries liability insurance for all its employees and that MYJP's liability insurance will cover all MYJP work conducted pursuant to this contract. 42 C.F.R. §51.21(vii). MYJP attorneys, community advocates, and interns are trained to provide advocacy services to and to conduct full investigations on behalf of individuals with mental illness and other disabilities. MYJP attorneys, community advocates, and interns are trained to work with family members of clients served by DRMS where the clients are minors and legally competent and choose to involve the family member, or are legally incompetent and the legal guardians, conservators or other legal representatives are family members. 42 C.F.R. §51.21(viii)-(ix).

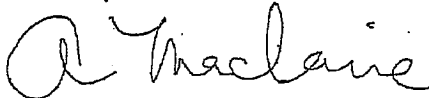


Bear Atwood, Director

Mississippi Youth Justice Project

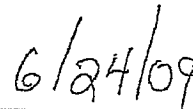


Date



Ann MacLaine, Interim Executive Director

Disability Rights Mississippi



Date

EXHIBIT 1-H

MISSISSIPPI YOUTH JUSTICE PROJECT

301 North Presidential Street, 2nd Floor, Jackson, MS 39201
501-442-2242 (office) 501-948-2525 (fax)

December 8, 2008

Honorable Frank Coleman
Honorable Veldore Young
Lauderdale County Youth Court
500 Constitution Ave.
Meridian, MS 39301

Re.: Protection & Advocacy Request

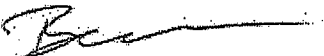
Dear Judge Coleman and Judge Young:

Vanessa Carroll, the Law Fellow at the Mississippi Youth Justice Project (MYJP) recently contacted you to arrange a time for MYJP to conduct a protection and advocacy visit at the Lauderdale County Juvenile Center. I realize that you may have many questions and concerns about MYJP conducting such a visit. Therefore, I would like to offer the opportunity for us to meet in person in the near future to discuss MYJP's access to the facility.

I understand that both of you must have incredibly busy schedules with very little room for flexibility. However, since the youth at the Juvenile Center have a federal right to receive protection and advocacy services, MYJP is concerned with obtaining access as soon as possible, and would greatly appreciate any time you may be able to spare before the end of the year.

Of course, if you have any immediate questions or concerns, please do not hesitate to call me or email me at bea.arwood@spicenter.org. Otherwise, I will follow up with the court administrator to schedule a meeting. Thank you so much for your attention to this matter. I look forward to talking with you soon.

Sincerely,



Bear Arwood, Director

Cc: Mike Everett, Mississippi Protection & Advocacy

EXHIBIT 1-I

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St., Suite B, P.O. Box 9283, Jackson, MS 39286
601/948.8882 voice, 601/948.8885 fax

October 28, 2008

Honorable Frank Coleman
Honorable Veldore Young
Lauderdale County Youth Court
500 Constitution Ave.
Meridian, MS 39301

Re.: Protection & Advocacy Request

Dear Judge Coleman and Judge Young:

I recently wrote to the Director of the Lauderdale County Juvenile Center, Al Moore, to request that the Mississippi Youth Justice Project ("MYJP") have access to the Juvenile Center to conduct a protection and advocacy visit pursuant to our authority as a contracted agent of Mississippi Protection & Advocacy ("MS P&A"). Mr. Moore did not feel comfortable simply granting MYJP access to the Juvenile Center, and he suggested that I contact the Youth Court for further direction.

I understand that you may not be familiar with the federal laws governing protection and advocacy systems ("P&A's"), and I would therefore like to take this opportunity to further explain what a P&A does, and why federal law permits MYJP to access all disabled youth at the Lauderdale County Juvenile Center.

Congress created protection and advocacy systems ("P&As") with the passage of the Developmental Disabilities Assistance and Bill of Rights Act of 1975; and P&A services have since been expanded to provide legal representation and other advocacy services on behalf of all persons with disabilities.¹ The DD Act provides for a P&A to protect the legal and human rights of individuals with developmental disabilities. 42 U.S.C. § 15041; and the PAIMI Act recognizes that "individuals with mental illness are vulnerable to abuse and serious injury . . . [and] subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning." 42 U.S.C. § 10801(a). PAIMI requires the P&A system to ensure that the rights of individuals with mental illness are protected by monitoring facilities and investigating incidents of abuse and neglect of the mentally ill. 42 U.S.C. § 10801(b). Finally, the PAIR Program was created to protect the rights of all other individuals with disabilities who are not covered under the DD and PAIMI Acts. 29 U.S.C. § 794e.

In order to carry out the congressional mandate to protect the rights of individuals with disabilities, the P&A Acts provide that the state's protection & advocacy system, and its authorized agents, like

¹ The "P&A Acts" consist of the following: Part C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the "DD Act"), 42 U.S.C. §§15041-15045; the Protection & Advocacy for Individuals with Mental Illness Act of 1986 (the "PAIMI Act"), 42 U.S.C. §§10801 *et seq.*; and the Protection and Advocacy of Individual Rights ("PAIR") Program of the Rehabilitation Act of 1973, 29 U.S.C. § 794e.

MYJP, must have physical access to facilities housing individuals with disabilities. (See attached contract between MYJP and MS P&A).

Under the DD Act, "the system and all of its authorized agents shall have unaccompanied access to all residents of a facility [providing care, support, and services to individuals with developmental disabilities] at reasonable times . . ." 45 C.F.R. § 1386.22 (g) and this "shall include the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person." 45 C.F.R. §1386.22(h). P&As have access to facilities for the purpose of:

- (1) Providing information and training on, and referral to, programs addressing the needs of individuals with developmental disabilities, and the protection and advocacy services available from the system, including the name, address, and telephone number of the system and other information and training about individual rights; and

- (2) Monitoring compliance with respect to the rights and safety of service recipients.

45 C.F.R. § 1386.22(g).

The PAIMI Act similarly provides that the P&A and its agents must have reasonable access to facilities that provide care or treatment to individuals with mental illness. 42 U.S.C. § 10805(a)(3). *See also* 42 C.F.R. § 51.42(a) ("Access to facilities and residents shall be extended to all authorized agents of a P&A system.") P&As are entitled to "reasonable unaccompanied access to facilities [which render care and treatment for people with mental illness] including all areas which are used by residents, are accessible to residents and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours." 42 C.F.R. § 51.42 (c). The purpose of this access is providing residents with educational programming on mental health, individual rights, and protection and advocacy services; "monitoring compliance with respect to the rights and safety of residents; and . . . inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents." 42 C.F.R. § 51.42(c) (1)-(3).

Congress intended that the respective access authorities under the three protection and advocacy programs be applied in a consistent manner, and the PAIR program expressly incorporates by reference (at 42 U.S.C. 794(e)(f)) the authority regarding access to facilities and records (as well as the other general authorities granted protection and advocacy systems) set forth in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (PADD). Specifically, the PAIR statutory language provides that protection and advocacy systems under the PAIR Program "have the same general authorities, including access to records . . . as set forth" in PADD. 29 U.S.C. § 794e(f)(2). Thus, PADD's access authority applies with equal force under the PAIR Program.

The population served under the PAIR program includes all individuals who have a physical or mental impairment that substantially limits one or more major life activity. 29 U.S.C. § 705(9)(B). Major life activities include learning, and thus individuals with learning disabilities who receive services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401(3), are also entitled to receive P&A services.

The Rankin County Juvenile Justice Center is subject to P&A access because both PAIMI and PADD include "juvenile detention centers" in the definition of facilities covered by P&A authority. 42 C.F.R. § 51.2; 45 C.F.R. § 1386.19.

Under both the DD Act and the PAIMI Act, Congress designated two distinct sources for access to facilities: 1) access for the purpose of investigating allegations of abuse and/or neglect, 42 U.S.C. § 15043(a)(2)(B); 42 U.S.C. § 10805(a)(1)(A), 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42 (b); and 2) access for the purpose of monitoring the facility and the treatment of residents. 42 U.S.C. § 15043(a)(2)(H), 42 U.S.C. § 10805(a)(3), 45 C.F.R. § 1386.22(g), 42 C.F.R. § 51.42 (c). Federal courts in the 5th Circuit have recognized both types of P&A access authority. See *Miss. Protection & Advocacy System v. Cotton*, 1989 U.S. Dist. LEXIS 17075 (S.D. Miss. 1989); *aff'd*, 929 F.2d 1054 (5th Cir. 1991).

A facility must grant a P&A investigatory access when the P&A receives a complaint or allegation of abuse, 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b)(1); or when the P&A has probable cause to believe that an incident of abuse has occurred. 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b)(3). A complaint includes any formal or informal communication alleging abuse, 42 C.F.R. § 51.2; and the P&A is responsible for making the probable cause determination. See 42 C.F.R. § 51.31(g) ("Determination of 'probable cause' may result from P&A system monitoring or other activities, including observation by P&A system personnel . . .") Further, when investigating allegations of abuse, a P&A "shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect." 42 C.F.R. § 51.42(b).

P&As also have authority to access a facility and its residents for the purpose of monitoring conditions – even absent a report of an incident of abuse or neglect or probable cause to believe that such an incident has occurred. *Michigan Protection and Advocacy, Inc. v. Miller*, 849 F. Supp. 1202 (W.D. Mich. 1994) (holding that beyond allowing the investigation of specific complaints, the state must also provide P&A with reasonable access to juvenile facility so that P&A may engage in monitoring activities.) In addition to access for investigating suspected incidents of abuse and neglect, P&As are also entitled to "reasonable unaccompanied access to facilities including all areas which are used by residents, are accessible to residents and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours." 42 C.F.R. § 51.42 (c); see also 45 C.F.R. § 1386.22(g). The purpose of this access is providing residents with educational programming on mental health, individual rights, and protection and advocacy services; "monitoring compliance with respect to the rights and safety of residents; and . . . inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents." 42 C.F.R. § 51.42(c) (1)-(3); see also 45 C.F.R. § 1386.22(g).

The P&A is not required to furnish a facility with the name or other identifying information regarding the residents(s) with whom it plans to meet, or of the individuals that reported incidents of abuse or neglect. See *Cotton*, 929 F.2d at 1056-57. Similarly, the P&A does not need to justify or explain its contacts with residents to the facility. See *Cotton*, 929 F.2d at 1056-1057. Indeed, federal courts widely recognize that a P&A is "the final arbiter of probable cause" for the purpose of investigating abuse or neglect. See *Arizona Ctr. For Disability Law v. Allen*, 197 F.R.D. 689, 693 (D. Ariz. 2000); see also *Office of Prot. & Advocacy for Persons with Disabilities v. Armonstrong*, 266 F. Supp. 2d 303, 321-22 (D. Conn. 2003) (holding that P&A is entitled to make its probable cause

determination independent of any other agency or third party review).

It is entirely possible that there are some youth housed at the Juvenile Justice Center who the facility has not yet identified as disabled. A P&A's right to access these youth is similarly well established. *See Michigan Protection & Advocacy Services v. Miller*, 849 F.Supp. 1202 (W.D. Mich. 1994) (finding that denying P&A full access prevents the advocacy organization from bringing in their own mental health professionals to ascertain whether the residents suffer from mental illness when studies showed the prevalence of mental illness in training schools and detention centers).²

With regard to concerns about MYJP meeting with youth already represented by counsel, as a P&A, it is not our mission or objective to interview youth about their pending youth court case, or to provide them with legal information, advice, or representation on their pending youth court matter. In fact, to do so would go beyond the federal P&A mandate, which authorizes a P&A to monitor juvenile facilities in order to ensure that youth with disabilities receive the care, treatment, and services to which they are entitled under state and federal law. The P&A mandate does not contemplate providing youth with legal advice or representation on criminal or youth court matters, and MYJP does not intend to go beyond the scope of our P&A authority. If a youth raises any questions or concerns about their youth court case, MYJP will refrain from offering information or advice, and will instead direct the youth to consult with their attorney. MYJP is also happy to contact a youth's attorney following a monitoring visit to pass on any questions or concerns raised by youth that need to be addressed by that child's defense attorney.

Finally, with regard to any concerns about confidentiality and parental consent, these matters are also addressed by the P&A Acts. The PAIMI Act specifically states that:

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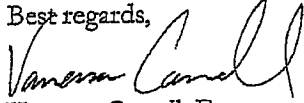
42 C.F.R. § 51.42(e). To the extent that Mississippi state law protects the identities of minors and requires parental consent, this confidentiality is preempted by federal authority to monitor these facilities.

² See also, *Connecticut P&A v. Hartford Board of Education*, 355 F. Supp. 2d 649 (D. Conn. 2005) (stating the purpose of PAIMI and PADD to provide protection and advocacy services is defeated if P&A is not allowed to ascertain whether students have a mental illness); *Georgia Advocacy Office Inc. v. Camp*, 172 F.3d 1294 (11th Cir. 1999) (finding that a facility that offered the services of a psychiatrist and psychologist as well as mental health screenings, evaluations, counseling, medication supervision, and education may have residents who were "mentally ill" under the PAIMI Act.); *Georgia Advocacy Office v. Borison*, 520 S.E.2d 701 (Ga. Ct. App. 1999) (holding P&A could have access to records of subjects of fraudulent drug studies even though P&A did not have knowledge of whether any particular individual had a disability.)

I hope that I have provided you with an adequate explanation of how P&As operate. If you have any questions or concerns about MYJP's authority to conduct P&A visits at the Juvenile Center, I would be more than happy to have a more detailed discussion with you either in person or over the phone. I will follow up with you by phone later this week.

Thank you for your attention to this matter, and thank you as well for all you do for Mississippi's youth.

Best regards,



Vanessa Carroll, Esq.

Enclosure (1)

Cc. Mike Everett, Mississippi Protection & Advocacy

Cooperative Agreement Between Mississippi Protection & Advocacy System, Inc. and the
Mississippi Youth Justice Project, a project of the Southern Poverty Law Center

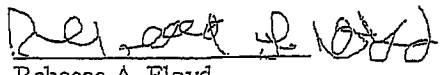
This is a contract between Mississippi Protection and Advocacy, "MS P & A," and the Mississippi Youth Justice Project, a project of the Southern Poverty Law Center "MYJP." This contract is intended to provide MYJP with access to correctional and mental health facilities housing mentally ill individuals under the age of 21. Pursuant to federal law and this agreement, MYJP will have all of the access rights and privileges afforded to MS P & A, subject only to the limitations explained below.

1. Pursuant to 42 U.S.C. § 10804 (a) (1)(A-B), MS P & A has the authority to contract with non-profit organizations that 1) operate throughout the state of Mississippi; 2) are independent of any agency that provides treatment or services to individuals with disabilities; and 3) have the capacity to protect and advocate for the rights of individuals with disabilities. MYJP operates throughout the state of Mississippi, does not provide treatment services to individuals with disabilities, and has the capacity to protect and advocate for the rights of individuals with disabilities.
2. This contract authorizes MYJP to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities who are incarcerated at the Walnut Grove Youth Correctional Facility, any county jail detention center or juvenile detention center housing children under the age 21, the Oakley Training School, and the Columbia Training School. This contract further authorizes MYJP to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21 committed to any facility operated by the Department of Mental Health including, but not limited to the Juvenile Rehabilitation Facility and the Specialized Treatment Facility for Youth with Emotional Disturbances.
3. Pursuant to 42 U.S.C. § 10806, this contract authorizes MYJP to have access to all records of any person with a disability who is incarcerated or committed in any institution in which MYJP conducts monitoring visits.
4. MYJP is authorized to pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness, developmental disabilities, and/or other disabilities in the above-mentioned facilities. MYJP will provide notice to MS P & A before it initiates any formal legal action.
5. MYJP will establish a schedule of monitoring visits and will provide notice to MS P & A at least twenty-four hours in advance of every visit. MYJP will also provide MS P & A with a written report of each visit within 48 hours of the visit.
6. All work conducted pursuant to this contract will be executed under the supervision of Sheila Bedi, an attorney and co-director of the MYJP. MYJP's liability insurance will cover all MYJP work conducted pursuant to this contract.


Sheila A. Bedi

Co-Director, MYJP

11/16/06
Date


Rebecca A. Floyd

Executive Director, MPAS

11/14/06
Date

EXHIBIT 1-J

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St. Suite B P.O. Box 9283 Jackson, MS 39286
601 948 8882 voice 601 948 8885 fax

September 26, 2008

Via Facsimile and U.S. Mail

Al Moore, Administrator
Lauderdale County Juvenile Center
5400 Semmes Rd.
Meridian, MS 39307
Fax: 601-484-3985

Dear Mr. Moore:

Thank you for talking with me on the phone this afternoon regarding your concerns about granting the Mississippi Youth Justice Project access to the Lauderdale County Juvenile Center for the purpose of a protection and advocacy visit. I understand that you may not be familiar with the federal laws governing protection and advocacy systems ("P&A's"), which is why you are hesitant to allow the Mississippi Youth Justice Project (MYJP) to conduct a protection and advocacy visit to the Lauderdale County Juvenile Center. I would therefore like to take this opportunity to further explain what a P&A does, and why federal law requires the Lauderdale County Juvenile Center to grant MYJP access to the Juvenile Center to provide all disabled youth with P&A services.

Congress created P&As with the passage of the Developmental Disabilities Assistance and Bill of Rights Act of 1975; and P&A services have since been expanded to provide legal representation and other advocacy services on behalf of all persons with disabilities.¹ The DD Act provides for a P&A to protect the legal and human rights of individuals with developmental disabilities. 42 U.S.C. § 15041; and the PAIMI Act recognizes that "individuals with mental illness are vulnerable to abuse and serious injury . . . [and] subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning." 42 U.S.C. § 10801(a). PAIMI requires the P&A system to ensure that the rights of individuals with mental illness are protected by monitoring facilities and investigating incidents of abuse and neglect of the mentally ill. 42 U.S.C. § 10801(b). Finally, the PAIR Program was created to protect the rights of all other individuals with disabilities who are not covered under the DD and PAIMI Acts. 29 U.S.C. § 794e.

In order to carry out the congressional mandate to protect the rights of individuals with disabilities, the P&A Acts provide that the state's protection & advocacy system, and its authorized agents, like MYJP, must have physical access to facilities housing individuals with disabilities.

Under the DD Act, "the system and all of its authorized agents shall have unaccompanied access to all residents of a facility [providing care, support, and services to individuals with developmental

¹ The "P&A Acts" consist of the following: Part C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the "DD Act"), 42 U.S.C. §§15041-15045; the Protection & Advocacy for Individuals with Mental Illness Act of 1986 (the "PAIMI Act"), 42 U.S.C. §§10801 *et seq.*; and the Protection and Advocacy of Individual Rights ("PAIR") Program of the Rehabilitation Act of 1973, 29 U.S.C. § 794e.

disabilities] at reasonable times . . ." 45 C.F.R. § 1386.22 (g) and this "shall include the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person." 45 C.F.R. §1386.22(h). P&A's have access to facilities for the purpose of:

(1) Providing information and training on, and referral to, programs addressing the needs of individuals with developmental disabilities, and the protection and advocacy services available from the system, including the name, address, and telephone number of the system and other information and training about individual rights; and

(2) Monitoring compliance with respect to the rights and safety of service recipients.

45 C.F.R. § 1386.22(g).

The PAIMI Act similarly provides that the P&A and its agents must have reasonable access to facilities that provide care or treatment to individuals with mental illness. 42 U.S.C. § 10805(a)(3). *See also* 42 C.F.R. § 51.42(a) ("Access to facilities and residents shall be extended to all authorized agents of a P&A system.") P&A's are entitled to "reasonable unaccompanied access to facilities [which render care and treatment for people with mental illness] including all areas which are used by residents, are accessible to residents and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours." 42 C.F.R. § 51.42 (c). The purpose of this access is providing residents with educational programming on mental health, individual rights, and protection and advocacy services; "monitoring compliance with respect to the rights and safety of residents; and . . . inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents." 42 C.F.R. § 51.42(c) (1)-(3).

Congress intended that the respective access authorities under the three protection and advocacy programs be applied in a consistent manner, and the PAIR program expressly incorporates by reference (at 42 U.S.C. 794(e)(f)) the authority regarding access to facilities and records (as well as the other general authorities granted protection and advocacy systems) set forth in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (PADD). Specifically, the PAIR statutory language provides that protection and advocacy systems under the PAIR Program "have the same general authorities, including access to records . . . as set forth" in PADD. 29 U.S.C. § 794e(f)(2). Thus, PADD's access authority applies with equal force under the PAIR Program.

The population served under the PAIR program includes all individuals who have a physical or mental impairment that substantially limits one or more major life activity. 29 U.S.C. § 705(9)(B). Major life activities include learning, and thus individuals with learning disabilities who receive services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401(3), are also entitled to receive P&A services.

MYJP is entitled to access the Lauderdale County Juvenile Center because both PAIMI and PADD include "juvenile detention centers" in the definition of facilities covered by P&A authority. 42 C.F.R. § 51.2; 45 C.F.R. § 1386.19. The Lauderdale County Juvenile Center clearly falls under this category.

Federal law grants P&A's two distinct sources for access to facilities: 1) access for the purpose of investigating allegations of abuse and/or neglect, 42 C.F.R. § 51.42 (b); and 2) access for the purpose of monitoring the facility and the treatment of residents. 42 C.F.R. § 51.42 (c). Federal courts in the 5th Circuit have recognized both types of P&A access authority. See *Miss. Protection & Advocacy System v. Cotton*, 1989 U.S. Dist. LEXIS 17075 (S.D. Miss. 1989); *aff'd*, 929 F.2d 1054 (5th Cir. 1991). MYJP seeks access pursuant to both P&A's monitoring and investigative authorities. 45 C.F.R. 1386.22(g)(ii); 42 C.F.R. 52.42(c)(2).

MYJP seeks access to the Juvenile Center pursuant to both our monitoring and investigative authorities. Through our contact with youth at other facilities in Mississippi, we have received reports from youth formerly detained in the Lauderdale County Juvenile Center about concerning conditions within the facility. This provides MYJP with probable cause to visit the facility and conduct an investigation.

But even absent probable cause, P&A's and its agents "shall have unaccompanied access to all residents of a facility at reasonable times, which at a minimum shall include normal working hours and visiting hours, for the purpose of . . . monitoring compliance with respect to the rights and safety of service recipients." 45 C.F.R. § 1386.22(g). See also 42 C.F.R. § 51.42(c)(2). We seek access to the Lauderdale County Juvenile Center and to the names of youth whom are receiving mental health services, special education services, or whom have a disability as defined by the Rehabilitation Act of 1973 under the authority that grants MS P&A and MYJP access to the Juvenile Center in order to monitor compliance with the rights and safety of these youth.

Of course, it is entirely possible that there are some youth housed at the Juvenile Center who the facility has not yet identified as disabled. MS P&A's right to access these youth is similarly well established. See *Michigan Protection & Advocacy Services v. Miller*, 849 F.Supp. 1202 (W.D. Mich. 1994) (finding that denying P&A full access prevents the advocacy organization from bringing in their own mental health professionals to ascertain whether the residents suffer from mental illness when studies showed the prevalence of mental illness in training schools and detention centers.).²

I would also like to address any concerns you may have about MYJP attorneys speaking with youth already represented by counsel. Under the U.S. Constitution, detained and committed youth have a fundamental right to access the courts to challenge the conditions of their confinement. *Cornett v. Donovan*, 51 F.3d 894, 897 (9th Cir. 1995) ("The right of access helps ensure that the unlawfully detained obtain their freedom, and that the lawfully detained have recourse for violation of fundamental constitutional rights.") (citation omitted); see also *Wolff v. McDonnell*, 418 U.S. 539, 580 (1974) (The right of access to the courts is "founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights.") Moreover, this right is not limited to adults – it applies with

² See also, *Connecticut P&A v. Hartford Board of Education*, 355 F. Supp. 2d 649 (D. Conn. 2005) (stating the purpose of PAIMI and PADD to provide protection and advocacy services is defeated if P&A is not allowed to ascertain whether students have a mental illness); *Georgia Advocacy Office Inc. v. Camp*, 172 F.3d 1294 (11th Cir. 1999) (finding that a facility that offered the services of a psychiatrist and psychologist as well as mental health screenings, evaluations, counseling, medication supervision, and education may have residents who were "mentally ill" under the PAIMI Act.); *Georgia Advocacy Office v. Borison*, 520 S.E.2d 701 (Ga. Ct. App. 1999) (holding P&A could have access to records of subjects of fraudulent drug studies even though P&A did not have knowledge of whether any particular individual had a disability.)

equal force to children. See *John L. v. Adam*, 969 F.2d 228, 230 (6th Cir. 1992) (holding that juveniles have constitutional right to access courts); *Morgan v. Sproat*, 432 F. Supp. 1130, 1158 (S.D. Miss. 1977) (same). It is my understanding that the youth detained at the Juvenile Center are represented by counsel in connection with a youth court proceeding. In contrast, MYJP is seeking to provide detained youth with services pertaining to their conditions of confinement.

Finally, with regard to any concerns about confidentiality and parental consent, these matters are also addressed by the P&A Acts. The PAIMI Act specifically states that

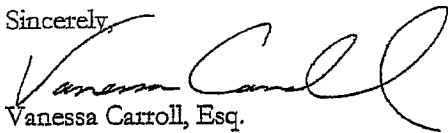
The right of access . . . shall apply despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators. The system shall make every effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian.

42 C.F.R. § 51.42(e). To the extent that Mississippi state law protects the identities of minors and requires parental consent, this confidentiality is preempted by federal authority to monitor these facilities.

Indeed, MYJP and MS P&A have negotiated access agreements with the Department of Corrections, the Department of Human Services, and the Department of Mental Health to access disabled youth at Walnut Grove Correctional Facility, Columbia Training School (while it was still in operation), Specialized Treatment Facility, and Juvenile Rehabilitation Facility. All three state agencies expressed similar concerns when we first approached them with a P&A request, and we were able to reach an amicable resolution in each case. We look forward to making a similar arrangement with the Lauderdale County Juvenile Center.

Please do not hesitate to call me to discuss any concerns that you may have.

Sincerely,



Vanessa Carroll, Esq.

Cc. Mike Everett, Mississippi Protection & Advocacy

EXHIBIT 1-K

MISSISSIPPI YOUTH JUSTICE PROJECT

753 North Congress St. P.O. Box 9283 Jackson, MS 39286
601 948 8882 voice 601 948 8885 fax

Fax

To: Al Moore, Administrator

From: Vanessa Carroll

Fax: 601-484-3985

Pages: Including Cover 3

Phone

Date: September 11, 2008

Re: Protection & Advocacy Visit

cc:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

This transmission is for use of the intended recipient only. It may contain information that is privileged and confidential. If you are not the intended recipient, any disclosure, copying, future distribution, or use of this communication is prohibited. If you have received this communication in error, please advise us by return email, or if you have received this communication by fax, advise us by telephone and delete/destroy the document.

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St. Suite B P.O. Box 9283 Jackson, MS 39286
601 948 8882 voice 601 948 8885 fax

September 11, 2008

Via Facsimile and U.S. Mail

Al Moore, Administrator
Lauderdale County Juvenile Center
5400 Semmes Rd.
Meridian, MS 39307
Fax: 601-484-3985

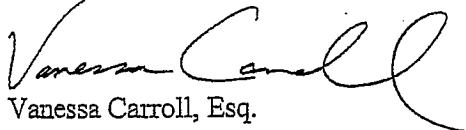
Re: Protection and Advocacy Visit

Dear Mr. Moore:

I am writing to request a protection and advocacy visit to the Lauderdale County Juvenile Center some time next week. My organization, the Mississippi Youth Justice Project (MYJP) has contracted with Mississippi Protection and Advocacy (MS P&A) to advocate for the rights of disabled people under 21 who are involved in the juvenile justice system. We have reason to believe that many youth at the Juvenile Center are entitled to protection and advocacy services based upon a mental health diagnosis and/or eligibility for special education services. I am requesting an opportunity to meet with all eligible youth at the Juvenile Center to provide them with information about protection and advocacy services, and to conduct individual meetings with youth that wish to speak to me in private.

For your review, I have attached a copy of our contract with Mississippi Protection & Advocacy, which outlines our access authority under federal law. I will contact you in the next few days to arrange a time when I may conduct an educational visit to your facility. Please contact me if you have any questions about this request or about our access to the youth housed at the Juvenile Center. I can be reached at (601) 948-8882 ex. 22, (601) 519-1994, or vcarroll@splcenter.org. I look forward to speaking with you soon.

Sincerely,



Vanessa Carroll, Esq.

Enclosure (1)

cc: Mike Everett, Mississippi Protection & Advocacy

Cooperative Agreement Between Mississippi Protection & Advocacy System, Inc. and the
Mississippi Youth Justice Project, a project of the Southern Poverty Law Center

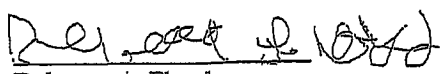
This is a contract between Mississippi Protection and Advocacy, "MS P & A," and the Mississippi Youth Justice Project, a project of the Southern Poverty Law Center "MYJP." This contract is intended to provide MYJP with access to correctional and mental health facilities housing mentally ill individuals under the age of 21. Pursuant to federal law and this agreement, MYJP will have all of the access rights and privileges afforded to MS P & A, subject only to the limitations explained below.

1. Pursuant to 42 U.S.C. § 10804 (a) (1)(A-B), MS P & A has the authority to contract with non-profit organizations that 1) operate throughout the state of Mississippi; 2) are independent of any agency that provides treatment or services to individuals with disabilities; and 3) have the capacity to protect and advocate for the rights of individuals with disabilities. MYJP operates throughout the state of Mississippi, does not provide treatment services to individuals with disabilities, and has the capacity to protect and advocate for the rights of individuals with disabilities.
2. This contract authorizes MYJP to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities who are incarcerated at the Walnut Grove Youth Correctional Facility, any county jail detention center or juvenile detention center housing children under the age 21, the Oakley Training School, and the Columbia Training School. This contract further authorizes MYJP to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21 committed to any facility operated by the Department of Mental Health including, but not limited to the Juvenile Rehabilitation Facility and the Specialized Treatment Facility for Youth with Emotional Disturbances.
3. Pursuant to 42 U.S.C. § 10806, this contract authorizes MYJP to have access to all records of any person with a disability who is incarcerated or committed in any institution in which MYJP conducts monitoring visits.
4. MYJP is authorized to pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness, developmental disabilities, and/or other disabilities in the above-mentioned facilities. MYJP will provide notice to MS P & A before it initiates any formal legal action.
5. MYJP will establish a schedule of monitoring visits and will provide notice to MS P & A at least twenty-four hours in advance of every visit. MYJP will also provide MS P & A with a written report of each visit within 48 hours of the visit.
6. All work conducted pursuant to this contract will be executed under the supervision of Sheila Bedi, an attorney and co-director of the MYJP. MYJP's liability insurance will cover all MYJP work conducted pursuant to this contract.


Sheila A. Bedi

Co-Director, MYJP

11/16/06
Date


Rebecca A. Floyd

Executive Director, MPAS

11/14/06
Date

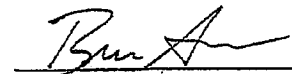
EXHIBIT 2

COOPERATIVE AGREEMENT

This is a contract between Disability Rights Mississippi (DRMS) formerly known as Mississippi Protection and Advocacy Systems, Inc., and the Mississippi Youth Justice Project, a project of the Southern Poverty Law Center (MYJP). This contract is intended to provide MYJP with access to detention centers, correctional and mental facilities in Mississippi housing individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21. Pursuant to federal law and this agreement, MYJP will have all of the access rights and privileges afforded to DRMS, subject only to the limitations explained below.

1. Pursuant to 42 U.S.C. §10804(a)(1)(A-B), DRMS has the authority to contract with non-profit organizations that: 1) operate throughout the state of Mississippi; 2) are independent of any agency that provides treatment or services to individuals with disabilities; and 3) have the capacity to protect and advocate for the rights of individuals with disabilities. MYJP operates throughout the state of Mississippi, does not provide treatment services to individuals with disabilities, has demonstrated experience in working with individuals with mental illness, and has the capacity to protect and advocate for the rights of all individuals with disabilities.
2. Pursuant to the above and 42 C.F.R. §51.21(3)(i), MYJP is authorized to provide the following protection and advocacy services: to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities who are incarcerated at the Walnut Grove Youth Correctional Facility, any county jail, detention center or juvenile detention center housing children under the age of 21 and the Oakley Training School; to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21 committed to any facility operated by the Department of Mental Health, including, but not limited to the Juvenile Rehabilitation Facility and the Specialized Treatment Facility for Youth with Emotional Disturbances; and to monitor the above mentioned facilities for compliance with respect to the rights and safety of service recipients as outlined in 45 C.F.R. §1386.22(g) and 42 C.F.R. §51.42(c)(2).
3. Pursuant to 42 U.S.C. §10806, this contract authorizes MYJP to have access to all records of any person with a disability who resides in any facility in which MYJP conducts monitoring visits, as well as all facility records to which DRMS is authorized access.
4. MYJP is authorized to pursue administrative, legal and other appropriate remedies to ensure the protection of individuals with mental illness, developmental disabilities, and/or other disabilities in the above-mentioned facilities. MYJP will provide notice to DRMS before it initiates any formal legal action.
5. MYJP will establish a schedule of monitoring visits and will provide DRMS with a written report of each visit within one week of the visit.

6. Pursuant to 42 C.F.R. §51.21, MYJP affirms that: MYJP attorneys, community advocates, and interns routinely advocate for children with mental illness, developmental disabilities, and/or disabilities and their families and conduct investigations on their behalf. 42 C.F.R. §51.21(b)(3)(ii). In the course of monitoring and/or investigation, MYJP will conduct interviews with clients and facility staff and review the relevant records. 42 C.F.R. §51.21(b)(3)(iii). While there is no deadline for this contract, it may be cancelled by either party upon written notification of cancellation provided two weeks in advance. 42 C.F.R. §51.21(b)(3)(iv). MYJP will use its own resources to fulfill the contract and will not seek monetary support from DRMS. 42 C.F.R. §51.21(b)(3)(v).
7. MYJP will abide by the federal law that establishes DRMS and will meet all applicable terms and conditions of DRMS's grant of authority. 42 C.F.R. §51.21(vi). All work conducted pursuant to this contract will be executed under the supervision of the Director of MYJP who is an attorney. MYJP affirms that it carries liability insurance for all its employees and that MYJP's liability insurance will cover all MYJP work conducted pursuant to this contract. 42 C.F.R. §51.21(vii). MYJP attorneys, community advocates, and interns are trained to provide advocacy services to and to conduct full investigations on behalf of individuals with mental illness and other disabilities. MYJP attorneys, community advocates, and interns are trained to work with family members of clients served by DRMS where the clients are minors and legally competent and choose to involve the family member, or are legally incompetent and the legal guardians, conservators or other legal representatives are family members. 42 C.F.R. §51.21(viii)-(ix).



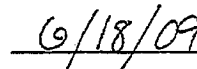
Béar Atwood, Director

Mississippi Youth Justice Project

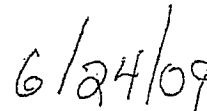


Ann MacLaine, Interim Executive Director

Disability Rights Mississippi



Date



Date