



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 1, 1996

U.S. v. Tennessee

The Honorable Don Sundquist
Governor
State of Tennessee
State Capitol
Nashville, Tennessee 37219



MR-TN-004-007

Re: Harold Jordan Habilitation Center

Dear Governor Sundquist:

On June 23, 1994, we advised Governor McWherter of this Department's intent to investigate conditions at the Clover Bottom Developmental Center (Clover Bottom) in Nashville, Tennessee, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. On March 10, 1995, we advised you of our investigative findings at Clover Bottom and further advised you that we had not yet concluded our investigation of the Harold Jordan Habilitation Center (Jordan Center), which is a program of Clover Bottom. In May 1995, we conducted an expert tour of the Jordan Center. Following our tour, we conveyed our initial findings to the facility superintendent and other State officials.

As set forth in our recent findings letters to you regarding Clover Bottom and other Tennessee Developmental Centers, under the Fourteenth Amendment and relevant federal statutes, residents of state-operated facilities for the developmentally disabled and mentally retarded have a right to, inter alia, adequate medical care, reasonably safe conditions, and training sufficient to protect each resident's liberty interests, including training to permit each resident an opportunity to function as independently as possible. Programs must be provided to teach adaptive skills, including self-help, communication, and social skills. In addition, individuals with developmental disabilities must be provided services in community-based programs where appropriate. Our investigation of the Jordan Center identified a number of violations of the constitutional and federal statutory rights of Jordan Center residents that are similar to the violations we identified earlier with respect to Clover Bottom

residents.^{1/} Our review also indicates that the rights of the residents guaranteed by Tennessee state law are also being violated. See, e.g., Tenn. Code Ann. § 33-3-104 and § 33-5-201. Violations of these statutes deprive residents of their procedural due process rights.

The general facts that support our findings of unconstitutional conditions and violations of federal law at the Jordan Center, as well as the necessary remedial measures to correct these conditions and violations, are similar to the findings and remedies that we articulated in our March 10, 1995 Clover Bottom findings letter. As such, we set forth our specific findings and remedies with regard to the Jordan Center in summary fashion below.

I. Inadequate Staffing And Protection From Harm At The Harold Jordan Habilitation Center.

The Harold Jordan Habilitation Center is a facility serving approximately 34 residents who have a dual diagnosis of both mental retardation and mental illness. The majority of Jordan Center's residents come to the facility either through the State criminal courts because they have been determined to be incompetent to stand trial, or they arrive from another State mental retardation facility because the other facility has concluded that their behaviors present a danger to themselves or other residents. Thus, Jordan Center residents require intensive psychological and psychiatric therapies. This level of therapy, however, is simply not provided at the Jordan Center.

1/ See, e.g., Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12132, et seq. (and implementing regulations, 28 C.F.R. 35.130(b)(1), and 28 C.F.R. 35.130(d)); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, et seq. (and implementing regulations, 42 C.F.R. §§ 483.420 - 480); Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400, et seq. (and implementing regulations); Youngberg v. Romeo, 457 U.S. 307 (1982); United States v. Tennessee, No. 92-2062, slip op. (W.D. Tenn. Feb. 17, 1994); Halderman v. Pennhurst State School & Hospital, 154 F.R.D. 594 (E.D. Pa. 1994); Jackson v. Fort Stanton Hosp. & Training School, 757 F. Supp. 1243 (D. N.M. 1990), rev'd in part on other grounds, 964 F.2d 980 (10th Cir. 1992); Thomas S. by Brooks v. Flaherty, 699 F. Supp. 1178 (W.D. N.C. 1988), aff'd 902 F.2d 250 (4th Cir.), cert. denied, 498 U.S. 951 (1990); Clark v. Cohen, 613 F. Supp. 684 (E.D. Pa. 1985), aff'd, 794 F.2d 79 (3d Cir. 1986) cert. denied, 479 U.S. 962 (1986); Gary W. v. Louisiana, 437 F. Supp. 1209 (E.D. La. 1976).

Many of the deficiencies outlined below can be traced directly to the Jordan Center's lack of a sufficient number of adequately trained professional and direct care staff. These staffing and treatment deficiencies are placing Jordan Center residents at undue and unreasonable risk of harm and are resulting in injuries.

II. Treatment Programs Do Not Address The Needs Of Residents.

Treatment plans and programs developed by the Jordan Center staff do not address the specific treatment needs of residents. Jordan Center residents require programs that are either specific to their alleged crimes (e.g., arson, sexual battery) or specific to their behavior-related difficulties. Neither is in evidence at the Jordan Center. The Jordan Center training programs are very generic and global, and fail to address the reasons why residents are confined to the Jordan Center.

Further, it appears that some Jordan Center residents are confined to the facility for unjustifiably long periods. For example, a number of Jordan Center residents are placed at the facility by the criminal courts following findings that these individuals are incompetent to stand trial, either because of their mental illness, mental retardation, or a combination of both. We were informed by Jordan Center staff, however, that certain residents who are currently committed to the facility because they were found to be incompetent to stand trial are likely never to gain competency due to the severity of their disabilities. Such prolonged and indeterminate confinement based upon incompetency to stand trial implicates due process rights because the nature and duration of commitment must bear some relation to the purpose for which the individual is committed. Jackson v. Indiana, 406 U.S. 715 (1972). The commitment status of all residents should, therefore, be reviewed for legal sufficiency. Where, as here, treatment is grossly deficient, confinement of these individuals in these circumstances raises serious constitutional issues.

A. Psychological Services Are Inadequate.

Despite the need of Jordan Center residents for intensive psychological services, there is no doctorate-level or similarly qualified psychologist working at the Center. The current psychology staff is simply not equipped, by education and training, to address the needs of residents with severe behavior disorders or criminal behaviors.

Current psychology staff have no forensic training, no knowledge of functional analysis, and no knowledge of the interactions of medication or environmental factors upon resident behavior. Without sufficient expertise among Jordan Center

psychology staff, the needs of residents go unmet. Further, a reliable data collection system is not in place upon which Jordan Center professionals can appropriately base treatment decisions.

B. Psychiatric Services Are Inadequate.

Again, despite the fact that Jordan Center residents require intensive psychiatric care, the psychiatric care that is provided residents is cursory at best. Jordan Center staff freely admit that the amount of psychiatric coverage is inadequate to meet the needs of residents. The current psychiatrist servicing the Jordan Center provides no psychotherapy to residents, nor does she maintain a regular schedule that allows her sufficient on-site time for resident contact. The absence of adequate psychiatric services has a direct and detrimental effect on the mental health, and, ultimately, the physical health and safety of the residents.

III. Individuals With Disabilities Education Act (IDEA).

The Jordan Center is not providing its school-aged residents with an appropriate education in accordance with the requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1486. The IDEA requires that the Jordan Center provide adequate individualized education plans, along with sufficient "related services" designed to meet the needs of all school-aged residents. Moreover, education must be provided in the "least restrictive educational environment." The Jordan Center does not have a sufficient number of qualified special education teachers to provide a special education teacher in each classroom and does not provide adequate supportive therapies, such as appropriate psychological services. In addition, because the Jordan Center is a totally self-contained program, there is no opportunity for any of the school-aged children to access educational services in a less-restrictive environment. As we found with regard to Clover Bottom, the Jordan Center must enhance its educational and related services and provide for appropriate placement and services in the local public school systems, where appropriate.

IV. Jordan Center's Institutional Environment Fails To Meet The Needs Of Residents.

In providing care and services to individuals with developmental disabilities, it is essential to furnish them with an acceptable and responsive environment that ensures safety and promotes learning, development, and their overall well-being. Such environments must be functional and serve to enhance the quality of life for the individuals. Currently accepted professional standards require that this environment be the least separate, most integrated setting where the individual's needs can be met. It must be safe, stable, and operate to teach and

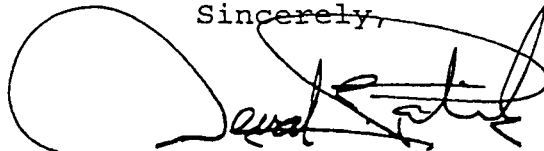
maintain functional skills, to reduce or preempt the occurrence of behavior problems, and otherwise promote the independent functioning of the individual. The Jordan Center does not meet these requirements. The State's practice of transferring individuals with the most challenging behaviors from other developmental centers and congregating them at the Jordan Center is inimical to currently accepted professional standards that these individuals should be served in appropriate settings that are specifically tailored to address their unique needs.

V. Remedial Measures.

As the findings set forth above are substantially similar to many of those contained in our March 10, 1995, findings letter to you concerning Clover Bottom, the same remedial measures relevant to these findings set forth in that letter are applicable to the Jordan Center and those remedies are incorporated herein by reference. Please refer to the Clover Bottom findings letter for a thorough detailing of the required remedial measures.

As a further measure, the State must develop a new model to serve the needs of individuals with particularly challenging behaviors, rather than merely transferring them to the Jordan Center. The State must also ensure that residents committed to the Jordan Center following court proceedings are not confined to the Jordan Center for any longer than is legally justified, based upon the original grounds for that commitment.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", written over a large, loopy flourish that starts on the left and curves around the signature.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: The Honorable Charles W. Burson
Attorney General
State of Tennessee

Ms. Julia Bratcher
Superintendent
Clover Bottom Developmental Center

John W. Roberts, Esquire
United States Attorney
Middle District of Tennessee