U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

MAY 6 1994

The Honorable Pete Wilson
Governor
State of California State Capitol
Sacramento, California 94268

Re: Sonoma Developmental Center

Dear Governor Wilson:

By earlier correspondence, we advised you of this Department's intent to investigate conditions of confinement at the Sonoma Developmental Center (hereinafter "SDC") pursuant to the Civil Rights of Institutionalized Persons act. Consistent with statutory requirements, we are now writing to advise you of our findings. We regret to advise you that we found numerous conditions at SDC that violate the constitutional and federal statutory rights of residents confined there.

Residents of state operated facilities for the developmentally disabled and mentally retarded have a fundamental Fourteenth Amendment due process right to reasonable safety. Youngberg v. Romeo, 457 U.S. 307 (1982). As well, residents have rights to adequate care and training. In our view, such training must be sufficient to protect each residents' liberty interests and permit each resident an opportunity to function as independently as their individual handicapping conditions permit. See, e.g., Thomas S. by Brooks v. Flaherty, 699 F. Supp. 1178 (W.D. N.C. 1988). Such training or habilitation must provide opportunities for residents to acquire and maintain skills that will enable each of them to cope more effectively with the demands of their own person and of their environment and to raise their level of physical, mental, behavioral, and social efficiency. See, e.g., Gary W. v. Louisiana, 437 F. Supp. 1209, 1219 (E.D. La. 1976).

The facts disclosed during the course of our investigation supporting our findings of unconstitutional conditions at SDC are set forth below. These facts are based upon our tours conducted in Spring, 1993.

1. Residents Are Subjected To Harm Due To Inadequate Supervision.

Due to the lack of sufficient numbers of direct care staff, residents are not properly supervised. Our investigation disclosed incidents where residents were left completely unattended. As a result of inadequate supervision, residents have been subjected to numerous, serious, unnecessary injuries.

For approximately 1,300 residents, the facility's staff consists of only 800 persons. This number of staff is simply not adequate to ensure appropriate supervision of residents, including the many residents of SDC who exhibit maladaptive, anti-social behaviors, eat foreign objects, or otherwise engage in dangerous behaviors.

During our tours of SDC, we observed numerous occasions where residents were left unattended or unobserved. On a number of these occasions, residents were engaged in self-injurious behavior, e.g., hitting their heads with their fists, banging their heads on furniture, walls, or concrete floors, or eating foreign objects. No staff was present to intervene.

Even when staff was present, they failed to intervene with residents exhibiting self-injurious and other dangerous behaviors. One resident was observed banging his head on a concrete ramp; no staff went to his aid even though the resident was bleeding from his head wounds. Four other residents were observed eating grass and dirt. Likewise, no staff intervened. Unit staff when asked about the incident by our consultant uniformly indicated that such behavior was commonplace.

Our review of SDC documents, particularly accident and injury reports and special incident reports, confirms our view that many SDC residents suffer serious injuries in circumstances unknown to staff. Such records reflect very serious injuries, including an incident where a resident suffered multiple bites over her entire body from another resident; an episode where a resident attacked another resident with a knife; and the drowning of a resident in a bathtub while unattended.

Many of these injuries are occurring at SDC as the result of inadequate supervision of residents by staff. The number of staff to afford adequate supervision is inadequate.

2. Medical Care Is Seriously Deficient.

Our consultants identified numerous deficiencies in the health care delivery system at SDC. These deficiencies range from serious defects in routine medical care to gross inadequacies in the delivery of specialized services.

a. Routine medical practices fail to comport with generally accepted professional standards.

Various routine medical procedures at SDC are inadequate. For example, residents' annual physical examinations are often incomplete, x-rays are not routinely read in a timely manner or are misread, and medications are used where contra-indicated. Further, unit staff is unfamiliar with basic emergency medical care procedures. In addition, in reviewing records of emergency medical responses ("code blues"), we found occasions where the "code blue" team would arrive at the site of an emergency only to find the resident in question totally unattended, a very dangerous practice.

b. Feeding practices and physical therapy services are inadequate.

Physically handicapped residents are subjected to dangerous feeding practices and are not properly positioned. Improper positioning has resulted in residents developing contractures, muscle atrophy, and inappropriate body growth and physical degeneration. Residents are fed in both reclined and prone positions, circumstances which subject them to severe risk of choking, aspiration and aspiration pneumonia. Residents being fed through G-tubes were likewise improperly positioned. Our nursing consultant observed staff failing to intervene or not intervening in a timely manner to assist residents who were choking while eating. Notwithstanding the significant number of physically handicapped residents at the facility with feeding difficulties, SDC does not evaluate residents for risk of reflux or aspiration or seek appropriate gastro-intestinal consultative services of residents in need of them. A review of death records of residents who died at the facility indicate that aspiration pneumonia, often caused by poor positioning or deficient feeding practices, is a significant problem at SDC.

The lack of physical therapists and physical therapy services has led to the development of undue contractures, muscle atrophy, inappropriate body growth, and physical degeneration. Such problems have also led to additional medical risks, including respiratory difficulties.

Tracheostomy management is a particularly serious deficiency at SDC. Residents with tracheostomies, particularly children, are not adequately monitored to ensure that they are not aspirating or experiencing other difficulties in maintaining a proper airway. In addition, tracheostomy tubes are not consistently cleaned by proper suctioning. The failure of staff to properly maintain such tubes subjects residents to the risk of death from suffocation and present other significant health risks, including infection.

c. Occupational therapy services are inadequate.

There are an inadequate number of occupational therapists at SDC. The lack of adequate occupational therapists has led to inadequate assessments of residents with oral-motor dysfunction who are in need of professionally developed feeding programs. As well, occupational therapists are needed to ensure that residents do not lose the abilities they currently possess, including the ability to walk or eat independently.

d. Seizure management is deficient.

Seizures are not consistently recorded or assessed. In addition, the frequency of neurological consultations is inadequate and necessary consultations by neurologists are not provided.

e. Medical staff is insufficient.

Many of the medical deficiencies noted above are exacerbated by the absence of adequate numbers of nursing staff to perform routine nursing functions. Our nursing consultant noted a dearth of routine nursing care. Nursing staff in a facility like SDC should be playing a major role in the assessment of resident health care needs, the identification and early intervention of resident medical needs, and the ongoing monitoring of residents' medical status. This is not occurring at SDC. For example, residents fail to receive proper health surveillance, including detection and follow-up of signs and symptoms of illness. Physically handicapped residents are frequently not moved or repositioned sufficiently, causing them to develop otherwise preventable bedsores or decubitus ulcers.

3. Failure To Provide Training Programs.

A large number of residents at SCD have aggressive, self-injurious, pica and other behaviors which pose serious threats to their personal safety and to other residents. Our consultant psychologist found that SDC residents are being subjected to harm and unreasonable risk of injury due to major deficiencies in the assessment of residents and in the development, implementation and monitoring of resident training programs.

All behavior programs must be based upon an adequate assessment of resident need, including the need to develop programs to address aggressive and other anti-social behaviors. Assessments at SDC fail to meet professional standards in that they do not address relevant factors underlying resident behavior but rely almost exclusively upon medical/historical or birth related events. Such assessments fail to provide an evaluation

of current on-going factors which might trigger aggressive or other anti-social behaviors.

Those training programs which have been developed for residents are inadequate and fail to reflect the facility's own standards. Programs are not sufficiently individualized to meet the needs of the residents. In lieu of teaching of alternative, appropriate behaviors, too much reliance is placed upon physically controlling the resident. Such programs represent substantial departures from generally accepted practice for the development of training programs. Further, the programs, when implemented, are not sufficiently monitored and revised, as appropriate.

In addition, programs to facilitate the growth and development of residents, including the learning of new skills is grossly deficient. Significantly, little effort is made to teach residents self-care skills, expose them to the activities of daily living, instill vocational skills, or provide an array of other meaningful opportunities for residents to learn, grow, and develop new skills. For example, residents are not taught to dress or feed themselves, or to care for the needs of their own person. In addition, their capacities for communication and appropriate social interaction are not enhanced. There is an absence of meaningful vocational opportunities for adults. In addition, those behavior programs described above lack sufficient provisions for the development of adaptive skills or the learning of appropriate behavior. In the absence of such programs, residents do not develop the skills necessary to exercise any degree of independence and remain totally dependent on staff to meet all their needs. Moreover, they are subjected to abject idleness which, in turn, promotes the development of more deviant, more primitive behaviors like those displayed by many residents during the course of our tours.

The lack of training programs at SDC, including both behavior and skill acquisition training programs, is particularly noteworthy at SDC because a review of accident and injury reports reveals a very large number of injuries, some very serious, that adequate training programs could have reduced or avoided. In sum, habilitative services or those programs designed to promote the growth and independence of residents are grossly inadequate.

4. Physical And Chemical Restraints Are Used In Lieu Of Training Programs.

As a result of inadequate training programs, staff resort to both physical and chemical restraints to control resident behavior. Our consultant psychiatrist found that “stat” (immediate) orders for psychotropic medication are used freely at the facility and without appropriate professional oversight,

recording, and monitoring. She likewise found that SDC utilizes seizure control medications for behavioral purposes in the absence of medical evidence of seizures. Moreover, there is no evidence that staff attempt to control such behaviors by other less restrictive means prior to resorting to physical or chemical restraints.

SDC particularly lacks staff with expertise in the use of psychotropic medications. For the 270 or more SDC residents on such medications, there is a mere 12 hours of consultation time by a psychiatrist. This is grossly inadequate. Deficiencies in medication review are so severe that there is not even a system in place for the monitoring of drug side-effects. In sum, the use of behavior control medications at SDC fails to comport with generally accepted professional standards and represent a danger to residents.

5. Failure To Provide An Education Required By the IDEA.

SDC 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. IDEA requires that states receiving educational funds for special education develop individualized education plans ("IEPs") for qualifying children. The IEPs reviewed at SDC fail to comply with statutory and regulatory requirements. In these circumstances, educational programs are inadequate. Moreover, these children are not being served in the least restrictive environment -- in public school programs in the community.

6. Remedial Measures.

In order to remedy these deficiencies and ensure that the rights of SDC residents are vindicated, the following remedial measures need to be promptly implemented.

a. Hire, train, and deploy adequate numbers of direct care and professional staff to properly supervise and protect residents. Direct care staff should be sufficient to meet a 1:4, 1:4, and 1:8 staff to resident ratio, present on duty. As needed, 1:1 staffing should be provided to residents engaging in self-destructive behaviors. Professional staffing, especially psychologists, physical therapists, occupational therapists, and nurses, should be enhanced sufficiently to meet the individual needs of residents.

b. Provide adequate medical care, including appropriate services to meet the acute, chronic, and emergency medical care needs of residents. Residents with feeding problems should be evaluated by appropriate professionals for the purpose of developing appropriate nutritional management plans. Physically

handicapped residents should also be evaluated to determine their need for physical therapy services, including proper positioning, adaptive equipment, including wheelchairs, and any other needed interventions. Ancillary therapy services, including occupations therapy and speech and hearing services, require significant enhancement.

c. All residents must be evaluated to determine their individual strengths and weaknesses and to develop appropriate training programs, including behavior management and skill acquisition programs. Such evaluations should review the need for and use of psychotropic medication and physical restraints. Such programs should address and develop appropriate strategies to promote the physical, mental, behavioral, and social efficiency of each resident and permit each resident to function as independently as possible. Such programs must be consistently implemented and procedures developed to ensure appropriate review and revision.

d. Immediate steps must be taken to develop and implement an overall plan to significantly reduce the size of the facility and to place residents in appropriate community based programs which offer the most practical and cost efficient means of vindicating their basic liberty interests. There should be an immediate ban on the admission of children and children should be prioritized for placement in alternate, community-based programs. In the meantime, school aged children should be provided appropriate, professionally designed individual education plans and afforded appropriate educational services in the public schools.

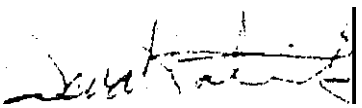
Large, congregate residential institutions have been demonstrated to be ill-equipped to provide the care, education, and training needed to promote the growth and development of individual developmentally disabled and mentally retarded persons. The national trend is to serve these individuals in appropriate, alternate community-based programs and facilities which can meet their individual needs. Our consultants found SDC to be attempting to provide little more than basic custodial care and failing even to provide adequate services for this purpose. In these circumstances, we must recommend the development of more appropriate, more effective services for the residents of SDC.

Pursuant to CRIPA, the Attorney General may initiate a lawsuit to correct deficiencies at an institution or otherwise to protect the rights of its residents 49 days after appropriate officials have been advised of the relevant violations of law, 42 U.S.C. § 1997b(a)(1). Therefore, we anticipate hearing from you as soon as possible but no later than 49 days after the date of this letter with any response you may have to our findings and a description of the specific steps you have taken or intend to take to implement each of the remedies described above. If you

do not respond within the stated time period, we will consider initiating an action against your jurisdiction to remedy the unconstitutional conditions we have identified. In your response, please address your willingness to enter into a judicially enforceable agreement to memorialize any agreement we may subsequently reach regarding this matter.

We look forward to working with you to resolve this matter in a reasonable and practical manner. If you or your staff has any questions, please feel free to contact Verlin Hughes, Senior Trial Attorney, Special Litigation Section, at 202-514-6260.

Sincerely,



Deval L. Patrick
Assistant Attorney General
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cc: The Honorable Daniel E. Lungren
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