U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 14, 1996

CRIPA Investigation

MR-FL-001-004

The Honorable Lawton Chiles
Governor of Florida
Governor's Office
State Capitol
Tallahassee, FL 32399-0001

Re: Landmark Learning Center

Dear Governor Chiles:

On May 17, 1995, we notified you, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et seq., of our intent to investigate conditions at the Landmark Learning Center ("Landmark") in Opa-Locka, Florida. From July 5-9, 1995, we conducted our investigative tour of the facility accompanied by three expert consultants: Nirbhay N. Singh, Ph.D., a developmental psychologist, Susan L. Hyman, M.D., a developmental pediatrician, and Victoria M. Therriault, MS, MN, ARNP-C, a developmental nurse practitioner.

In investigating Landmark, our intent was to determine whether Landmark violated the constitutional and federal statutory rights of its residents. Residents of state operated facilities for the developmentally disabled and mentally retarded have a fundamental Fourteenth Amendment due process right to reasonable safety, adequate medical care and training. Youngberg v. Romeo, 457 U.S. 307 (1982). Such training must be sufficient to protect each resident's liberty interests and permit each resident an opportunity to enhance his or her functioning. See, e.g., 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); United States v. Tennessee, No. 92-2062, slip op. at 12 (W.D. Tenn. Feb. 17, 1994); Halderman v. Pennhurst State School & Hospital, 154 F.R.D. 594 (E.D. Pa. 1994). See also 42 C.F.R. § 483.440. In addition, individuals with developmental disabilities must be provided services in the most integrated setting appropriate to meet their needs. 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)).

As a preliminary matter, we wish to commend District 11 of the State of Florida Department of Health and Rehabilitative Services ("District 11"), the administrators and staff at Landmark, and personnel from the Office of the Attorney General, Department of Legal Affairs, for the cooperation and courtesy they extended to the Department of Justice and its touring personnel. Ms. Anita M. Bock, Esq., District Administrator of District 11, Morton R. Laitner, Esq., District Legal Counsel, and Mr. Bob Ritz, Landmark Superintendent, all made a special effort to set a positive and cooperative tone for the tour.

We would also like to specifically recognize the diligent and commendable efforts of Mr. Bob Ritz, the Landmark superintendent, and his staff. Throughout our visit, the Landmark administrators and professional and direct care staff were open in acknowledging both areas of improvement in care and treatment at Landmark and continued areas of deficiencies. The findings set forth below, therefore, should not come as a surprise to the State of Florida or Landmark Learning Center.

CRIPA requires only that we set forth our findings of unconstitutional conditions at the facilities we investigate. However, given the level of cooperation exhibited by District 11 and Landmark, we wish to first acknowledge those areas in which Landmark has substantially improved services.

Our medical expert, Susan L. Hyman, M.D., noted that the current Medical Director, Dr. Stein, has aggressively sought to improve the standard of care to meet community standards. Dr. Stein's innovative management style and solid medical skills have enabled him to improve medical practice at Landmark during his tenure. His staff displayed general knowledge of many accepted standards of care. However, as outlined below in our findings, and as acknowledged by Dr. Stein, certain areas of care and treatment that directly affect residents still fall below accepted professional practices. Such areas include feeding and swallowing, physical management and positioning, integration of psychiatric services into the general habilitation process, and the need to develop behavioral programs to prevent injury requiring medical management.

In sum, while certain areas of medical care at Landmark still demand effort and attention, a number of areas deserve specific recognition, including (1) clear medical documentation, (2) an organized system of preventive medical care, (3) generally appropriate use of consultations, (4) generally prudent and current approaches to medical problems, and (5) appropriate attitudes towards residents on the part of the medical staff.

are at least a decade out of date. Moreover, there is an acute shortage of experienced and well trained behavioral psychologists at Landmark. The current ratio of psychologists to residents at Landmark is unacceptable, especially since Landmark increasingly houses those with severe or profound mental retardation and challenging behaviors. Although we found psychological services inadequate, the psychology staff was dedicated and caring. Unfortunately, it was overworked and inadequately trained.

1. Inadequate Training Programs.

Landmark fails to provide residents with that level of individualized training necessary to enhance functioning and facilitate their growth, development, and independence. Currently accepted standards of care recognize that training programs must teach skills that are useful and relevant to functioning in every day society. It violates current accepted practice to train a person to acquire isolated skills through repetition of meaningless tasks that have little bearing on those skills necessary to achieve some modicum of an independent existence. None of the training programs at Landmark reviewed by our consultant were adequate to ensure that useful skills are taught and that such skills are transferrable to living in the community. Further, the absence of professional involvement in skills training, including psychologists, communication specialists, physical therapists, and occupational therapists, severely limits the scope and quality of skills training.

Landmark also fails adequately to integrate behavior programs and skills training programs. Behavior reduction and skills training are interconnected issues. Maladaptive behavior affects the acquisition of skills and vice-versa. It is difficult to learn new skills where behaviors impede learning. Similarly, as noted above, an environment devoid of meaningful activity can cause or exacerbate behavioral problems. This phenomenon was evident at Landmark. For example, we walked into one unit where two staff members were watching television while two residents were just standing around doing nothing, two residents were sitting quietly not watching the TV, another two residents were engaging in self-injury and four other residents wandered around unattended without guidance or direction. The staff would periodically attend to the two residents engaging in self-injury by saying "stop biting your hand" and "very good." No training or skill development was occurring whatsoever. These deficiencies were also evident even in areas specifically designated for skills training. For instance, although Landmark has a vocational training program, it does not teach residents useful skills for competitive or supported employment in the community. Instead, our expert consultant observed that during the vocational training program, most of the residents either engaged in meaningless tasks or in maladaptive behavior such as screaming and self-injury unattended by staff.

2. Inadequate Behavioral Programs.

There are a number of Landmark residents with serious self-injurious and/or aggressive behaviors that have led to significant injury and continue to pose a risk of harm. Accepted professional practice requires that these residents receive appropriate behavior programs to reduce or eliminate harmful behaviors by replacing them with more appropriate behaviors and useful skills. Landmark fails, however, to provide residents with adequate individualized behavioral programming to ensure and protect their safety and liberty interests. Dr. Singh, our expert psychologist, found that all of the behavior management programs he reviewed were substantially below currently accepted professional standards. Dr. Susan Hyman also noted that Landmark's inadequate behavior programs adversely affected residents' health.

Accepted practice in the field of mental retardation requires psychological and behavioral services to consist of several components, including (1) adequate evaluation of the problem behavior through appropriate assessments and data collection, (2) development of an individualized behavior program based upon the evaluation, (3) implementation of the program through adequately trained staff, (4) monitoring and evaluation of the efficacy of the behavior plan, and (5) modification of the program if it does not work. Our psychology expert found that Landmark does not provide adequate care in any of the above major components of appropriate behavioral and psychological services.

To begin with, Landmark does not provide adequate assessments of clients, which is the necessary first step in developing adequate behavior programs. Psychologists fail to use basic behavioral principles in evaluating problem behaviors, including identifying the reason why the behaviors occur and using acceptable data collection techniques to provide essential underlying information about the behaviors. Our expert psychologist found that no psychologist at Landmark was performing an acceptable analysis designed to understand the reasons for or function of a behavior of a particular client.

Without such individual analysis of residents' behaviors, the behavior plans developed at Landmark are generic "boiler plate" programs instead of being tailored to meet the individual needs of each resident. There were numerous instances where the psychologist merely inserted the name of the client in the blank spaces of a pre-written behavior program. This practice does not comport with accepted professional standards.

A further deficiency in assessing and developing behavior programs is the lack of a reliable and systematic data collection system at Landmark. The facility does not collect adequate data either to formulate appropriate and individualized behavior

programs in the first instance or to measure whether they are working and, if not, the way in which they must be revised. There is no systematic, facility-wide policy of reviewing behavior outcome data on a daily basis so that trends in the data can be assessed and changes in ineffective programs implemented. Such a lack of trend analysis severely impacts follow-up and reevaluation of behavior programs.

A final problem in implementing behavior programs is that direct care staff lack good behavior management skills and are not being adequately taught how to carry out individual behavior treatment programs. The one consistent statement by all interviewed psychologists was that most behavior programs do not work because staff are not adequately trained. The result in many cases is that inappropriate and maladaptive behavior of residents is reinforced rather than being replaced by more appropriate behavior.

The above deficiencies in skills training and behavior programs compromise Landmark residents' rights to be protected from harm, to live in reasonable safety, and to be afforded opportunities to gain and develop that level of autonomy or independence of which they are capable.

C. **PSYCHIATRIC CARE AND SERVICES SUBSTANTIALLY DEPART FROM PROFESSIONAL PRACTICES AND DO NOT MEET THE NEEDS OF THE RESIDENTS.**

Landmark inadequately serves residents with both mental retardation and mental illness. Both Dr. Singh and Dr. Hyman were encouraged that Dr. Lipton had begun to provide some stability in psychiatric care that had been previously lacking. Drs. Singh, Hyman, and Lipton agree, however, that Landmark needs to improve considerably in this area. Simply put, four hours per week of psychiatric care is grossly inadequate for the approximately 150 residents that are on psychotropic medication. Everyone at the facility, including Drs. Lipton and Winston, acknowledged that this is not enough time to meet the needs of the many dually-diagnosed residents. Dr. Singh stated that Landmark should immediately hire the equivalent of 1 FTE psychiatrist with a good working knowledge of the psychiatry of mental retardation.

Landmark also fails adequately to integrate behavior programs and psychopharmacological treatments. Dr. Singh found the current state of combined behavioral and drug treatments at Landmark unacceptable and substantially below generally accepted standards of practice. As noted by Drs. Lipton and Winston, there is no one on the Landmark staff who has an adequate knowledge of the interactive effects of behavioral and psychopharmacological treatments. At a minimum, Landmark should have a behavioral psychologist with a good knowledge of learning,

behavior and drugs necessary to provide a link between the psychiatrist, prescribing physicians, and the psychologists.

The inadequate data collection and behavior programs at Landmark discussed above adversely affect psychiatric care at the facility. The Landmark behavioral data about residents, including environmental information, is flawed making adequate psychiatric services virtually impossible. Drs. Singh and Hyman noted that the facility needs to make considerable progress toward better behavior intervention and data collection in order to improve psychiatric practices.

Because of inadequate consult time, behavior programs and data collection, many more residents are on medication for behavior control than should be. Furthermore, too many residents are on multiple psychotropic medications or "polypharmacy." The percentage of residents on polypharmacy is unacceptably high and demonstrates (1) that the psychiatric and/or behavior problems of residents are not adequately addressed through proper behavior programs or single drug management and (2) that there is no adequate alternative to such problems other than drug management. Three examples suffice. First, several residents who were not on any behavior program were receiving multiple drugs to control behavior. In one case, behavioral data had been collected but the psychiatrist had not done anything with the data to create a behavior treatment program for over six months. Second, a resident had been on multiple medications for fifteen years without any significant change in his behavior. Finally, in several cases, being on psychotropic medications functioned as a barrier to community placement.

As a final note on psychotropic medication use, a serious problem exists at Landmark in the care of individuals who may have tardive dyskinesia ("TD") that should be corrected immediately. At Landmark, the monitoring for TD is grossly inadequate and in many cases does not exist. Consequently, there is no way of determining exactly how many individuals have been diagnosed as having TD and had a neurological consultation to verify the diagnosis. According to the Director of Nursing, TD assessments are supposed to be done annually. However, few TD assessments were found in the charts and no data exists to document the reliability of the assessments. Furthermore, where TD assessments have been completed, they are not given to the consulting psychiatrist. Landmark has policies governing TD but they are not being implemented.

In sum, the above deficiencies in treating Landmark residents with mental illness and mental retardation result in inadequate care and subject residents to harm.

D. **LANDMARK FAILS TO PROVIDE ADEQUATE NURSING PLANS FOR LANDMARK RESIDENTS THAT MEET GENERALLY ACCEPTED STANDARDS OF CARE.**

Landmark fails to ensure that nurses perform their responsibilities in keeping with accepted professional standards of care by adequately identifying health care problems, notifying physicians of health care problems, and monitoring and intervening to reduce such problems. The nursing assessments at Landmark are inadequate and are not in keeping with accepted professional practices. The nursing assessment is a summary that does not identify potential problems, fails to integrate information from other disciplines, and fails to develop and implement adequate and appropriate comprehensive nursing care plans to address each resident's health care needs.

E. **NUTRITIONAL MANAGEMENT AND SERVICES FOR THOSE AT RISK OF ASPIRATION DO NOT MEET GENERALLY ACCEPTED STANDARDS.**

Landmark fails to provide its residents with adequate and appropriate nutritional management or services for individuals with feeding and/or swallowing difficulties. Failure to provide adequate feeding and swallowing services is an extremely dangerous, potentially life-threatening situation. It has placed and continues to place many Landmark residents at risk of choking and death due to aspiration and reflux and consequent medical complications.

Both our medical consultant, Dr. Hyman, and our nursing consultant, Ms. Therriault, found numerous examples of undiagnosed feeding and swallowing problems. Dr. Stein agreed with Dr. Hyman that Landmark lacked a team approach to feeding and swallowing problems and needed to develop a coordinated approach to the assessment and treatment of residents with such concerns. Our consultants found that Landmark failed to screen and assess residents for nutritional management problems, including difficulty swallowing, chewing, or retaining, assimilating, and eliminating food and/or liquids. Consequently, Landmark failed to identify residents at risk for aspirating and/or who had symptoms of gastroesophageal reflux ("GER"). Dr. Stein indicated to Dr. Hyman that the staff turnover in the occupational and physical therapy departments has been responsible for delay in instituting an adequate feeding program.

Our consultants also found that mealtime feeding techniques and interventions at Landmark by staff did not meet accepted standards. Staff often failed to intervene in the face of dangerous feeding behaviors by residents that increased their risk of choking and aspiration. Staff also fed residents using improper techniques such as feeding a resident with his or her head tilted back in hyperextension called "bird-feeding."

Residents were consistently poorly positioned during feeding that increased the risk of a feeding problem during mealtime. Professional staff failed to supervise the direct care staff during meal times, resulting in improper feeding. Our consultant nurse observed a number of examples of dangerous and improper feeding techniques that caused many individuals to cough and gag.

Finally, Landmark fails to provide any skill acquisition training to prevent aspiration for those individuals with dysphagia and other eating disorders. There is no training provided in oral motor therapy, and staff generally fail to provide appropriate oral motor stimulation when necessary in connection with feeding. Further, Landmark fails to monitor regularly the progress of the Landmark residents at risk of aspirating and to take whatever steps are necessary to ameliorate the risk.

In sum, Landmark has failed to provide a safe, structured, mealtime program for its residents.

F. OCCUPATIONAL AND PHYSICAL THERAPY SERVICES DO NOT MEET THE NEEDS OF THE RESIDENTS.

Landmark fails to provide its residents with sufficient occupational therapy ("OT") and physical therapy ("PT") services. As stated to Dr. Hyman, and discussed earlier, Dr. Stein recognizes that OT and PT services at Landmark are inadequate and adversely affect other disciplines at the facility. Most residents have never been provided with an OT or PT evaluation or even a routine screening. OT and PT staffing and consultation hours are insufficient. With regard to OT, many residents are not assessed for and do not receive adequate nutritional management or communications therapy. With regard to PT, Landmark serves a population with chronic care needs but fails to provide physical management as an ongoing system of integrated services aimed at both correcting and preventing deformities.

II. MINIMAL REMEDIAL MEASURES.

In order to remedy the above cited deficiencies and to protect the rights of Landmark residents, the following measures, at a minimum, need to be implemented promptly.

1. The State must provide services to individuals with developmental disabilities in the most integrated setting appropriate to their needs. The main restriction to community placement for Landmark residents is the State's failure fully to develop and support adequately its community services system for individuals with mental retardation. The State has neither expanded community placement options for Landmark residents nor instituted sufficient quality control measures to monitor community placements. Staff acknowledged to us that District 11

recently closed several community-based options due to lack of adequate care and supervision. Because the State has not expanded available community services to meet the various needs of Landmark residents, residents remain at the facility unable to acquire the skills that they could develop in a more normalized and integrated setting while their existing skills deteriorate over time through lack of training and services at the facility. To provide services to individuals in the most integrated and normalized setting appropriate to their needs, the State must:

a. Have an appropriate interdisciplinary team of professionals (with input by staff involved on a day-to-day basis with the person being evaluated, by relatives of the person being evaluated, by the individual him or herself, and by interested individuals) assess each Landmark resident to determine the most integrated setting appropriate to the needs of the resident;

b. Identify the required residences, day programs, including vocational opportunities, specialized services, including medical care and related services, and other supports needed to serve those individuals who professionals have determined should be served in the community;

c. Survey existing resources and develop and implement a comprehensive plan to expand and establish services to meet the individual needs of each resident, including community placement for those individuals who professionals have determined should be served in the community;

d. Establish a schedule to place individuals in the most integrated and normalized setting appropriate to their needs, including community placement where appropriate, and to place individuals into such settings; and

e. Develop and implement an adequate system to monitor community-based programs to ensure program adequacy and the full implementation of each individual's habilitation plan.

2. Landmark must provide an adequate array of comprehensive individualized behavior programs and services for the residents developed by qualified professionals consistent with accepted professional standards to provide a safe, functional and stable living environment, prevent regression, and facilitate the growth, development, and independence of every Landmark resident. To this end, Landmark must:

a. Conduct a comprehensive and timely interdisciplinary structural and functional assessment for each Landmark resident to determine and plan for the individual's training needs that uses a systematic and reliable method for assessing the impact of the physical environment on the resident;

b. Develop and implement a professionally based, individually appropriate data collection system to measure and review relevant information about maladaptive behaviors and the conditions under which they occur, including, where appropriate, the frequency, intensity, and duration of the behaviors;

c. Develop and implement individualized behavior programs to reduce or eliminate harmful behaviors by replacing them with more appropriate functional behaviors and useful skills; and

d. Institute a systematic, facility-wide system of reviewing behavioral outcome data on a daily basis to detect and track trends in the data and make changes in ineffective training programs.

3. Landmark must have a qualified professional timely develop, implement and monitor a professionally based, individualized skills training program for each resident with appropriate skills development that will enable each resident to grow and develop and learn useful adaptive skills, provide each individual with an adequate number of hours of training, and provide adequate vocational training where appropriate.

4. Landmark must provide adequate and appropriate psychiatric and mental health services in accordance with accepted professional standards to residents who need such services. Landmark must procure adequate psychiatry consultation hours to meet the needs of the residents. Psychotropic medication must only be used in accordance with accepted professional standards and must not be used for behavior control in place of a training program or for the convenience of staff. Psychotropic medication shall be used with an appropriate psychiatric or neuropsychiatric diagnosis. To this end, Landmark must:

a. Conduct a comprehensive and timely assessment of each Landmark resident receiving psychotropic medication;

b. Develop an overall treatment plan for each resident with a diagnosis of mental illness that describes clear, objective and measurable short-term, intermediate and long-range goals and objectives for each resident, including time frames for the achievement of each, and provides ongoing monitoring of the treatment;

c. Document that, prior to using psychotropic medication for behavior modification, less restrictive techniques have been systematically tried as part of a training program and were documented as ineffective;

d. Provide adequate integration between behavioral and psychopharmacological treatments with adequate behavioral and medical data and monitoring of the effectiveness of combined behavioral and psychopharmacological treatments;

e. Hire or procure consultation time from a behavioral psychologist who has a good knowledge of learning, behavior, and drugs to provide adequate interdisciplinary guidance to psychology and psychiatry services at Landmark; and

f. Develop and implement an adequate system for detecting, reporting, and responding to any drug-induced side effects of psychotropic medication, specifically tardive dyskinesia.

5. Landmark must ensure that its residents receive adequate nursing care, and that nurses perform their responsibilities in keeping with accepted professional standards of care by adequately identifying health care problems, notifying physicians of health care problems, and monitoring and intervening to prevent and reduce such problems. To this end, Landmark nurses must:

a. Conduct adequate, comprehensive assessments;

b. Develop nursing diagnoses; and

c. Develop and implement adequate and appropriate comprehensive nursing care plans to address each resident's health care needs.

6. Landmark must provide adequate care for those individuals at risk of aspirating. To this end, Landmark must:

a. Identify all individuals who are at risk of aspirating;

b. Take all appropriate steps to reduce the individual's risk of aspiration and develop and implement an individualized feeding and positioning plan for each individual identified as at risk of aspirating; and

c. Develop and implement a system to regularly monitor the progress of Landmark residents at risk of aspirating to ensure that staff are continually taking the necessary steps concerning assessment, diagnosis, supervision and treatment to prevent the risk of aspiration.

7. Landmark must provide adequate and appropriate nutritional management for those individuals with feeding and swallowing problems. To this end, Landmark must:

a. Identify each individual who has a nutritional management problem, including dysphagia, difficulty swallowing, chewing, or retaining, food and/or liquids;

b. Have an interdisciplinary team of oral motor specialists comprehensively assess each such individual to identify the causes for the nutritional management problems;

c. Take all appropriate steps to ameliorate the individual's feeding and swallowing problems, develop and implement an individualized feeding and positioning plan for each individual who is unable to feed him or herself, and train staff in how to implement the plans; and

d. Develop and implement a system to regularly monitor the progress of the Landmark residents who have feeding and swallowing problems to ensure that staff safely and appropriately feed the residents and are continually taking the necessary steps concerning assessment, diagnosis, supervision and treatment to ameliorate a resident's nutritional management problems.

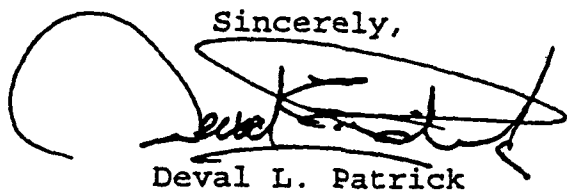
8. Landmark must provide each resident with adequate and appropriate physical, occupational, and communication therapy services in accordance with accepted standards of care.

9. The State must ensure that a sufficient number of professional and non-professional staff, including outside consultants, are employed to meet fully the needs of the Landmark residents. Landmark must increase the number of psychologists, physical therapists, occupational therapists, and hours of psychiatric consultation.

Given our positive experience with the State thus far, we fully expect to be able to resolve this matter amicably and cooperatively. From discussions with District 11 legal counsel, we understand that a remedial plan is being prepared to address our concerns. We request that the State submit such plan as soon as possible.

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 contact William G. Maddox at 202-514-6251.

Sincerely,



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Assistant Attorney General
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cc: The Honorable Robert Butterworth
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The Honorable Jason Vail
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