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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

#90398
The Honorable George Nigh
Governor of Oklahoma
State Capitol
Oklahoma City, Oklahoma 73105

Re: Enid and Pauls Valley State Schools
Enid and Pauls Valley, Oklahoma

Dear Governor Nigh:

As you will recall from my letter of April 9, 1982, the Department of Justice initiated an investigation of conditions at Enid State School and Pauls Valley State School pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997. This letter is to inform you of the major findings of our investigation in accord with the requirements of the Act. We wish to express our thanks for the extensive assistance and cooperation that we have received from your office, the Department of Human Services, the Superintendents and staff of the facilities, the State Medical Examiner, and counsel. This cooperation has greatly facilitated our work.

Our investigation has consisted of tours of Enid and Pauls Valley State Schools (hereinafter "ESS" and "PVSS") by a physician, an educational psychologist, and Civil Rights Division personnel. We and our consultants have also reviewed extensive documentary information provided at our request, including, inter alia, reports of investigations into alleged incidents of abuse, staffing information, and medical records of former residents.

Based upon this information, we have concluded that there exists a pattern or practice of egregious and flagrant conditions causing grievous harm to the residents of both institutions. This letter sets forth our findings in some detail, followed by our recommendations as to the measures required in order to correct these conditions. We are hopeful that, after your review of this letter, meetings can be arranged between ourselves and appropriate state officials to discuss means by which such corrections might be made.

We are unaware of the precise length of time during which these conditions have been present. However, we believe that they have existed for at least the past several years.

## I. Conditions at ESS and PVSS

### 1. Lack of minimally adequate medical services

Both facilities provide inadequate medical services to their resident populations. The primary reason for this deficiency is insufficient staffing, a fact acknowledged by facility staff.

At ESS, the physician staff consists of three full-time M.D.'s, two of whom are not fully licensed; a part-time M.D.; and a part-time Medical Director. Similarly, PVSS employs two full-time M.D.'s, neither of whom is fully licensed; a part-time M.D.; and a part-time Medical Director. This staffing is inadequate. While we do not advocate the imposition of specific staff/resident ratios as a constitutional requirement, it is our view that staff of whatever kind is required in order to provide residents with minimally adequate medical care.

Insufficient licensed physician coverage has resulted in serious harm to residents. For example, in a random review of 12 ESS death records performed by our consultant physician, one record revealed that no physician had seen a resident during the five hours between recognition of his deteriorating condition and death, despite efforts by nursing staff to obtain an M.D.'s services. Moreover, our consultant noted that a working diagnosis had not been documented nor timely intervention implemented in five of the records reviewed.

In six of the ESS death records reviewed by our consultant, there was undue delay in recognition of the resident's health problem, resulting in death. For example, the record of one resident revealed that she was noted to refuse supper, moaned and groaned when turned in bed, and developed a fever of 101°. She died the following day of a ruptured duodenal ulcer found to be 2 to 3 days old at post mortem examination.

Both facilities are critically short of registered and licensed practical nurses. As a result, direct care personnel, despite their lack of medical training, must assume undue responsibility for health surveillance.

Although our consultant found commendable the practice of transferring residents for medical treatment in certain instances to Oklahoma City, PVSS records revealed that the transfers of at least two residents were delayed. The individuals subsequently died. Such results are expected given the shortage of nursing staff combined with the problem of direct care staff who are obliged to perform health assessments on the basis of inadequate medical training.

The available psychiatric consultation at ESS and PVSS is severely inadequate in light of the number of residents receiving psychotropic medication. The problem is especially severe at PVSS, where there has been no psychiatric consultation available for the past two years. In addition, psychological services for such residents, many of whom exhibit aggressive behavior, are also insufficient. The lack of psychologists to employ necessary behavior modification training leads to the overuse of psychotropic medication as a substitute for programming and subjects residents to unnecessary restraint.

The use of polypharmacy was noted in a random survey of records at both facilities. This practice, which can cause hazardous long term irreversible side effects, can be justified only after both intensive programming efforts and maximal doses of a single drug have proven ineffective. The records reviewed did not reveal such justification or documentation. Also, medical aides at the facilities, questioned by our consultant, indicated lack of appropriate training in assessing risks and benefits of psychotropic medications and in identifying harmful side effects.

Deficiencies are also apparent in the area of dentistry. At ESS, the dentist was planning to retire imminently, and the one dental assistant on staff was about to be decertified due to her lack of continuing education. At PVSS, three part-time dentists performed the services of one full time equivalent, and the two dental assistants on staff were not certified and lacked formal training. At both ESS and PVSS, resident life staff aides received no training in preventive oral hygiene or in teaching residents to brush and care for their teeth. There also was inadequate sanitation in toothbrush storage areas.

At PVSS, deficiencies in pharmaceutical practices were also noted. The two pharmacy technicians on staff are not licensed to dispense prescriptions when the registered pharmacist is not available. The pharmacy staff reissues discontinued medications, which jeopardizes pharmaceutical safety and sanitation. Prescription ointments were dispensed, to be administered by direct care staff, without being labeled as prescribed to named residents. In addition there appears

to be no regular participation by the pharmacy staff in the annual interdisciplinary team meetings wherein each resident's individual habilitation plans are reviewed and revised.

In the area of physical therapy, staffing is similarly so seriously deficient that medically needed services are not delivered. Sufficient adaptive equipment for physically handicapped residents was also not in evidence. Proper adaptive equipment with individual modifications is needed in order to prevent inappropriate body growth and to allow residents greater use of existing extremity functions. However, residents were frequently observed restrained in unadapted wheelchairs with narrow cloth belts where proper positioning might serve to prevent inappropriate physiological growth and physical harm to the residents.

As to occupational therapy, the presence of substantial numbers of residents with special feeding needs and/or impairments of the upper and lower extremities creates an urgent need for additional OT staff at both institutions. Frequently, residents were observed being fed much too rapidly for their own safety given their problems with mastication and swallowing behaviors. In addition, at ESS, at least two residents were observed by our consultant physician being fed in an essentially prone position, with wheelchairs tipped backward. At PVSS, some residents were fed in bed. Feeding residents in prone positions is dangerous because it exposes such residents to aspiration and the development of aspiration pneumonia.

2. Lack of care and training

A lack of minimally adequate training to enable residents to live in a reasonably safe environment free of undue bodily restraint was noted. See Youngberg v. Romeo, 102 S.Ct. 2452 (1982). We do not believe that the state has a constitutional obligation to provide "optimal" care, or to guarantee that each resident will improve to the degree of achieving his or her fullest potential. Moreover, the state has broad discretion in selecting the particular methods of training to be provided, if its selections reflect the judgments of "qualified professional[s]." Id. at 2461. It is our view, however, that the minimal levels of training just described are not being provided at ESS and PVSS. For instance, it appeared that many of the physically handicapped residents, including those discussed above with ambulation, feeding or speech handicaps, receive no training in such areas as motor skills and ambulation, reflex training, mastication and self-feeding, self-bathing, and rudimentary

communication skills. This failure to provide minimal training contributes to and manifests itself in residents' aggressive and stereotypic behaviors observed at the facilities. These include, inter alia, incessant disordered physical movements, headbanging, biting, hyperactivity, and assaultive behavior. Moreover, such behaviors, left unremediated, lead to physical deterioration.

The facilities also lack sufficient and adequately trained staff to supervise residents properly, thereby enabling them to enjoy a safe environment. For example, a group of 21 naked residents were observed being led to a shower area, where two staff sprayed the residents down with a large garden type hose. Residents waiting to be showered sat on toilets lined up in a row without any provisions for privacy. These arrangements present hazards to residents and indicate that no effort has been made to afford minimal privacy within the constraints of the facilities.

Restraints are often improperly used at ESS and PVSS. Physical restraints should be used only when necessary to protect residents and staff, and only after less intrusive behavior modification training methods have proved unsuccessful. In the case of one resident at ESS, a mitten restraint was in use although her record revealed no plan to address her handbiting. At PVSS, another resident wore mittens continually, although program goals noted in the record showed activities which would not properly address behaviors typically controlled by restraints. Another resident wore mittens plus stove pipe arm restraints continually, although no self-injurious behavior was observed by our consultant while the resident was feeding himself. Still another resident was in restraints even though she was sleeping at the time. These are examples of the application of undue bodily restraints, which are being used in lieu of minimal training.

At the Cherokee Park School and Hilltop School, operated by the local school authorities of Enid and Pauls Valley, respectively, the educational services provided to the less handicapped students are adequate. However, our experts noted that the more severely handicapped residents do not have "individualized education program[s]" as defined in the Education for All Handicapped Children Act. 20 U.S.C. §1401(19). For example, several of the individualized education programs did not address short term instructional objectives, the children's present levels of educational performance, the specific educational services to be provided, or criteria for determining whether each child's instructional objectives are being met. Moreover, a review of students' files indicates that those programs in existence are not individualized as required by statute. See 20 U.S.C. §1401(16), (17).

The Supreme Court's decision in Board of Education of Hendrick Hudson Central School District v. Rowley, 102 S.Ct. 3034(1982), recognizes that in the formulation of educational programs to be accorded handicapped children under the Act, "questions of methodology are for resolution by the States." Id. at 3052. Likewise, educational plans need not be designed "to maximize each child's potential" but must be "reasonably calculated to enable the child to receive educational benefits." Id. at 3046, 3051. Thus, greater efforts must be made at the Hilltop and Cherokee Park Schools to ensure that the formulation and implementation of the children's educational programs comply with the procedural requirements of the Act and result in "individualized consideration of and instruction for each child." Id. at 3042.

3. Lack of personal physical safety

Internal reports prepared by ESS and PVSS reveal numerous incidents of physical abuse of residents by staff. In various instances, records reveal that staff have been counseled, suspended, discharged, or requested to resign for slapping, kicking, hitting, or spanking residents. Moreover, the reports reflect many instances of unexplained resident injuries. The reports further indicate that these occurences may result, at least in part, from inadequate training of direct care staff and from staffing levels too low to assure proper care and supervision.

Commendably, many of the reported incidents are apparently investigated in depth. However, while such reporting and investigation are essential, we believe that further attention to the problem of injuries and abuse at ESS and PVSS is required.

4. Inadequate environmental conditions

Environmental conditions are constitutionally deficient. In some bathrooms, there are no privacy partitions or even toilet seats. Evidence was noted that routine sanitary practices at ESS, e.g., procedures for storage of soiled laundry, are inadequate. Such deficiencies may be at the root of the reportedly high incidence of amebiasis and of the recurrent instances of shigellosis. We also noted that several living areas have had to be quarantined because of outbreaks of these and other infectious diseases.

PVSS appears to have a better physical plant than does ESS. Although it too contains some living units that are barren, it also had a number of living areas that are clearly adequate.

5. Placement

While we do not believe that the Constitution establishes a per se right to any particular kind of placement, including

community placement, it is our view that the applicable state statute, Okla. Stat. Tit. 43A, §411 - which requires annual evaluations for the purpose of determining residents' further treatment or training needs and whether residents may appropriately be released from the institution - creates sufficient liberty interests as to require some regular process by which professionals evaluate the appropriate placement for individuals at ESS and PVSS. This process must also operate to ensure that these professional determinations are not arbitrarily denied. Presently no systematic procedure exists at either facility for evaluating placement or ensuring that the attendant professional decision is implemented.

In a number of resident records, we noted statements by the institutional professionals that the residents had maximally benefitted from the institution and were in need of placement elsewhere but could not be placed because of the lack of alternative programs. In one instance, an eight year old ESS resident was deemed ready for community placement, but because there were no group homes for adolescent residents, the record indicated placement efforts would not begin until he is eighteen.

While some efforts are under way at the departmental level to develop alternative programs for retarded persons, it is unclear to what extent such efforts will benefit the ESS and PVSS population.

II. Minimum measures to remedy these conditions

The following are the minimum measures which, in our view, are necessary to remedy the deficiencies discussed herein:-

1. State officials must evaluate the need for medical and other professional personnel. Needed medical and professional staff must be hired, trained and deployed. Such staff should be sufficient in number to afford necessary medical care, surveillance and protection, and to provide minimal training programs to enable residents to live in a reasonably safe environment free from unreasonable bodily restraint.

2. ESS and PVSS should evaluate its need for additional direct care staff and ensure that such staff, when hired, receives adequate training in the proper care of residents. In order to reduce the incidence of resident abuse, such direct care staff should be sufficient in number to supervise residents. Training in the proper management of residents with behavior problems is needed.

3. School-aged residents must be evaluated by state officials and provided individualized education plans reasonably calculated to enable the child to receive educational benefits.

4. Environmental conditions should be improved; sanitation practices should be reexamined and, where necessary, revised.

5. Regular procedures should be developed to evaluate the appropriateness of placement of residents at ESS and PVSS as well as a procedure to ensure that these professional decisions are not arbitrarily denied when made.

Finally, I would note that many of our findings and recommendations will undoubtedly come as no surprise to ESS and PVSS personnel. Many of these individuals, including the Superintendents, members of the professional staff, and ward personnel, candidly acknowledged the existence of areas requiring improvements. It was clear to us that both facilities employ many conscientious and dedicated staff who strive to make the most of the resources available to them. We would be remiss if we failed to commend these persons for their very substantial efforts.

As I have already noted, we are available and willing to discuss these issues at your convenience. We very much hope to resolve these matters amicably. Again, thank you for the cooperation that we have received throughout our investigation.

Sincerely,

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