

Disability Rights Center

The Protection and Advocacy System for People with Disabilities in Arkansas



DISABILITY
RIGHTS
CENTER

It's Not Punishment, It's Rehabilitation

A Report on the Conditions at the Alexander Youth Services Center

*This report is based on Disability Rights Center's (DRC) investigation of allegations of abuse/neglect or rights violations of children with disabilities confined at Alexander Youth Services Center. **On Friday, November 3, 2006, DRC was informed the State had cancelled its contract with Cornell Interventions Inc., a national private for-profit provider responsible for services to juveniles confined at the Alexander Youth Services Center. While we applaud this action, it does not go far enough. DRC encourages the Arkansas Department of Health and Human Services and the General Assembly to close Alexander Youth Services Center and take this as an opportunity to reform the entire juvenile justice system by providing services to juveniles in the least restrictive setting appropriate to their needs.***

**A report by:
Disability Rights Center, Inc.,
The Protection and Advocacy system for people with disabilities in Arkansas
November 2006**

Member, National Disability Rights Network



One of these is for rehab... but which?



Summary of Report

This is the first in a series of reports which the Disability Rights Center, Inc. (DRC) will publish over the next few months as we continue to investigate the various components of Arkansas' juvenile justice system. In this report, we examine the quality of programs created to address the needs of juveniles placed in the custody of the Department of Health and Human Services (DHHS), Division of Youth Services (DYS) who are confined at the Alexander Youth Services Center (AYSC). This report covers the period DRC advocates monitored AYSC from March 2006 through September 2006.

Key findings of this report include:

JUVENILES WITH DISABILITIES

- **AYSC has a disproportionate number of juveniles with disabilities confined.**¹

EDUCATIONAL SERVICES

- AYSC fails to provide appropriate child find under Individuals with Disabilities Education Act (IDEA), 34 C.F.R. § 300.1 *et seq.*
- **AYSC fails to provide appropriate evaluations as required under IDEA.**
- AYSC fails to ensure the acquisition of juveniles' educational records in a timely fashion.

¹ Approximately 40% of the juveniles were identified with disabilities.

- **AYSC fails to accept educational records from parents.**
- AYSC fails to take referrals for special education services in a timely manner as required under IDEA.
- **AYSC fails to provide special education services in the Least Restrictive Setting as required under IDEA.**
- AYSC fails to provide notice of conferences as required under IDEA.
- **AYSC fails to hold meetings or timely develop Individualized Education Programs (IEPs) when a juvenile is committed to AYSC.**
- AYSC fails to provide appropriate behavior plans/programs to address behaviors associated with juvenile's disabilities.
- **AYSC fails to provide adequate library services.**
- AYSC has inadequate means of determining credits given.
- **AYSC fails to issue diplomas or certificates of completion as agreed to in an agreement with the Department of Justice and the State signed and approved by U.S. District Court Judge Susan Webber Wright on March 12, 2003.**
- AYSC fails to provide appropriate related services as required under IDEA.
- **AYSC fails to provide transition plans or services as required under IDEA.**
- AYSC fails to provide notice to juveniles of their rights under IDEA when they are 17 or 18 as required under IDEA.
- **AYSC fails to provide due process procedures as mandated under IDEA.**
- AYSC fails to provide any reading programs, even though it is estimated that between fifty and seventy percent of juveniles committed to AYSC read on a very low level or don't read at all.
- **AYSC fails to provide access to curriculum that is required in public school in Arkansas.**
- AYSC fails to provide adequate vocational opportunities.
- **AYSC fails to provide access to adequate educational materials. AYSC library has very few books that provide information about the twenty-first century.**

MENTAL HEALTH SERVICES

- AYSC has a high number of juvenile sex offenders who are also mentally retarded/developmentally delayed. AYSC places these juveniles in a "regular" sex offender program in which they are expected to read and understand the literature provided and participate in group therapy with juveniles of "average" intelligence.
- **AYSC fails to properly evaluate juveniles for mental health issues.**
- AYSC fails to properly medicate juveniles with previous diagnoses and medication, whether the juvenile is stable or not upon entry into their facility.
- **AYSC fails to provide appropriate mental health treatment depending upon juveniles' diagnoses.**
- AYSC fails to provide appropriate training to its staff regarding different mental health diagnoses and how to manage behaviors associated with those disabilities.
- **AYSC fails to provide an adequate number of mental health professionals.**
- AYSC fails to properly document juveniles' mental health treatment.

- **AYSC fails to provide a mechanism by which parents/juveniles may challenge the mental health/medication decision.**

MEDICAL TREATMENT

- AYSC fails to provide timely access to a medical specialist when a juvenile's condition warrants such specialist.
- **AYSC fails to provide parental involvement in non-emergency medical treatment.**
- AYSC fails to provide appropriate information regarding medical treatment a juvenile will be receiving.
- **AYSC fails to provide a mechanism by which the parent/juvenile may challenge a particular medical decision.**

ACCESS TO FAMILY

- AYSC fails to provide private/confidential access to a juvenile's family members.
- **AYSC fails to provide a mechanism for the family to visit the juvenile if the family is unavailable for visitation because of illness/work schedule. Instead, juveniles simply do not have family visitation.**
- AYSC fails to provide adequate contact between female juveniles who have given birth while at AYSC and their babies.
- **AYSC case managers fail to provide parents/juveniles about juvenile's status, programs the parent may want to participate in, and other services available to the juvenile and family.**
- AYSC fails to provide case manager oversight to ensure adequate communication with the family on the progress of the juvenile.

COMMUNICATION BETWEEN DYS AND AYSC

- **DYS has an administrative building on the AYSC campus. This building is approximately fifty yards from the AYSC administrative building, yet failure of communication between AYSC and DYS creates an environment in which both entities attempt to evaluate, program, and treat juveniles with only part of the information because they both refuse to communicate effectively with each other.**
- DYS fails to share documents necessary for AYSC to properly program for the juvenile.
- **DYS fails to share diagnostic or discharge summaries for juveniles who require residential care while at AYSC.**

SAFETY ISSUES

- AYSC fails to remove a staff member from direct care should a juvenile make an allegation of abuse against the staff member. The only time the staff member is removed from direct care is if the DHHS abuse hotline takes the complaint. If the

- DHHS abuse hotline decides not to take the complaint, then there is no investigation of the staff member.
- **AYSC fails to provide an environment in which juveniles are not fearful of retaliation should he/she make a complaint involving staff on juvenile abuse.**
 - AYSC fails to allow timely and confidential access to the Arkansas Protection and Advocacy System (DRC).

RELIGIOUS FREEDOM

- **AYSC fails to provide an atmosphere where juveniles are welcomed to practice the religion of his/her choice. Instead, Christianity is subtly encouraged as the religion of choice.**
- AYSC fails to provide adequate materials on different types of religious beliefs.

Introduction

For over 100 years, Arkansans have struggled with how to address the needs of children involved with our State's juvenile justice system.² The Alexander Youth Services Center has a long history of problems, beginning most recently in June 1998 with a series of articles published in the *Arkansas Democrat Gazette* on the condition of facilities for juvenile delinquents, including allegations of abuse and mismanagement at the Alexander Youth Services Center and continuing into 2001 when the United States Department of Justice (DOJ) issued a findings letter to Governor Huckabee pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997(a)(1) in which DOJ concluded that certain conditions at Alexander Youth Services Center violate the constitutional and/or statutory rights of juveniles confined at that facility.

After issuing its letter to Governor Huckabee, in 2003 DOJ and state defendants entered into an agreement, United States of America vs. State of Arkansas, the Arkansas Division of Youth Services, and the Arkansas Department Of Human Services, which was approved by the Court. While not named in this action, the parties recognized that the cooperation and assistance of the Arkansas Department of Education, the Arkansas Department of Workforce Education, and other state agencies would be required to ensure compliance with the settlement agreement. The State of Arkansas agreed to ensure that the Arkansas Department of Education, the Arkansas Department of Workforce Education, and all other state agencies take any actions required to comply with the provisions of this settlement agreement. The Defendants entered into this Court enforceable settlement agreement because, while admitting that the State, through certain

² **Act 199 of 1905** - The Arkansas General Assembly ventured into the realm of juvenile law in 1905 – six years after the first juvenile court was established in Cook County, Illinois. That year, Arkansas' legislature established, *not* a juvenile court, but their first *reform school*. Thereafter, juveniles charged with crimes were tried in adult court, and, if convicted, were sent with judicial discretion to reform school or adult prison.

state agencies, had violated federal rights of juveniles housed at Alexander, they were firmly committed to remedying these violations and providing legally adequate conditions by instituting the remedial measures required by the Court enforceable settlement agreement.

Rehabilitation is beginning to look a lot like punishment



Background

- **Alexander Youth Services Center** is a staff-secure, 143-bed residential facility for male and female adjudicated Arkansas juveniles ages 10 to 17. If the youth received his/her adjudication prior to his/her 18th birthday, he or she can be retained in the Juvenile Justice System until age 21. The AYSC campus consists of six living units, a cafeteria, gymnasium, chapel, medical, administration, and educational buildings. AYSC provides a central intake and assessment unit for juveniles throughout Arkansas.



This is an aerial view of Alexander Youth Services Center.

Arkansas law says "To protect society more effectively by substituting for retributive punishment, whenever possible, methods of offender rehabilitation and rehabilitative restitution..."

- **Cornell Interventions, Inc.** In 2001, responsibility for AYSC was turned over to Cornell Intervention, Inc., a for-profit corporation, to provide on-site management and operation of the AYSC and the DYS maximum-security facility, known as JUMP (Juvenile Upward Mobility Program).³ "Under the initial two-year contract, the state was to pay Cornell about \$13 million to do a better job, presumably, than the state could do at almost twice the cost. Although no sound estimate of the projected cost-savings exists, since the state will continue to pick up the costs for medical insurance associated with Alexander's young inmates, DHS officials anticipate a minor windfall that they say they'll use to build still more juvenile detention facilities." [June 17, 2001, *Arkansas Democrat-Gazette*]. **Cornell Interventions, Inc.**, contract amount 07/01/06 through 06/30/07 for AYSC and the JUMP is **\$10,135,502.00**.

- **Total \$ amount paid** on this contract from 7/01/02 thru 06/30/07 will be **\$55,525,778.00**.

Cornell Interventions, Inc., and DYS are supposed to work in partnership to complete client assessments and treatment plans. The program goals are:

- To create a safe and secure environment and climate in which juveniles can grow and develop;

³ October 09, 2006 09:26 AM ET HOUSTON (AP) - Cornell Companies Inc., an operator of private prisons, said Monday it agreed to be bought by investment firm Veritas Capital for about \$245 million cash. The deal also includes the assumption of \$273.6 million in debt. Under the terms, Veritas will pay Cornell holders \$18.25 per share, which represents a 2 percent premium over the stock's Friday closing price of \$17.88. Cornell, which operates 78 facilities used for prisons, juvenile detention centers and rehabilitation centers, said its board unanimously approved the deal and will recommend that shareholders also back the bid. The company said it expects the deal to close by the end of the first quarter. Cornell shares were unchanged in electronic premarket trading on INET. The stock recently surged to within striking distance of its 52-week high of \$18.83 on news that California may send some inmates out of state -- and potentially to private-run prisons -- to alleviate overcrowding. [© 2006 The Associated Press].

- To create a physical environment that is conducive to treatment;
- To implement an integrated program of education, therapy, and recreation with a high degree of structure and supervision;
- To provide an effective, individualized education program for each resident so that upon completion, each juvenile has acquired the basic skills necessary to secure and keep gainful employment as an adult;
- To provide an effective therapeutic program so that, upon completion, each juvenile has learned or developed the cognitive behavior and life skills necessary to reintegrate successfully into mainstream society and live successfully as a law-abiding citizen. To achieve both therapeutic program success for juveniles and successful financial and administrative management of the facility.

Disability Rights Center's Investigation

Disability Rights Center, Inc. (DRC) is the federally authorized and funded Protection and Advocacy System (P&A) and Client Assistance Program (CAP) for people with disabilities in Arkansas. DRC is authorized to protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal law.⁴

DRC began monitoring AYSC in response to calls received from several parents of children confined at AYSC. These parents questioned whether their children were receiving special education services at AYSC. In response to these parents' concerns, three members of DRC's Quality Assurance Team (QA Team), 1 member of DRC's Education Team and one DRC attorney toured the campus of AYSC in March 2006. After that initial tour, DRC's QA Team began conducting regular monitoring visits to AYSC, focusing initially on the educational services or lack thereof by reviewing Cornell and DYS policies.

After reviewing the policies, it became evident that Cornell/DYS policies were woefully lacking with respect to special education. Particularly, there were no policies which explained or described how neither Cornell nor DYS implemented the Individuals with Disabilities Education Act (IDEA). Instead there were a set of generic policies which said they would provide services consistent with IDEA but failed to explain how the services would actually occur. There was nothing in the policies that described the process for referral, evaluation, identification, or FAPE for children with disabilities. During DRC's investigation, DRC attempted to refer a child for special education services per IDEA and was told to just wait until the student's records were received by AYSC. There was no timeline discussed as to how long AYSC would wait for records

⁴ Pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§15001, 15043 and 45 C.F.R. §1385 *et seq.*; the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801 *et seq.* and 42 C.F.R. § 51 *et seq.*; and the Protection and Advocacy of Individual Rights, 29 U.S.C. § 794e, the P&A System may use any appropriate technique and pursue administrative, legal or other appropriate remedy to protect and advocate on behalf of individuals with disabilities to address abuse, neglect or other violation of law.

prior to accepting the special education referral. It was DRC's experience while on the AYSC campus that often the special education records were never received. AYSC also failed to provide basic policies describing the due process procedures or how they operated. Not once during DRC's investigation did DRC discover evidence that parental rights under IDEA were ever mentioned or discussed. Parental participation is the cornerstone of IDEA and is required for the law to effectively work the way it was envisioned. It was the intent of Congress under IDEA to cover children with disabilities who were committed to juvenile detention facilities. Education must be one of the main components of rehabilitating juveniles.

Seventy percent of children in the juvenile justice system have an educational disability — the vast majority are children with Emotional Disturbance (ED) and children with Specific Learning Disabilities. Children with ED fail more courses, earn lower grade point averages, miss more days of school, and are retained more often than other students with disabilities.

<http://www.splcenter.org/images/dynamic/main/SpecialEducationLaw.pdf>

DRC provided a list of concerns to both Cornell and DYS in order to assist in creating policies which complied with the law.

In addition to reviewing the policies, the QA Team provided rights training to the juveniles confined at AYSC and in the JUMP and, during these trainings and afterwards, the QA Team had the opportunity to talk with the juveniles about the conditions at AYSC. It was during these one-on-one discussions that we were informed of numerous allegations of abuse and neglect and/or rights violations, which we investigated. At one point, during the 7 months DRC monitored AYSC, we had as many as 44 juveniles as clients.

It often appeared that DYS and Cornell made a concerted effort to move the juveniles who were our clients to other facilities.

Many of our clients had similar issues. Some examples of the kinds of issues we investigated are listed below:

- **Juvenile 1, a 16 year old female, was committed to AYSC in January 2006 because she took her father's car without permission.** Juvenile 1 had been diagnosed with Bi-polar disorder by four different doctors prior to her commitment to AYSC. However, the contract psychiatrist at AYSC refused to treat Juvenile 1 for bi-polar disorder, stating:

Have reviewed records. There is no consistent dx of Bipolar. She has strong evidence of situationally driven mood disorder that is more consistent with Cluster "B" personality. She feels she needs anger management relative to Family problems. Not suicidal. Not homicidal. Not psychotic. She takes Elavil for migraines. Staff see her as immature, not manic. She does not think she needs additional meds, and I agree. Best tx is psychotherapy.

DRC decided to have an extensive independent evaluation performed on juvenile 1 to determine what her diagnosis was and what treatment was mandated because of the diagnosis. This evaluation was performed over a two day period and required our psychiatrist to conduct interviews with Juvenile 1 as well as with her family. The diagnosis at this time was a textbook bipolar disorder, along with other diagnoses and medication was prescribed. However, after providing the evaluation results to DYS and to AYSC and having our psychiatrist participate in a staffing by phone (the AYSC Dr. does not participate in staffings), DYS refused to provide the appropriate mental health treatment. DRC was informed that AYSC would follow the treatment prescribed by the attending physician at AYSC, who had refused to recognize Juvenile 1's bipolar diagnosis.

Juvenile 1 appears to do quite well in school. However, at an AYSC staffing Juvenile 1, family, and DRC advocate, were informed that after almost a year in DYS custody, Juvenile 1 had only managed to receive three and a half credits toward graduation, which she received from another juvenile detention facility. It appeared that Juvenile 1 had attended school regularly and done well according to AYSC staff; yet, AYSC had failed to provide juvenile 1 any educational credits for the work she had done.

- **Juvenile 2 is a seventeen year old male who has mental retardation and borderline intellectual functioning.** DRC reviewed records and attended a staffing for Juvenile 2. Juvenile 2 is an adjudicated sex offender. When DRC asked how the sex offender curriculum/program would be modified to accommodate Juvenile 2's cognitive deficits, DRC was told that the program wouldn't be, "as reading intensive", and juvenile 2 would be in a smaller group.

Juvenile 2 cannot read, yet he will be in a sex offender program which will require him to not only read, but also understand and be able to describe his feelings.

When DRC asked AYSC and DYS if they had a separate therapy program for children who were developmentally delayed, AYSC and DYS responded with a definitive no.

- **Juvenile 3 is a thirteen year old female** whose mother informed AYSC that Juvenile 3 had not had a menstrual cycle in three months. Mom voiced her concern and asked AYSC to make an appointment for Juvenile 3 with a gynecologist. According to mom, staff response was to ask Juvenile 3 if she had sex and was pregnant.

DRC asked that Juvenile 3 be referred out to a gynecologist for diagnosis and treatment. AYSC staff said they preferred that their pediatrician see Juvenile 3 first to see what could be done. An appointment for the gynecologist was scheduled for two months later. In the meantime DRC wanted to see what had

been done by the AYSC pediatrician. DRC requested this information and was shown a thyroid panel performed almost a month after Juvenile 3's dysmenorrhea was brought to AYSC's attention. The panel was within normal limits and DRC was informed that was all that had been done. In the meantime Juvenile 3 still had no menstrual cycle, and did not have an appointment for another month.

- **Juvenile 4 is a 15 year old male with mental retardation who is in the custody of Arkansas Division of Children and Family Services (DCFS),** and was set for release from AYSC on May 8, 2006, and who, as of October 13, 2006 remains confined at AYSC. DRC was contacted by staff at AYSC because Juvenile 4 completed his program before his scheduled release date of May 8, 2006, yet he continued to languish at AYSC. DRC reviewed documents and met with Juvenile 4 and could find no evidence that there was an attempt by either DCFS or DYS to secure placement for Juvenile 4 prior to his scheduled release date of May 8, 2006. Juvenile 4 is the responsibility of the State of Arkansas and appropriate placement is mandated.
- AYSC claims that the average stay at their facility is ninety days. This may be true for some juveniles, but through our investigation and review of documents, many of the juveniles with developmental disabilities were at AYSC for years with very little hope of leaving. DRC believes the reason for this is AYSC's failure to modify its program and provide appropriate treatment so that juveniles with developmental delays can achieve success.

ARKANSAS JUVENILE JUSTICE SYSTEM – HOW DID I END UP IN ALEXANDER?

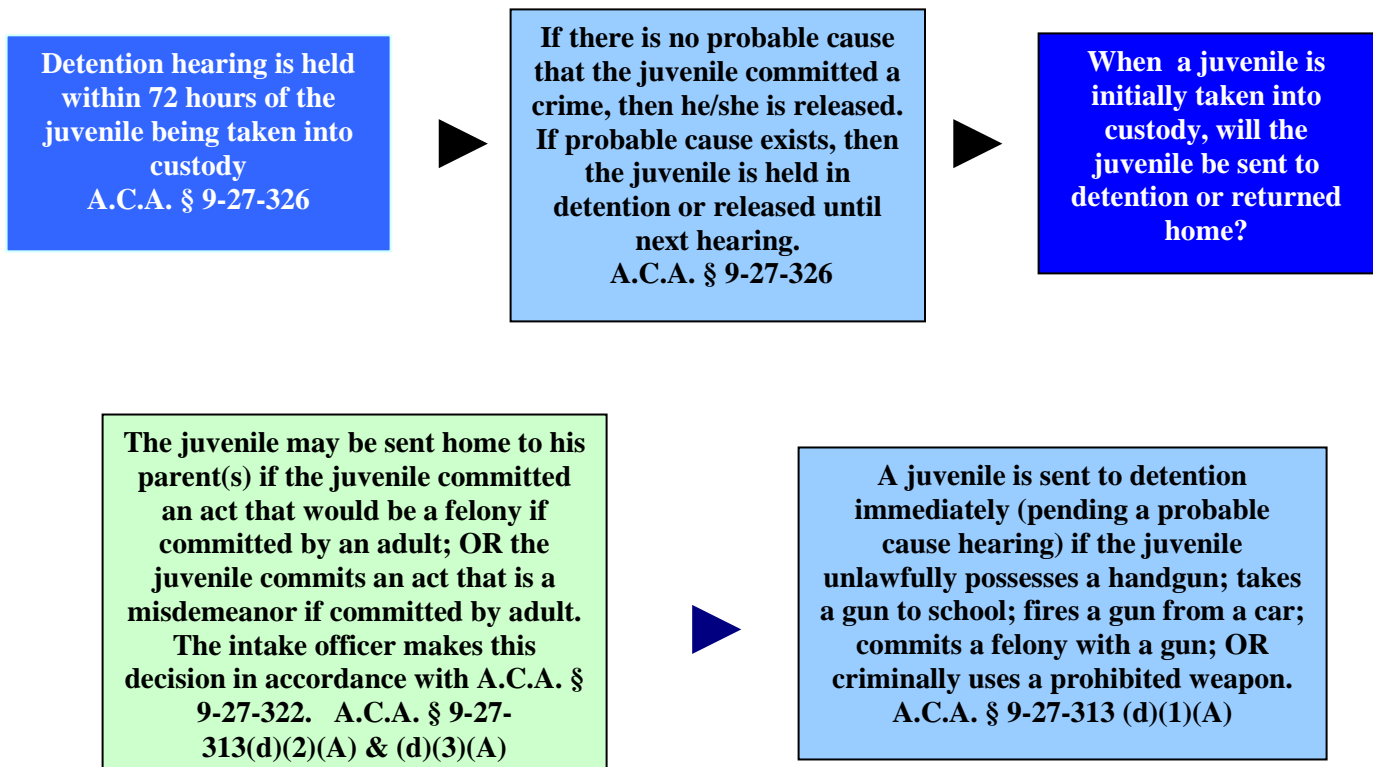
**If a juvenile is found to be delinquent at an adjudication hearing, the court may commit the juvenile to a youth services center (DYS) per a risk assessment.
A.C.A. § 9-27-330**



Other disposition options available if juvenile found delinquent:

1. The Court may transfer custody of the juvenile to a relative or licensed agency.
2. If the juvenile is committed to a youth services center, the risk assessment may be modified by DYS.
3. The court may recommend placement of a juvenile in a community-based program & make specific findings to support its recommendations. The division shall consider the recommendations of the committing court.
4. The Court may place the juvenile on probation & require the juvenile to follow the terms of probation.
5. Order the juvenile or members of juvenile's family to submit to physical, psychiatric or psychological evaluations.
6. Grant permanent custody to an individual upon proof the parent or guardian from whom the juvenile was removed has not complied with the court's orders & no further services and reviews are required.
7. Order probation fee of no more than \$20.00 per month.
8. Assess a court cost of no more than \$35.00 to be paid by the juvenile, his parent(s), guardian or custodian.
9. Order the juvenile to pay restitution.
10. Order the juvenile to pay a fine of no more than \$500.00.
11. Order the juvenile, his parent(s), or guardian to perform community service.
12. Order parents to attend parental responsibility training program.
13. Order the juvenile to remain in detention for no more than 90 days.
14. Place the juvenile on house-arrest/detention with electronic monitoring.
15. Hold parents liable for the cost of commitment, detention, or electronic monitoring.
16. Suspend the driving privileges of the juvenile.
17. Judgment of the court may be discharged by a settlement between the parties ordered to pay restitution and the beneficiaries of the judgment.

A.C.A. § 9-27-330



Recommendations

The constitutional and/or statutory rights violations identified at AYSC by the DOJ that the defendants agreed to remedy are identical in many respects to the findings of DRC set forth in this report. The state has failed to take the remedial action agreed to and rights of juveniles confined at AYSC continue to be violated.⁵

- **Provide state funding and access other funding sources for new, additional community-based services, assure a comprehensive, coordinated approach for all troubled youth, avoiding duplicity among interrelated programs and programming.**
- The inter-institutional transferring of some youth between less to more restrictive settings should be reviewed.
- **Review programs similar to JRAP in Garland County which focuses on providing intensive services/treatment to the juvenile in the community which enables the juvenile in many instances to remain at home.**

MENTAL HEALTH

- **Provide adequate mental health care to all juveniles who require such services.**
- Develop and implement an effective protocol to ensure that direct staff has all relevant mental health information about juveniles, including instructions regarding any required suicide precautions and information about critical incidents in which the juveniles were involved.
- **Ensure that a qualified mental health professional has sufficient daily interaction with juveniles and sufficient weekly interaction with any juvenile who needs such treatment.**
- **Ensure that all mental health services provided to a juvenile, including individual mental health treatment, are properly documented.**
- Institute an appropriate case management system that assigns a case manager to be responsible for each and every juvenile. The case manager shall, on a systematic, routine and timely basis, provide information to the juvenile about his/her status at AYSC; facilitate the juvenile's entry into specialized treatment programs, keep in contact with the juvenile's parent(s) or guardian; interact with all outside agencies and entities on the juvenile's behalf; and be responsible for the juvenile's transition upon his/her release from AYSC.
- **Provide all case managers at AYSC with adequate additional training (including both initial training for new employees and ongoing training for experienced employees), and support to ensure that they effectively fulfill their case management and other responsibilities;**

⁵ See Exhibit 1, *United States of America v. State of Arkansas et al*, Civil No. 4-09 Court Entered Settlement, 2003

- Develop and implement a procedure, consistent with all applicable Federal and State privacy laws, to obtain all relevant mental health and medical information about juveniles on a routine, systemic and prompt basis from outside sources. Cornell/DYS shall develop and implement an effective quality assurance system regarding this procedure.
- **Keep all relevant mental health and medical information about juveniles in one centralized location available to all appropriate facility employees.**
- Develop and implement a procedure to ensure that the facility psychiatrist adequately documents the diagnosis and the basis for the diagnosis for each juvenile requiring such a diagnosis.
- **Ensure that appropriate plans to provide mental health services to those juveniles who require such services are developed and implemented in a timely fashion.**
- Develop and implement an adequate protocol for reviewing, at required intervals, the appropriateness of all medication prescribed for juveniles.
- **Develop and implement an adequate protocol for ensuring that all juveniles receive any necessary medical screening or tests before and during prescription of all medication.**
- Ensure that when a facility psychiatrist meets with a juvenile, he/she has appropriate access to relevant information from the direct care staff regarding the juvenile.

EDUCATION

- Provide:
 - a. all juveniles with adequate education services; and
 - b. adequate special education services to all juveniles who require such services.
- **Ensure that all students receive reasonable and appropriate education instruction within two school days of their arrival at the facility. To satisfy this requirement, Cornell/DYS may operate an adequately staffed intake classroom, taught by licensed teachers that focus on basic education skills such as literacy, understanding current events, and math skills. Juveniles may remain in this classroom while waiting to be transferred to a more permanent educational setting, for up to 30 days.**
- Provide all teachers with effective and appropriate monitoring, professional development, and mentoring.
- **Ensure that students have access to reading materials at school and in housing units.**
- Develop and effectively implement a policy to: a) require that students be provided with appropriate homework assignments; b) mandate that teachers and direct care staff monitor students' progress in completing such assignments and assist and encourage students in performing their assignments; and c) ensure that students have access to any materials (pencils, paper, etc.) required to complete such assignments.

- **Employ a qualified full time (or full time equivalent) school counselor for Alexander to aid students in education, personal, social, and career development.**
- Continue to employ a qualified full time school principal for AYSC.
- **Ensure that all academic credits earned at AYSC are accepted by other public schools in the State of Arkansas in the same way as the credits earned at any other school in the State.**
- Ensure that all teachers at the school at AYSC are appropriately licensed and certified in the subjects that they teach.
- Obtain the ability to issue high school diplomas to juveniles at AYSC.
- **Provide all juveniles (whether or not they have already received a GED) with an adequate and appropriate vocational program that satisfies the requirements for vocational education found in the Standards for Accreditation of Arkansas Pubic Schools.**
- Provide prompt and adequate screening of juveniles of special education needs, including obtaining prior education records from school systems in a timely fashion, conducting adequate testing of juveniles substantive educational knowledge and performing necessary vision and hearing tests.
- **Create and/or implement an adequate Individual Education Plan (“IEP”), as defined in 34 C.F.R. & 300.340, for each juvenile who qualifies for an IEP. As part of satisfying this requirement, Cornell/DYS must conduct required reevaluations of IEPs, adequately document special education services, and comply with requirements regarding parent, surrogate and student participation in the IEP process.**
- Hire sufficient additional special education instructors to enable the facility to provide adequate special education services to both boys and girls. To satisfy this requirement the Cornell/DYS needs to:
 - a. employ at least 6 appropriately qualified full time (or full time equivalent) special education teachers at AYSC. This number of additional positions assumes that the AYSC census remains approximately 140 juveniles. If the average daily census for any three consecutive months is greater than 170 or less than 110 juveniles, or if the population’s need for special education services changes significantly, either party to this agreement can seek an adjustment to this figure. If the parties cannot agree on an adjustment, the issue shall be submitted to the Court for resolution;
 - b. develop a plan , subject to the review and approval by DRC, for allocating and utilizing these teachers.

RELIGIOUS FREEDOM

- **Develop a policy and protocol that clarifies the proper role that religious activities can play at the facility.**

- Provide adequate training (including both initial training for new employees and ongoing training for experienced employees) on the policy and protocol described above.
- **After the implementation of the policy and protocol described above, monitor facility programs to ensure that the policy and protocol is being followed.**

Conclusion

DRC has seen little change at AYSC during the seven months we have been monitoring. It is our hope that the State of Arkansas will address each of our findings and create an environment for juveniles confined at AYSC that actually provides the rehabilitative services which will enable the juveniles confined there to grow into productive members of society.



Are we spending \$10.5 million per year to prepare our children for this rehabilitation opportunity?

END NOTES

Arkansas Constitution, Statutory Provisions and Olmstead

Constitution of Arkansas:

Art. 14 § 1 Free school system.

Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education. The specific intention of this amendment is to authorize that in addition to existing constitutional or statutory provisions the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age, as may be provided by law, and no other interpretation shall be given to it. [As amended by Const. Amend. 53].

Art. 19 § 19. Deaf and dumb and blind and insane persons.

It shall be the duty of the General Assembly to Provide by law for the support of institutions for the education of the deaf and dumb, and of the blind, and also for the treatment of the insane.

Statutory Provisions:

Arkansas Code Annotated § 9-27-302. Purposes - Construction.

This subchapter shall be liberally construed to the end that its purposes may be carried out:

(1) To assure that all juveniles brought to the attention of the courts receive the guidance, care, and control, preferably in each juvenile's own home when the juvenile's health and safety are not at risk, which will best serve the emotional, mental and physical welfare of the juvenile and the best interest of the state;

(2)(A) To preserve and strengthen the juvenile's family ties when it is in the best interest of the juvenile;

(B) To protect a juvenile by considering the juvenile's health and safety as the paramount concerns in determining whether or not to remove the juvenile from the custody of his or her parents or custodians, removing the juvenile only when the safety and protection of the public cannot adequately be safeguarded without such removal;

(C) When a juvenile is removed from his or her own family, to secure for him or her custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents, with primary emphasis on ensuring the health and safety of the juvenile while in the out-of-home placement; and

(D) To assure, in all cases in which a juvenile must be permanently removed from the custody of his or her parents, that the juvenile be placed in an approved family home and be made a member of the family by adoption;

(3) To protect society more effectively by substituting for retributive punishment, whenever possible, methods of offender rehabilitation and rehabilitative restitution, recognizing that the application of sanctions which are consistent with the seriousness of the offense is appropriate in all cases; and

(4) To provide means through which the provisions of this subchapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

Olmstead v. L.C., 527 U.S. 581 (1999):

The Supreme Court held that undue institutionalization of persons with mental disabilities qualifies as “discrimination” by reason of disability under the public services portion of the Americans with Disabilities Act (ADA). Under the same action of the ADA as interpreted in Olmstead, states are required to provide community-based treatment for persons with mental disabilities when 1) the state’s treatment professionals determine that such placement is appropriate; 2) the affected persons do not oppose such treatment; and 3) the suggested placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with mental disabilities.

This report was made possible by funding support from Centers for Mental Health Services, Substance Abuse and Mental Health Services Administration and the United States Department of Health and Human Services, Administration on Developmental Disabilities. The contents are solely the responsibility of the grantee (Disability Rights Center) and do not necessarily represent the official views of the grantors.

**This report is available online at www.arkdisabilityrights.org
Click on “Alerts”**

Disability Rights Center, Inc.
1100 North University, Suite 201
Little Rock, AR 72207
800-482-1174 V/TTY – 501-296-1775
Fax: 501-296-1775
www.arkdisabilityrights.org