



National Center for Youth Law

August 24, 2010

Judy Preston
Chief, Special Litigation Section
United States Department of Justice
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Washington, DC 20530
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Dear Chief Preston,

We are writing to advise you of systemic problems in the Texas Youth Commission's (TYC) secure facilities that violate federal Constitutional and statutory standards and jeopardize the health, safety, and rehabilitation of youth. We have become aware of these problems through direct representation of youth, visits to TYC facilities, and meetings or conversations with service providers and TYC leadership. These problems include, but are not limited to:

- Inability to ensure safety of youth;
- Inadequate mental health care;
- Lack of educational programming;
- Inadequate special education programming; and,
- Over-Reliance on Short-Term Security & Lack of programming for youth in security (segregation).

The Texas Youth Commission System

The Texas juvenile justice system is bifurcated between two state agencies: the Texas Youth Commission (TYC), which operates state-run institutions for youth committed to its care after being adjudicated delinquent of a felony offense, and the Texas Juvenile

Probation Commission (TJPC), which oversees county-based juvenile probation departments and pre and post-adjudication county facilities.

TYC's mission is to:

[P]romote public safety by partnering with youth, families, and communities to provide a safe environment where youth in the agency's care and custody receive individualized education, treatment, life skills and employment training, and positive role models to facilitate successful community reintegration.¹

During the 2007 Texas legislative session, media reports emerged documenting extreme sexual and physical abuse in TYC facilities.² As a result, the legislature passed sweeping reforms that resulted in a drastic reduction in the agency's population, as well as changes to the agency's leadership and structure.³

Today, TYC houses about 2,000 youth in 10 secure, lockdown facilities, 175 youth in contract facilities, and 169 youth in nine halfway houses.⁴ About another 1,700 youth are on parole under TYC supervision.⁵ Most of TYC's secure facilities are well outside urban areas, and many are in rural areas, making staffing the facilities a challenge. The 10 secure facilities are:

- Al Price State Juvenile Correctional Facility – Beaumont, TX
- Corsicana Residential Treatment Center – Corsicana, TX
- Crockett State School – Crockett, TX
- Evins Regional Juvenile Center – Edinburg, TX
- Gainesville State School – Gainesville, TX
- Giddings State School – Giddings, TX
- McLennon County State Juvenile Correctional Facilities I & II – Mart, TX
- Ron Jackson State Juvenile Correctional Complex I & II – Brownwood, TX⁶

¹ TEXAS YOUTH COMMISSION, COMPACT WITH TEXANS, available at <http://www.tyc.state.tx.us/privacy.html#compact>

² See, generally, Dallas Morning News, *Investigative Reports – TYC*, <http://www.dallasnews.com/investigativereports/tyc/>. See, also, Doug Swanson, *Officials Indicted in Abuse at TYC*, DALLAS MORNING NEWS, April 10, 2007, <http://www.dallasnews.com/sharedcontent/dws/news/texassouthwest/stories/041107dntextyc.b59c6b.html>, Holly Becka et al., *Young Inmates Endured "Deplorable Conditions,"* DALLAS MORNING NEWS, October 3, 2007, http://www.dallasnews.com/sharedcontent/dws/news/texassouthwest/stories/DN-tyc_03tex.ART0.State.Edition2.42910b9.html, Doug J. Swanson & Steve McGonigle, *Seven TYC Workers Fired After Inmates Found Living in Filth*, DALLAS MORNING NEWS, October 4, 2007, <http://www.dallasnews.com/sharedcontent/dws/news/dmn/stories/100407dntextycfirings.368cc6e.html>.

³ See Senate Bill 103, 80th Reg. Leg. Sess. (TX 2007); TYC, Strategic Plan 2011-2015 (2010), at 14-15.

⁴ TEXAS YOUTH COMMISSION, STRATEGIC PLAN 2011-2015 (2010), available at http://www.tyc.state.tx.us/about/TYC_Strategic_Plan_2011_to_2015.pdf

⁵ *Id.*

⁶ Map of TYC facilities available on their website at http://www.tyc.state.tx.us/programs/facility_map.html

Though TYC generally places youth in the facility closest to the county where they were living before they were committed, there are a few exceptions. Mart I is the orientation unit where all youth spend a short time just after being committed.⁷ Corsicana is intended to house youth who have a serious mental illness that cannot be addressed in another facility.⁸ Giddings State School runs a specialized program for capital and serious violent offenders.⁹ Ron Jackson I is the facility devoted to girls,¹⁰ and Ron Jackson II runs the Accelerated Reintegration Program (ARP) for youth who have violated conditions of their parole.¹¹

Department of Justice Investigation of Evins

Even before the sexual abuse scandals broke in the media, the Department of Justice had begun an investigation of the Evins facility after receiving reports of physical abuse of youth by staff.¹² During its investigation, DOJ identified serious violations of federal law and sent a findings letter to the Governor on March 15, 2007.¹³ A complaint and proposed settlement were filed in the United States District Court Southern District of Texas on February 1, 2008.¹⁴ The Court's docket indicates that after a hearing the parties filed a revised agreement on April 8, 2008, which the Court subsequently approved. However, the most recent audit of the facility revealed ongoing problems similar to many of those we have discovered in other facilities, including serious concerns related to youth's safety.¹⁵

History of Signing Organizations' Advocacy with TYC

Advocacy, Incorporated, the Center for Public Representation, the National Center for Youth Law, and Texas Appleseed have been working together in advocating for reform of the TYC system since 2007. Advocacy, Inc. is the protection and advocacy (P&A) organization for Texans with disabilities; since 2007, they have provided direct representation to 221 youth in TYC custody. With the support of the agency, the signing organizations have made multiple trips to TYC facilities system-wide; we have been able to interview youth at almost every facility within the system.

⁷ TYC, STRATEGIC PLAN, *supra* note 4.

⁸ *Id.*

⁹ *Id.* at 60.

¹⁰ *Id.*

¹¹ Texas Youth Commission, Description of Ron Jackson State Juvenile Correctional Complex Unit II, available at <http://www.tyc.state.tx.us/programs/jackson2/index.html>

¹² Letter to Hon. Rick Perry, Governor from Wan J. Kim, Ass't Attorney General (March 15, 2007) available at http://www.justice.gov/crt/split/documents/evins_findlet_3-15-07.pdf.

¹³ *Id.*

¹⁴ *United States v. Texas*, No. 7:08-cv-00038 (S.D. Tex. Feb. 1, 2008).

¹⁵ Jeremy Roebuck, *DOJ: Youth prison continues to improve conditions for inmates*, THE MONITOR, May 20, 2010 (though auditors saw progress, they noted problems with youth safety, blind spots in security camera surveillance, and extortion of food, personal items and clothing among inmates).

Our early advocacy focused on addressing punitive practices that we felt had to be eradicated in order to make way for a culture of reform, including escalating use of OC spray in facilities and placement of youth in long-term isolation. We worked with TYC to rewrite the agency's administrative rules relating to Use of Force, as well as their rules relating to long-term security. These amended rules went into effect in September 2009.

While we were pleased with the cooperation and progress we made in addressing these focused issues, our recent visits to facilities indicate broader systemic problems that TYC leadership has not resolved. These problems are not isolated to specific sites, but exist throughout TYC's system of 10 lockdown facilities.

Many of these problems are caused or exacerbated by an inability to adequately staff the facilities. In addition, while TYC leadership has been working to change the punitive climate that prevailed pre-reform, not all facilities have moved away from the use of aversive behavior intervention techniques. The more progressive, reform-minded attitudes of the TYC leadership in its Central Office do not appear to be filtering down to the local facility level, even after three years of "reform." Of even greater concern are the youth's reports that they do not feel safe in TYC facilities.

Systemic Issues

I. Inability to Ensure Safety of Youth

The Due Process clause of the Fourteenth Amendment governs the standards for conditions of confinement of juvenile offenders. *Gary H. v. Hegstrom*, 831 F.2d 1430, 1432 (9th Cir. 1987). Subjecting confined juveniles to undue restraint or excessive force violates the Due Process clause. *See Youngberg v. Romeo*, 457 U.S. 307, 73 L.Ed 2d 28, 102 S. Ct. 2452 (1982). The Due Process clause also requires TYC to keep juveniles reasonably safe from harm inflicted by third parties, including by other juveniles in the facility. *See J.H. ex rel. Higgin v. Johnson*, 346 F.3d 788, 791 (7th Cir. 2003).

Recent visits to two facilities – Corsicana and Al Price – revealed a recurring theme among the youth we interviewed: youth do not feel safe in these facilities.¹⁶ Youth at both facilities reported problems with both youth-on-youth violence and improper restraints by staff. Corsicana and Al Price have two of the highest rates for reports of assault – by youth and by staff – according to data kept by the TYC Office of Inspector General.¹⁷ Only one other secure facility – Crockett State School – is a consistent source of a higher number of reports of assault by staff or youth.¹⁸ Corsicana also was named in the 2010 Bureau of Justice Statistics Special Report on Sexual Victimization in Juvenile

¹⁶ DOJ's 2007 investigation of Evins found strikingly similar conditions. Letter to Hon. Rick Perry, *supra* note 12, at 6 ("Youths consistently reported that they did not feel safe. One said, 'It's not safe for me to be on this campus.' Another related, 'In a gang you're not safe, but safer.'").

¹⁷ TEXAS YOUTH COMMISSION, OFFICE OF INSPECTOR GENERAL, QUARTERLY REPORTS, *available at* <http://www.tyc.state.tx.us/oig/index.html>

¹⁸ *Id.*

Facilities as having the second highest rate of sexual abuse among juvenile facilities in the nation.¹⁹

Improper Restraint by Staff

Attorneys from Advocacy, Inc., the Center for Public Representation, and the National Center for Youth Law visited Corsicana Residential Treatment Center on March 29, 2010. As mentioned above, Corsicana houses youth whose mental health needs cannot be met in other facilities. During this visit, the attorneys interviewed eight youth.

The youth described a climate of fear at Corsicana that included fear of staff as well as of other youth. One youth reported “an awful lot of restraint,” during which youth are “smacked to the ground” or “dragged” with multiple staff involved in the restraint. This was confirmed by another youth who described five-to-six staff being involved in restraints that were often used for low-level misbehavior including “talking back” to staff. One youth said he was kicked by a staff person while he was in his cell, and another said he was slapped on the back of the head by a staff person. Another youth described being “choked” by staff during a restraint.

During the restraint of an Advocacy, Inc. client at Corsicana, a staff member grabbed him by the neck, threw him into the wall, and continued to hold him by the neck until other staff arrived. The youth’s attorney was told that this staff member received only a disciplinary letter in his file because investigators were unable to tell if he “had actually squeezed” the youth’s neck.

One of the youth interviewed during this visit was brought to the interview in restraints. The youth was calm and presented no behaviors warranting restraint, and the youth reported that he was routinely shackled for any legal interview. Several Advocacy, Inc. clients have been placed in barrel restraints for minor infractions, including refusing to give up “contraband” (a roll of coins), or for placing staples and paper clips in their mouth. The response to these rule infractions – placing them in a barrel restraint – seems disproportionate to their behavior.

An Advocacy, Inc. client at Ron Jackson was placed in a physical restraint for refusing to stand up. The youth was sitting on the floor of her dorm. When she was told by staff to get up and she refused, staff called security. Three staff members dragged her to the side of the room and physically restrained her before having her carried to the security unit, where she remained for several hours.

¹⁹ U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2008-09 (2010). TYC responded to this report by hiring the Moss Group to “assess the sexual safety of youth in all TYC facilities.” As of May 2010, TYC reported that the Moss Group had made a site visit to Corsicana. See Message from TYC Executive Director Cherie Townsend to all TYC staff (May 18, 2010) available at http://www.tyc.state.tx.us/news/ctownsend_05_18_2010.html

Attorneys with Advocacy, Inc., the Center for Public Representation, and Texas Appleseed visited the Al Price facility in Beaumont on August 4, 2010. During that visit, we met with 14 youth. Most of their concerns related to youth-on-youth violence, discussed below. However, two youth spoke of an incident involving a restraint by a staff person who “grabbed [the youth], lifted him up, and slammed him into the floor and held him down.” One youth reported that the restrained youth’s jaw was dislocated, another said that this resulted in “injuries to the youth’s face and shoulder.” Another youth described a restraint in which the staff person “took the [youth] down and had him face down with his knee in his back.” Staff reportedly would not ease up on the restraint even when the youth complained that he couldn’t breathe.

Youth-on-Youth Violence

During our March 2010 visit, youth at Corsicana also spoke of youth-on-youth violence. Several of the residents reported being frightened of other youth. One youth reported that youth-on-youth sexual assaults occur at Corsicana “on a daily basis.” This youth seemed particularly fearful. Another youth also spoke of sexual activity among youth, but it was not clear whether this was consensual. Given the 2010 Bureau of Justice Statistics findings, we were deeply concerned by these reports.

Another youth at Corsicana had his arm in a cast when we met with him. This youth reported that his arm was broken when he got into a fight with another youth during orientation. It wasn’t clear whether this occurred at Corsicana or Mart I.

Self-harming behavior is also of great concern, particularly at Corsicana. Several of the youth we met had engaged in serious and dangerous cutting behavior. Youth who were not cutting prior to placement at Corsicana began cutting after being placed there. This has been true since we began visiting Corsicana in 2007, and almost appears to be an established part of the culture of that facility.

As we spoke with youth at Al Price during our visit last month, we heard more and more about the chaotic, dangerous conditions at that facility.²⁰ The youth we interviewed spoke of frequent riots and fights, and of being “jumped” by other youth. When asked directly whether “kids felt safe” at Al Price, every young person we asked said they did not feel safe.

One of the first youth we interviewed at Al Price had a broken jaw; his mouth was still wired so that he could not move his jaw. The youth told us that the injury occurred when he was attacked by another youth while they were in their dorm. When we met with him, he’d been kept in security for more than a month after coming back from the hospital just a few days after the incident in June. Asked why he was being kept in security, the youth said the staff members were afraid to put him on the dorm with the other youth. While he

²⁰ Again, these reports are remarkably similar to what DOJ noted earlier at Evins. *See* Letter to Hon. Rick Perry, *supra* note 12, at 6 (“Many of the youths we interviewed stated that fights are a regular part of the culture on the living units.”).

was in security, there was nothing for him to do except “sit by the window and watch the other kids walk by.”

One youth said “as soon as you set foot on Al Price, you could feel the tension, you could feel something is going to happen.” He said that when a new youth comes to Al Price, “he is jumped by everyone.” When we asked this youth if staff knew of the problems, he said that they knew but “couldn’t really do anything unless they catch it.” This youth said that his caseworker had him moved to a different dorm several times, but at each dorm, he encountered the same problem.

Youth told us that their food gets stolen, and that kids steal things out of their rooms. The youth spoke of the frustration of feeling that either they had the choice of defending themselves and getting in trouble for “feeding in,” or of getting beaten or having their things stolen. Youth spoke of frequent riots, including a recent riot just outside the education building. They reported this riot was “gang related.” They also reported frequent fights between youth.

The youth themselves were able to identify one of the causes for the excessive number of fights and riots – lack of programming. Most specifically, there is a lack of educational programming (see below), which leads to boredom and long periods of time spent in the dorm. Youth reported spending hours that would ordinarily be spent at school in the dorm with little to do except watch television or play games. During this time, youth reported engaging in “horseplay” that often ended in fights and resulted in youth getting sent to security.

II. Inadequate Mental Health Care

Thirty-seven percent of youth in TYC have been characterized as having “serious mental health problems.”²¹ However, a much higher percentage of youth – 48 percent – had some need for mental health treatment in 2009.²²

Youth in TYC facilities have a constitutional right to adequate mental health care. *Youngberg*, 457 U.S. at 323-24; *Morales v. Turman*, 383 F. Supp. 53, 101 (E.D. Tex. 1974), rev’d on other grounds, 535 F.2d 864 (5th Cir. 1976), rev’d, 430 U.S. 322 (1977). Texas Appleseed and Advocacy, Inc. became concerned about problems with mental health treatment in TYC facilities early in our work. Most importantly, it is apparent that youth in TYC facilities are being unnecessarily incarcerated due to failures in the state’s community mental health system, and that once inappropriately warehoused in TYC facilities their conditions are worsened.

Unfortunately, TYC has not been able to adequately address the problems related to mental health care that we have raised in meetings with leadership. Advocacy, Inc. staff who provide direct representation to youth with disabilities regularly raise concerns over the inadequacy of mental health services and have seen a pattern of shortfalls in care

²¹ TYC, STRATEGIC PLAN, *supra* note 4, at 15.

²² *Id.* at 84.

system-wide. The pattern includes an extreme shortage of appropriate mental health staffing, a lack of continuity of care, and a lack of integrated care.

Shortage of Mental Health Staff

Corsicana Residential Treatment Center is the secure facility set aside for specialized treatment of youth with severe mental health problems. Since many youth in the TYC system have at least one mental health diagnosis, the youth who are sent to Corsicana are considered to be in need of treatment that cannot be provided in other settings. Corsicana also houses the Corsicana Stabilization Unit (CSU), where youth are sent when their behavior has disintegrated to the point that it is deemed to present a risk of serious harm to themselves or others.²³

Corsicana has the capacity to house up to 145 youth and their daily population usually stays just below capacity at around 130 youth with perceived serious mental health issues. Yet, this facility's staffing levels fall far short of what would be expected for this type of program and population. As of August 6, 2010, the mental health staff at the facility consisted of:²⁴

- Two unlicensed PhD psychologists
- Two licensed associate psychologists
- Two unlicensed psychologist interns
- One contract psychiatrist, who provides services on a part-time basis.

There are no social workers on staff. TYC is apparently incapable of filling vacant positions with appropriately licensed staff in large part because of the remote location of the facility.

Existing staffs' hours do not always appear to correspond to expected need for services within this type of facility. In response to an open records request, TYC stated that the contract psychiatrist was funded to provide services up to 30 hours per week at Corsicana, but that the number of hours spent at the facility "varies." The response to an earlier open records request indicated that the psychiatrist for this facility reported spending an average of only 17 hours per week at Corsicana.²⁵

While we have not investigated the adequacy of mental health staffing at other facilities, we suspect there may be shortfalls system-wide. As of March 2010, there were only 24 full-time associate psychologists, seven full-time psychologists, and four full-time social workers employed system-wide in TYC facilities – in either a secure facility or a halfway

²³ See 37 TEX. ADMIN. CODE §87.67.

²⁴ Based on information received by Advocacy, Inc. on August 6, 2010 through an open records request to TYC.

²⁵ Advocacy, Inc. received information regarding mental health staffing for all the facilities in late 2009. Though Advocacy, Inc. requested updated information for Corsicana in July 2010, the update did not include the average number of hours the psychiatrist spent at the facility.

house.²⁶ Both the “social services” staff and “medical and health” staff had a high turnover rate, of 27 percent and 25 percent, respectively.²⁷

While we were visiting Al Price, the Assistant Superintendent told us that they have several youth who have mental health problems that would typically qualify them for placement at Corsicana. Several of the youth we spoke with were taking psychotropic drugs. Yet, the youth did not report seeing a psychologist regularly and had met with a psychiatrist only via televideo. We spoke with the lead psychologist at the facility, who could not tell us how many youth were taking psychotropic medication.

During our interviews, one youth told us that he had requested to see a psychologist on several occasions for an anger problem and that his caseworker had made several referrals for him to see a psychologist. However, more than a month had gone by and he had neither been seen by a psychologist nor notified when he would be seeing one. Indeed, he reported that he had received no response whatsoever regarding his efforts to get some mental health treatment.

Staff from Texas Appleseed, Advocacy, Inc., and the Center for Public Representation visited Mart I & II on July 7, 2010. We interviewed three youth in Mart I, and five youth in Mart II. As we were leaving, we attempted to alert the psychiatrist to one youth’s report that he needed to be evaluated for medication. After a great deal of confusion, we were told the psychiatrist was on vacation and there was no one there who could help us with the youth’s request.

In many cases, the shortage of mental health staff not only results in inadequate treatment but also results in a lack of continuity of care and inadequate integration between psychiatric treatment, treatment provided by TYC psychologists, and educational or behavioral programming. And the lack of adequate, legally mandated children’s mental health services throughout Texas communities results in far too many youth inappropriately incarcerated in these prisons that make their conditions worse.

Lack of consistent, integrated mental health care

System-wide, TYC is unable to provide consistent care that is integrated into educational and behavioral health programming. This is in part due to the way mental health services are provided in TYC. Though TYC employs psychologists who work with youth, psychiatrists are provided through a contractor.

The University of Texas Medical Branch (UTMB), based in Galveston, Texas, is the contract provider of psychiatric services.²⁸ Because of the shortage of qualified, licensed staff, UTMB has not assigned specific psychiatrists to each facility. Rather, youth see whichever psychiatrist is available the day of the youth’s appointment.

²⁶ TYC STRATEGIC PLAN, *supra* note 4, at 183.

²⁷ *Id.*

²⁸ TYC has just renegotiated its contract with UTMB. See Texas Youth Commission, Board Meeting Minutes, May 21, 2010, available at <http://www.tyc.state.tx.us/about/tycminutes.html>

This results in severe inconsistencies in care. For example, an Advocacy, Inc. client currently housed at Corsicana who is diagnosed with schizoaffective disorder hears voices that tell her to harm herself. Due to the lack of consistent, qualified psychiatrists, she has been seen each month by a different psychiatrist via televideo. This results in frequent changes in psychotropic medications, as some psychiatrists appear to prefer one drug over another and will arbitrarily change the youth's medication accordingly. At her most recent psychiatrist appointment, the doctor noted that the psychiatrist who had seen her via televideo the previous month had changed her medication, prescribing two contraindicated anti-psychotic medications. This combination led to a dramatic increase in the youth's self-harming behavior.

Lack of consistency may also result in overmedication. During the March 2010 trip to Corsicana, several youth appeared to be overmedicated. It can also result in difficulty stabilizing youth on medication. Under TYC's administrative rules, when a youth refuses medication three times, he or she is taken off the medication. Often, youth refuse medication because of side effects or some other legitimate reason. However, it takes so long for the youth to see a psychiatrist that the youth may not be prescribed another medication for weeks. Since it may take several attempts to get a youth on a medication regimen that alleviates his or her symptoms without side effects, the shortage of psychiatrists and long waits between appointments means some youth do not get stabilized on medications.

In addition to continuity of care issues, youth's mental health treatment is rarely integrated with behavioral and educational programming. TYC's CoNEXTions program is designed around five core principals:

1. Be at the Right Place at the Right Time.
2. Follow Directions.
3. Participate in Activities.
4. Respect Others.
5. Accept Consequences.

While the literature describes a program that is designed to respond to the individual needs of youth, the reality appears quite different. CoNEXTions is described as "flexible to allow for individual youth needs and strengths," and "fully integrative with other agency programs and community services."²⁹

Yet, one client of Advocacy, Inc. entered into an agreement with his psychologist that he would refer himself to security to manage behavioral and safety issues associated with his mental illness. However, because the first rule of CoNEXTions is "Be at the Right Place at the Right Time," this youth often was not considered by facility staff to be at the right place at the right time because he was following the plan of self-referral to security. Consequently, he is not able to progress in the CoNEXTions program, which will likely affect his commitment length. When his Advocacy, Inc. attorney suggested that the

²⁹ TYC STRATEGIC PLAN, *supra* note 4, at 20.

CoNEXTions program should be modified to accommodate the plan suggested by the youth's psychologist, the very psychologist who developed the plan responded that the program could not be modified and noted, "in Corsicana, all kids are held to the same standards. They all have to abide by the five rules of CoNEXTions. The program takes into account mental health disability."

The same youth also has an intellectual disability and has great difficulty reading. TYC is aware of his reading disability, and he receives accommodations for this in the classroom. Yet, he has been given a 60-page document that he must complete in order to progress to the next level of CoNEXTions. When his Advocacy, Inc. attorney raised the issue of his reading disability and the difficulty the youth would have completing the document, she was told everyone had to complete the document to progress in CoNEXTions, and his reading disability could not be accommodated.

Lack of Trauma-Informed Care

Nearly 40 percent of TYC youth report having experienced trauma, most often sexual abuse, prior to commitment.³⁰ Concern for youth who enter TYC from the foster care system led Advocacy, Inc. to create a program of representation geared specifically toward foster care youth in TYC custody. Attorneys who represent youth as a part of this program report a lack of trauma therapy for youth with very significant trauma in their histories.

Another Advocacy, Inc. client— a young woman who was a victim of sexual abuse prior to her commitment – has been restrained by male staff, with the staff person lying on top of the youth. Staff is aware of the youth's history of sexual abuse and has been advised not to restrain her in a way that will re-traumatize her.

III. Lack of Educational Programming

The Texas Constitution recognizes the importance of education, and mandates the provision of a system of public schools.³¹ All children in Texas are not only entitled to a free public education, but are required to attend school until they are 18 years of age.³² TYC's failure to provide educational programming to incarcerated youth deprives them of this state-created right without any rational basis in violation of the Equal Protection clause of the Fourteenth Amendment. *Plyler v. Doe*, 457 U.S. 202, 221-22 (1982). Federal law also requires TYC to provide educational programming. TYC is required to provide juveniles in its facilities with rehabilitative care. *Nelson v. Heyne*, 355 F.Supp. 451, 459-60 (N.D. Ind. 1972). Given the impact that academic failure or dropout has on the propensity to recidivate,³³ meaningful rehabilitative care must include educational programming.

³⁰ TYC STRATEGIC PLAN, *supra* note 4, at i.

³¹ TEX. CONST. art. 7

³² TEX. EDUC. CODE ANN. § 25.085(b).

³³ CENTER FOR LABOR MARKET STUDIES, THE CONSEQUENCES OF DROPPING OUT OF HIGH SCHOOL: JOBLESSNESS AND JAILING FOR HIGH SCHOOL DROPOUTS AND THE HIGH COST FOR TAXPAYERS (2009)(high school dropouts

Furthermore, students with disabilities in TYC facilities have federal statutory rights to special educational services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 *et seq.* The IDEA requires states like Texas that accept federal funds, to provide educational services to all children with disabilities even if the children have been removed from school and are in juvenile justice facilities. 20 U.S.C. § 1412(a)(1)(A), 34 C.F.R. § 300.2(b)(1)(iv) (applying IDEA requirements to “State and local juvenile and adult correctional facilities”). See *Handberry v. Thompson*, 92 F. Supp. 2d 244, 248 (S.D.N.Y. 2000) (“the [IDEA] entitlement to special education services is not trumped by incarceration.”); *Alexander S. v. Boyd*, 876 F. Supp. 773, 800 (D.S.C. 1995) (IDEA regulations make it clear that reference to all programs includes state correctional facilities). In addition, Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794, also requires states to provide juveniles confined in its institutions with educational services.

Most youth in TYC struggled academically before being committed. In 2009, the median age of the youth at the time of their commitment to TYC was 16, however the median reading achievement level for the youth was 6th grade and the median math achievement level was 5th grade.³⁴ Yet, only 36 percent of TYC youth were identified as eligible for special education.³⁵

In 2008, a report was released documenting serious shortcomings in TYC’s educational programming.³⁶ This report was highly critical of problems with education within the entire TYC system. Problems cited by the report included inconsistencies between facilities in length of school day, structure, and program offerings; lack of educational programming for youth in security; and extensive problems with special education services.³⁷

TYC responded by creating an Education Plan that included a new curriculum (CSCOPE) meant to “align TYC curriculum with what is being used in Texas public school systems,” a comprehensive reading skills program, and expanded special education services.³⁸

Shortage of Teachers & Cancelling of School

Despite these initiatives, recent visits to TYC facilities have confirmed extreme shortfalls in educational programming. A shortage of teachers – and a rash of teachers calling in

47 times more likely to be incarcerated than their similarly aged peers who held a four year college degree).

³⁴ TYC STRATEGIC PLAN, *supra* note 4, at 83.

³⁵ *Id.* at 84.

³⁶ MICHAEL P. KREZMIEN, A REVIEW OF EDUCATION PROGRAMS FOR STUDENTS IN THE TEXAS YOUTH COMMISSION STATE SCHOOLS: A SPECIAL REPORT OF THE OFFICE OF INDEPENDENT OMBUDSMAN (2008).

³⁷ *Id.*

³⁸ TEXAS YOUTH COMMISSION, TYC EDUCATION PLAN: IMMEDIATE ACTION ITEMS FOR THE UPCOMING 2009-2010 SCHOOL YEAR (2009).

“sick” for several days in a row – has resulted in an inability to provide regular programming.

Data received by Advocacy, Inc. from TYC in response to an open records request also suggest problems, with a high number of school days cancelled or shortened either due to a shortage of staff or youth misbehavior in five of the nine facilities for which TYC produced data, including: Al Price, Crockett, Gainesville, Mart II, and Ron Jackson I.³⁹

During our visit in July, one youth in Mart I, and all of the youth we interviewed in Mart II, reported serious problems with educational programming. Specifically:

- Youth reported that they had not been attending school regularly for at least a month.
- Instead of following a regular school schedule, teachers bring packets of work to the youths’ dorms, and they complete the packets in their dorms.
- The teacher does not stay in the dorm while youth are working on the packets, because she must distribute packets to other dorms. Some youth told us that the teachers would help them with their work if they had problems and if they asked for help. Others told us that since the teacher did not stay in the room while they completed the work, some students often copied work off of one another.
- Most youth told us these packets were easier than their normal school work. One student reported that the packets often included crossword and hidden word puzzles, and that the work took him “about 15 minutes” to complete. Another student called the work he was given “kindergarten work.” All of the youth reported that it took an hour or less to finish the packets.
- Once they finish the packets, they are not given more work to do.
- One student told us that the work was “more difficult” than the regular schoolwork. We had very serious concerns about whether this might be a Special Education student whose needs were either unidentified, or were not being met.

After we spoke with the youth at Mart II, we spoke with the Superintendent for Mart II. The Superintendent acknowledged that students had not been going to school due to a teacher shortage, and asked, “How can I have school with no teachers?” The Superintendent said that the teachers are working hard and that the packets were an alternative to classroom work.

Similar problems were described by youth during our visit to Al Price on August 4:

³⁹ TYC produced data for every facility except Ron Jackson II.

- All the youth we interviewed at Al Price told us they had not been in school at all for at least two weeks, and that school before that period was inconsistent at best.
- Youth reported that, at most, they went to school about three days per week.
- Youth also said that they often had shortened school days – on some days, they were only in class for half the day.
- Youth complained that the problems with the educational programming meant they had trouble getting class credits.

Youth reported that the irregular educational programming was often due to a shortage of teachers, or to teachers calling in sick. We also learned during our visit that the new principal at Al Price is the sixth principal that the facility has had in the last 21 months. The frequent turnover in leadership at this level undoubtedly contributes to problems with educational programming. TYC’s recent Strategic Plan suggests that this instability is not just a problem at Al Price – with the turnover rate for educational staff *increasing* from 25 percent to 27 percent between 2007 and 2009,⁴⁰ despite the system-wide reform initiatives.

Problems with Special Education

The failure to provide full weeks of school and full days of class even when school is held denies students with disabilities of their right to a free, appropriate public education required by the IDEA. Even when students do attend school, the shortage of professional staff continues to create significant problems. Advocacy, Inc. staff working with students in facilities across the state note that due to the lack of qualified staff there are unreasonable delays in obtaining Functional Behavioral Assessments (FBA) and other evaluations for youth receiving or needing special education services. TYC acknowledges that it needs to increase its special education staffing in order to provide special education and legally required related services. In their Strategic Plan, TYC notes, “in order to provide special education services equitable to those provided in mainline public schools, TYC will need to hire additional special education teachers and teacher aides.”⁴¹

The IDEA also requires schools to have procedures for identifying and testing students with disabilities. 34 C.F.R. § 300.111(a)(1)(I). Interviews at Mart I & II and Al Price raise serious concerns regarding “child find” issues. We interviewed several youth who appeared to us to be candidates for special education services but who reported to us that they have never been offered any.

IV. Over-Reliance on Short-Term Security & Lack of Programming for Youth in Security

⁴⁰ TYC, STRATEGIC PLAN, *supra* note 4, at 184.

⁴¹ *Id.* at 73.

TYC data indicate that some facilities tend to over-rely on short-term security referrals as a method of behavioral management. “In a juvenile facility, segregation is typically the most severe disciplinary sanction available. Generally accepted juvenile justice practices dictate that it should be used only in the most extreme circumstances, and only when less restrictive interventions have failed or are not practicable.”⁴²

Data from TYC show that youth are referred and admitted to security at exceedingly high rates.⁴³ In several facilities, the number of youth who are referred to security each month is more than double the facility’s capacity. While security admissions are considerably lower,⁴⁴ in many cases, they still exceed the total number of youth in several facilities.

Referrals and Admissions to Security
by Facility July 2010

Facility Name (Capacity)	Referrals	Admissions
Al Price (176)	547	175
Corsicana (145)	754	226
Crockett (180)	503	462
Evins (176)	496	204
Gainesville (288)	644	221
Giddings (296)	716	283
McLennan II (214)	489	256
McLennan I (156)	682	276
Ron Jackson I (162)	499	245
Ron Jackson II (108)	173	60

The referral rates suggest a revolving door in security units in most facilities. For example, at Al Price – with 547 youth referred to security in July 2010 – an average of 18 youth were referred each day. Of these, an average of five youth were admitted to security each day of that month. Corsicana – which should arguably strive to use security less often than other facilities – had a higher referral and admission rate, with an average of 24 youth referred each day and seven admitted to security. Admissions to security for July exceed potential facility capacity in six of the 10 facilities. While this might not present a problem for youth who spend a few hours, or even a day, in security, there are many youth who are admitted to security multiple times over the course of their stay at TYC. This is confirmed through our interviews with youth, who report having been referred to security multiple times for very low-level misbehavior.

⁴² Letter to Hon. Mitch Daniels, Governor, from Thomas E. Perez, Ass’t Attorney General (January 29, 2010).

⁴³ Data produced pursuant to an open records request by Advocacy, Inc. to TYC.

⁴⁴ Pursuant to TYC policy, youth referred to security are provided a Level III hearing within one hour of arrival (or two hours with approval of the administrator). Those determined to meet the security admission criteria are then admitted and confined in a locked cell for up to 24 hours, with the possibility of four additional 24-hour extensions. 37 TEX. ADMIN. CODE §§97.40(e)-(g).

Our interviews also indicate that youth who are in security receive little programming. Interviews with youth at Mart I & II indicate serious problems with programming for youth in short-term security, particularly for youth who are in security pending a Level II hearing. Several of the youth we spoke with – both in Mart I and Mart II – reported that it was not unusual for youth to spend up to five days in security pending a Level II hearing. While this is consistent with TYC’s administrative rule, during that time the youth were only being allowed out of their cells for showers. Youth reported they were not receiving any schoolwork – even the packets provided to youth in the general population - while in security or any opportunity for exercise out of their cell. This in no way complies with TYC’s administrative rules regarding security, which require youth to be out of their rooms for at least four hours a day, with access to 5.5 hours of educational programming each day to “enable the youth to meet the goals of the youth’s individualized education plan.”⁴⁵

We noticed cage-like structures around the showers in security units in Mart I and Mart II. Staff confirmed that the cages were added because youth would “run around” the locked area in security when they were taken out of their cells for showers. To avoid this, staff indicated that youth are handcuffed while they are in their cells, and then escorted to the shower cage, which also has a handcuff port. The cuffs are taken off once the youth is inside the shower cage, and the youth is then given the opportunity to shower. This is in complete contradiction to the recent changes to the rules relating to security. The rules, which went into effect September 1, 2009, focus on less punitive measures, and more time out of cells even for youth who are in security for shorter stays, as discussed above. However, for some youth, even the short time they are allowed out of their cells for a shower is spent in a locked shower cage.

Finally, we were told that the ReDirect Program – which is a long-term security program for youth with aggressive behavioral issues – is not working as the rule requires at the Al Price facility. Youth who are on Step 1 of the program spend 23 hours per day locked in their cells. This is contrary to TYC’s administrative rule, which requires doors to remain unlocked except during sleeping hours.⁴⁶ Youth spend at least a week on Step 1, though one youth told us he knew of a youth who had spent up to a month on Step 1. Step 1 youth neither attend school nor are they provided with individualized instruction in their cells. Though youth reports seem to indicate that the ReDirect program appears to be working as anticipated at other facilities, it clearly was not being administered correctly at Al Price.

Conclusion

Information received through interviews with youth, Advocacy, Inc.’s direct representation of youth, and information received from TYC through open records requests indicate serious risks to the safety and well being of youth in TYC facilities. We encourage you to investigate not only the facilities mentioned in this letter, but all ten

⁴⁵ 37 TEX. ADMIN. CODE §97.40.

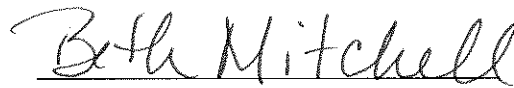
⁴⁶ 37 TEX. ADMIN. CODE §95.17.

facilities within the TYC system. While we have visited many facilities and spoken with a number of youth, we suspect there are many problems that we may not have uncovered simply because of our limited resources.⁴⁷ We are happy to assist you in whatever way we can.

Sincerely,



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Marina Mazor, Attorney, Special Litigation Section

Honorable John Whitmire, Chair, Texas Senate Criminal Justice Committee
Honorable Jim McReynolds, Chair, Texas House of Representatives Corrections
Committee

⁴⁷ Our research for this letter uncovered serious concerns regarding Crockett, based on data from the OIG regarding the number of assaults reported by youth and staff, as well as the education data which show a high number of school days cancelled at that facility. The data tend to suggest a chaotic environment with problems similar to those we found at Al Price. In addition, a youth at Crockett committed suicide last year. See Terri Langford, *14-year-old hangs himself at Crockett youth lockup*, HOUSTON CHRONICLE, March 18, 2009.