June 19, 2003

The Honorable Ronnie Musgrove
Governor of Mississippi
Office of the Governor
Jackson, Mississippi 39205

Re: CRIPA Investigation of Oakley and Columbia Training Schools in Raymond and Columbia, Mississippi

Dear Governor Musgrove:

On May 8, 2002, we notified you of our intent to investigate the Oakley Training School in Raymond, Mississippi ("Oakley") and the Columbia Training School in Columbia, Mississippi ("Columbia") pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA"), and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. Consistent with the statutory requirements of CRIPA, we are writing to report the findings of our investigation. At the outset, we wish to express our appreciation for the complete cooperation of the staff at the facilities, the Department of Human Services, and the Attorney General's Office during this investigation.

On June 24-28, 2002 and July 16-17, 2002, we conducted on-site inspections of Oakley with expert consultants in juvenile justice administration, psychology, medicine, education, and sanitation. On July 29-August 1, 2002 and September 25-27, 2002, we inspected Columbia with all but the sanitation expert consultant. We reviewed documents including, but not limited to, policies and procedures, incident reports, medical and education files, and facility maintenance records.

We find that conditions at Oakley and Columbia violate the constitutional and statutory rights of juveniles. Youth confined at Oakley and Columbia suffer harm or the risk of harm from deficiencies in the facilities' provision of mental health and medical care, protection of juveniles from harm, and juvenile justice management. There are also sanitation deficiencies at Oakley. In addition, both facilities fail to provide required general education services as well as education to eligible youth as required by the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401, et seq., and Section 504 of the

Rehabilitation Act of 1973, 29 U.S.C. § 794. Finally, we find that Oakley and Columbia violate the youths' First Amendment rights by forcing them to engage in religious activities.

I. BACKGROUND

The Mississippi Department of Human Services operates Oakley and Columbia through the Division of Youth Services. The average length of stay for youth in the training schools is two to three months, but some youth may stay up to six months or longer. The majority of youth committed to Oakley and Columbia are non-violent offenders. For example, 75 percent of the girls at Columbia are committed for status offenses, probation violations, or contempt of court. The majority of boys at Oakley are committed for property offenses, lower level drug possession charges, or auto theft charges.

Youth offenders who are mentally ill or have mental retardation are to be committed by the Mississippi youth courts[1] to rehabilitation facilities operated by the Mississippi Department of Mental Health. See MS ST §§ 41-21-109; 43-21-611. Thus, we were told that youth with mental illness or mental retardation are not confined at Oakley or Columbia. As discussed in greater detail below, this is not the case.

A. Description of the Facilities

1. Oakley Training School

Oakley Training School, also known as the Mississippi Youth Correctional Complex, sits on approximately 1,068 acres of land surrounded by agricultural fields in Raymond, Mississippi, which is approximately 30 minutes outside of Jackson, Mississippi. Oakley is designed to function as a paramilitary program for delinquent boys[2] and is comprised of three operational units,

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[1] Mississippi youth courts are divisions of either chancery or county courts and have original jurisdiction in proceedings involving delinquent, neglected or battered children.

[2] Reportedly, the program imposes a military style discipline on youth and is purported to promote a "vigorous physical fitness training program."

Unit One, Unit Two, and Ironwood. Boys housed at Oakley range in age from 10 to 17. At the time of our visit, 336 boys were committed to Oakley.

Unit One is a large, under-utilized, self-contained building with a housing capability of 275. Enclosed in a secure perimeter fence, Unit One contains the intake unit with approximately four separate cells, a medical infirmary, its own school, a small modern gym, and outside recreational space. The intake unit is where youth sent to Oakley are processed and evaluated, and contains 11 separate living units known as pods, each designed to hold approximately 20 juveniles. Each pod has a locked correctional officer's control room designed in a manner such that no interaction between line staff and juveniles can occur. During our visit, only three of the 11 pods were operational due to staff shortages.

Unit Two consists of several unfenced buildings in a traditional juvenile detention campus setting with a free-standing school, vocational shops, a large cafeteria, a chapel, and open space used for parade and military training. Unit Two has eight living units known as cottages. The cottages hold between 24 to 32 juveniles. Unit Two also has a separate unit known as the Special Intervention Unit ("SIU") for youth with behavioral and disciplinary problems, and youth who are suicidal. The SIU has 14 locked single cells and a large unfurnished day room that is adjacent to the staff control room. During our visit, approximately seven youth were confined to the SIU.

Ironwood, the third unit on the Oakley campus, is a free-standing building housing boys aged 10 to 17. Ironwood is described as a 90-day, therapeutic intensive treatment unit for boys with behavioral problems from Units One and Two at Oakley and transfers from Columbia. It is a self-contained maximum security unit purportedly used for the most aggressive juveniles. Youth who are considered difficult, have attempted to escape, have been involved in assaults, or have serious emotional or mental health problems are housed there. Ironwood can house 25 youths in locked single cells. Nineteen boys were confined in Ironwood during our visit.

2. <u>Columbia Training School</u>

The Columbia Training School, located in Columbia, Mississippi, is approximately two and one-half hours northwest of

Gulfport, Mississippi. Like Oakley, Columbia sits on over 1,000 acres of land in an unfenced agricultural setting and purports to use a military model for delinquent youth. Columbia, comprised of several housing and administration buildings encircling a large field in a cottage setting, has a medical clinic, a free-standing school with a cafeteria, a chapel, and a gym. Columbia houses girls aged 10 to 18 and boys aged 10 to 15. During our site visit, 196 youth were committed to Columbia, 92 girls and 104 boys.

Columbia has two secure housing units, one for boys and the other for girls, used in the same manner as the SIU at Oakley with the added function of serving as the intake units for all Columbia youth. The boys' population in an SIU unit called McGehee varied from seven to 12 during our tour. The girls' SIU population in a unit called Cleveland ranged from 10 to 12. During our visit, only four residential cottages were being used and only one of those housed girls, Hammond Cottage. Hammond Cottage, designed to hold approximately 40 girls, has two divisions: one side of the cottage houses girls rotating through the basic training program and the other side houses the advanced training programs. During our visit, the basic side of Hammond housed 43 girls and the advanced side 37 girls. Many girls had bunks in the hallways due to overcrowding. Boys were housed in the other three cottages -- Rouse, Hugh-White, and Burrow. Rouse is a boys' basic program cottage for new commitments and housed 28 boys during our visit. Hugh-White is for basic program participants who are re-committed to Columbia. Hugh-White housed 27 boys during our visit. Burrow is for boys in the advanced phase of the program and housed 40 boys.

B. Legal Background

Youth adjudicated delinquent have a right to reasonably safe confinement conditions and, at a minimum, should have the same constitutional protections as adult pretrial detainees. See Youngberg v. Romeo, 457 U.S. 307, 315-16 (1982) (holding that a person with mental retardation committed to the state's custody has substantive due process rights under the Fourteenth Amendment); Bell v. Wolfish, 441 U.S. 520, 535-36 (1979) (Fourteenth Amendment standard applies to pretrial detainees); Gary H. v. Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987) (applying the Fourteenth Amendment standard afforded adult pretrial detainees to juveniles); Morgan v. Sproat, 432 F. Supp. 1130, 1135-36 (S.D. Miss. 1977) (in a case involving the rights

of youth confined at Oakley, the court held that juveniles adjudicated delinquent are entitled to substantive due process protections under the Fourteenth Amendment); see also Morales v. Turman, 383 F. Supp. 53, 120 (E.D. Tex. 1974) ("all juveniles . . . are constitutionally entitled to care that at least conforms to minimal professional standards,"), rev'd on other grounds, 535 F.2d 864 (5th Cir. 1976), rev'd, 430 U.S. 322 (1977) (per curiam), on remand 562 F.2d 993 (5th Cir. 1977 (court did not reach definitive holding regarding existence of right to treatment), on remand 569 F. Supp. 332 (E.D. Tex. 1983).

Adjudicated youth have a right to adequate education instruction. See Morgan v. Sproat, 432 F. Supp. 1130, 1140-41 (S.D. Miss. 1977). Eligible youth also possess federal statutory rights to education under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, et seq. and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. See Alexander S. v. Boyd, 876 F. Supp. 773, 788 (D.S.C. 1995).

II. FINDINGS

Youth at Oakley and Columbia are confined in unsafe living conditions and receive inadequate treatment and care. These conditions exist mainly because of staff shortages, ineffective management and supervision at every organizational level within both facilities, and the facilities' emphasis on control and punishment instead of rehabilitation.

A. Protection from Harm

Oakley and Columbia do not have any system of positive incentives to manage youth, but instead rely on discipline and force. This leads to unconstitutionally abusive disciplinary practices such as hog-tying, pole-shackling, improper use and overuse of restraints and isolation, staff assaulting youth, and OC spray abuse.

1. Abusive Disciplinary Practices at Columbia

(a) Hog-tying and Pole-Shackling

The use of restraints without penological justification is cruel and unusual punishment. See Hope v. Pelzer, 122 S. Ct. 2508, 2514, 2518 (2002) (the unnecessary handcuffing of an inmate to a hitching post after his disruptive behavior ended violated

the Eighth Amendment). Youth reported and one staff member confirmed incidents of hog-tying at Columbia in the boys' and girls' SIUs and in Hammond Cottage. Approximately 10 to 15 boys and girls consistently described the practice, where youth are placed face down on the floor with their hands and feet shackled and drawn together. That is, youths' hands are handcuffed behind their backs. Their feet are shackled together and then belts or metal chains are wrapped around the two sets of restraints, pulling them together. A 13-year-old boy, in the SIU on suicide watch, told us that he had been hog-tied twice while in the SIU. Another boy told us that he was hog-tied for refusing to follow orders. Several girls in Hammond Cottage told us that either they had been hog-tied or they had witnessed other girls being hog-tied. They reported that girls are typically tied for three hour periods in the corners of the cottage and stated that girls were also hog-tied in the SIU. Girls also reported being hog-tied in a SIU cell called the "dark room."

Contrary to Columbia's policy that requires the documenting of all uses of restraints, the practice is not documented in incident reports or unit logbooks. When our expert consultant discussed the apparent discrepancy between youth reports and lack of incident report documentation, Columbia SIU staff either denied that these incidents took place or reluctantly admitted they may have occurred -- but not during their shifts. A senior manager claimed it had been a long time since hog-tying had occurred because the practice was "inhumane." However, one relatively new SIU staff person stated that hog-tying had occurred in the boys' SIU a few months prior to our visit.

Thus, we have reason to believe that hog-tying occurs at Columbia despite the lack of penological justification or therapeutic or rehabilitative benefit to hog-tying. Columbia's own policies prohibit the use of restraints as punishment.

Columbia youth consistently reported another abusive restraint practice. Youth reported that they had either observed or experienced having their arms and legs shackled to poles in public places. For instance, one young girl reported that her arms and legs were handcuffed and shackled around a utility pole because she was non-compliant during military exercises. The rest of the unit was forced to perform military drills around her. The youth was shackled for at least three hours, released for lunch, and briefly shackled again. This incident was witnessed and similarly described by other youth, both boys and

girls. Another girl reported that two weeks prior to our visit, she was shackled to a pole for talking in the cafeteria. Still another girl reported that she was shackled to a pole for approximately four hours because she did not say, "Yes, sir," on command. Again, this practice is not documented in incident reports or unit logbooks in violation of Columbia's restraint policy. Not only is this abusive practice in violation of Columbia's policies, it is unlawful.

(b) The girls' SIU

Girls in the SIU at Columbia are punished for acting out or for being suicidal by being placed in a cell called the "dark room." The "dark room" is a locked, windowless isolation cell with lighting controlled by staff. When the lights are turned out, as the girls reported they are when the room is in use, the room is completely dark. The room is stripped of everything but a drain in the floor which serves as a toilet.

Most girls are stripped naked when placed in the "dark room." According to Columbia staff, the reason girls must remove their clothing before being placed in the darkroom, is that there is metal grating on the ceiling and the cell door which could be used for hanging attempts by suicidal girls. Such suicidal hazards should be remedied rather than requiring suicidal children to strip naked.

One girl told us that the weekend prior to our visit, she was placed naked in the "dark room" from Friday until Monday morning. She stated that she was allowed out of the cell once a day to take a shower, but received all her meals inside of the cell. Another girl told us that in July 2002, she was placed in the "dark room" with the lights off for three days with little access to water as her requests for water were largely ignored.

While facility administrators told us that this room is rarely used and if used, for no longer than a few hours at a time, a number of girls reported being locked in the cell for as long as three days to a week. There is no separate log book to record the use of the "dark room" to substantiate the administrators' claims regarding the length of time the darkroom is in use. To the contrary, log book entries for a three-month period for the girls' SIU indicate that the dark room often is used overnight or over the weekend, particularly when the SIU is

overcrowded, as well as used for punishment and for suicidal girls.

During our visit to the girls' SIU at Columbia, there were 14 girls present. Nine of the girls had been locked in bare cells for more than a week; one girl had been locked in a bare cell for 114 days. The conditions we observed in the SIU are particularly inhumane. The cells are extremely hot with inadequate ventilation. Some girls are naked in a dark room where they must urinate and defecate in a hole that they cannot flush. Restraint chairs are use for punishment in violation of Columbia's own policy and procedures manual.[3] OC spray is sometimes used in response to a youth's minor misbehavior. As discussed earlier, sometimes, girls are hog-tied. Girls are often not given access to basic necessities, such as water, personal hygiene items, and bathroom facilities, and girls are not given sufficient mental health services. Given the significant number of juvenile girls in Mississippi juvenile facilities who suffer from various forms of mental disorders, particularly separation anxiety disorder,[4] the use of the SIU in its present form should be banned at Columbia.[5]

(c) Other abusive practices at Columbia

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[3] Columbia's policy states that a restraint chair should only be used if extreme force is necessary and that restraints, in general, must not be used to punish. Generally accepted professional standards mandate that restraint chairs be used only for youth whose self-destructive or dangerous behavior cannot be controlled safely in any other way; they should never be used as punishment.

[4] Girls in Mississippi juvenile justice facilities are five to seven times more likely than boys to have a depression disorder, and are two to five times more likely than boys to meet the criteria for an anxiety disorder. Angela Robertson & Jonelle Husain, Prevalence of Mental Illness and Substance Abuse Disorders Among Incarcerated Juvenile Offenders 27-28 (2001).

[5] See Lollis v. New York State Department of Social Services, 322 F. Supp. 473, 482 (S.D.N.Y. 1970) (two-week confinement of a 14-year-old girl dressed in night clothes in a bare cell with no recreational facilities or reading matter is cruel and unusual punishment).

Youth at Columbia describe a number of abusive practices imposed by staff. For example, youth report "sitting in a chair," in which youth are required to assume a sitting position while holding their backs up against the wall with knees bent for as long as 20 to 30 minutes. Youth also are forced to perform "guard duty." Youth are awakened in the middle of the night, required to get dressed, and walk inside the cottage for hours with their hands to their heads (similar to a military salute) from bed to bed. In June 2002, according to the SIU log book, a staff person was given permission to awaken the boys at midnight, take away their mattresses and covers, and force them to perform "guard duty." Boys housed in the cottages are sent by drill instructors to the SIU during the day for punishment for failing to perform exercises. SIU staff confirmed that boys' punishment may last for hours and consists of running around tables in the SIU day room with mattresses on their backs. Girls are punished in the military field by being forced to run with automobile tires around their bodies or carrying logs. Girls reported being forced to eat their own vomit if they throw-up while exercising in the hot sun.

Our juvenile justice expert consultant observed a cottage staff person punish an entire cottage by forcing youth to run inside the dorm room silently for at least 25 minutes while other youth showered. We learned that prior to our visit, one youth had broken his toe by hitting it on a bed while performing this exercise.

These exercises and disciplinary practices serve no penological or rehabilitative purpose. Many are cruel and demeaning.[6] They also are unsafe because, as our expert noted, when this type of physical punishment is imposed, the facility does not monitor the physical well-being of the youth.

2. Abusive Staff

(a) Assault

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[6] See Morales v. Turman, 364 F. Supp. 166, 174 (E.D. Tex. 1973) (*subsequent history omitted*)("Requiring [youth] to maintain silence during periods of the day merely for purposes of punishment, and to perform repetitive, nonfunctional, degrading, and unnecessary tasks for many hours . . . constitutes cruel and unusual punishment in violation of the Eighth Amendment.").

Based on our interviews with youth, our observations during the tours, and review of documentation provided by the State, we find that staff at Oakley and Columbia use excessive force with impunity.

At Oakley, more than half of the youth in Ironwood reported that staff had physically abused them. In Unit One, a number of youth reported, and some line staff confirmed, that youth who are re-committed to Oakley are taken to one of the isolation rooms in the intake area and punched and slapped by staff as punishment for being re-committed. Youth reported in Unit Two that staff hit and physically assaulted other children. One such incident was confirmed by staff members who reported that approximately two weeks prior to our visit, a school counselor physically abused a youth. This youth was choked by the counselor and sent to Ironwood based on the counselor's recommendation to the facility director. The youth never received a hearing. We were told by staff and youth that the counselor would never be held accountable for the incident. Indeed, we received no written incident or investigative reports concerning this incident.

When asked why abuses were allowed to occur at Oakley without consequences to staff, we were told that staff shortages inhibited the facility administration's ability to follow-up on youth's complaints. Staff also stated that some staff abused youth with impunity because they were favored by the administration. When asked why staff did not report these allegations, most staff responded that they feared retaliation. In other cases, youth did not file complaints because they believed that their concerns would not be investigated or addressed. During our second tour of Oakley, we observed a general assembly conducted by administration officials where a number of the youth voiced concerns about being assaulted by staff. For example, one youth stated that a staff person had shoved his head into a toilet. The youth wanted to know how the administration would respond to complaints. One administrative official responded that youth were not allowed to defend themselves against staff who assaulted them.

In the girls' SIU at Columbia, staff reportedly have hit, choked, and slapped girls. For instance, girls reported that a ten-year-old girl was slapped by a male security guard. A young boy in the boys' SIU reported that before being taken to the SIU,

security slapped him twice in the face and placed his neck in a "sleeper hold."[7]

(b) OC Spray Abuse

Both at Oakley and Columbia, staff practices regarding the use of OC spray amount to excessive force. According to the facilities' policy, OC spray may be used in only three situations: to "quell a riot"; or to "prevent further injury when students are fighting" and all other efforts to resolve the fight have failed; or if a youth possesses a device "clearly intended to be used as a weapon and refuses to disarm." Incident reports and youth complaints reflect that youth are sprayed arbitrarily and in violation of facility policy and law. See Alexander S. v. Boyd, 876 F. Supp. 773, 786 (D.S.C. 1995) (indiscriminate use of OC spray violates youth's constitutional rights. OC spray should only be used when there is a risk of serious bodily harm and no other less intrusive restraint is available). At Columbia, boys in the SIU reported that staff sprayed under their locked cell doors and that staff sprayed boys in the face while they were hog-tied. Boys also told us that staff sprayed into the air while boys were doing exercises for punishment in the SIU. Incident reports make clear that suicidal youth are sprayed for their suicidal gestures and behaviors and that youth locked in isolation rooms who bang on the door of their cell are sprayed. A log entry for the SIU in May 2002 indicates that a suicidal girl was sprayed because she refused to remove her clothes before being placed in the "dark room."

Youth at Columbia reported that staff routinely sprayed youth for failing to perform military exercises. Our review of incident reports confirms that OC spray is used for this purpose. For example, a 13-year-old boy was sprayed because he did not perform exercises. Reportedly, he was punished further by being forced to do 100 squat thrusts, 100 push ups, and 100 jumping jacks. One girl, prior to being sent to the SIU, had difficulty keeping up with the group during exercise in the parade field. She yelled to a staff person that it was hot and to "shut up talking to me." Security was called and she was sprayed in the face. Youth also talked extensively about "running the ridge," a

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[7] Youth told us that in order to be placed in a sleeper hold, a security officer stands behind a youth with his arm around the neck of the youth, cutting off the ability to breath.

form of intensive running on the campus grounds.[8] Youth who refuse to run the ridge are reportedly sprayed by staff.

On the Oakley campus, staff at Ironwood and Unit One use excessive force, spraying OC to control youth who misbehave or who are noncompliant. For example, a youth in Unit One was sprayed for refusing to go into his cell. In another case, two youths were sprayed in Ironwood as they engaged in horseplay.

Finally, based on our document review and conversations with staff and juveniles, OC spray use at both facilities often is undocumented and unreported. We find that OC spray is used regularly at both facilities for minor infractions or for punishment.

3. Investigation of Abuse Allegations

Oakley and Columbia do not have systemic internal and external review processes of abuse allegations to ensure that investigations are conducted thoroughly and objectively.

(a) Internal Review

All abuse allegations are not being investigated internally at the facilities or by the Division of Youth Services. Oakley and Columbia share an investigator who investigates allegations of abuse, when reported to him by the facility administrators. The investigator also functions as the "military coordinator." The investigator conducts a limited perfunctory investigation and submits brief investigative reports and summary recommended courses of action to the Director of the Division of Youth Services for approval. However, the investigator's authority to conduct abuse investigations is not clearly defined. As a result, we found that Oakley and Columbia administrators are not held accountable if they fail to report all allegations to the investigator.

In addition, youth reported feeling prohibited from reporting abuse allegations. Youth at both facilities stated that they did not report staff abuse because they believed that

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[8] "Running the ridge" is a practice where staff force youth to repeatedly run up and down the upper fields of the Columbia grounds at a fast pace.

reporting led to retaliation, or their allegations were not taken seriously. A medical clinic incident notebook at Columbia documents the nursing staff's treatment of youth's injuries from alleged physical abuse by staff or pepper spray use. However, these abuse allegations appear never to have been investigated, even when an injury was noted by the nurse and could have possibly substantiated the youth's claim.

(b) External Review

We found few external reviews of abuse allegations from outside agencies. The Division of Youth Services' Division of Program Integrity conducted only 10 external reviews of abuse allegations between May 2000 and May 2002, most of them concerning staff at Columbia. We are aware of allegations of staff abuse at Columbia and Oakley that would have warranted more than 10 investigations from the Division of Program Integrity during that time period.

Moreover, during our tour of Columbia, children made various abuse allegations concerning specific staff. Several girls alleged that a recreation staff person forced girls to run and perform military exercises wearing tires. Many youth reported that the acting head nurse routinely denied medical care and access to appropriate health services. The girls in the advanced cottage alleged that a security guard engaged in inappropriate sexual behavior by standing in front of the uncovered windows of the girls' cottage and observing them while they were undressing before going to bed.

We provided enough information for a thorough investigation to be conducted. We relayed the nature of the allegations, the approximate date and location of where the incidents occurred, and the names of the staff persons allegedly responsible for the incidents[9] to the Mississippi State Attorney General's Office ("Attorney General's Office").[10] We were informed by the Public Integrity Division of the Attorney General's Office that they

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[9] We did not, however, provide the names of the allegedly involved youth in deference to the youths' request for confidentiality, many of whom had relayed fears of retaliation.

[10] The Mississippi Department of Human Services agreed to defer its investigation of the allegations to the Attorney General's Office.

would need the names of the youth making the allegations in order to conduct the investigation because approval of the youth court judge who adjudicated the youth delinquent was required.[11]

4. Severe Staff Shortages

Columbia and Oakley fail to keep the youth in their care safe due to severe staffing shortages. Oakley has a staff vacancy rate of 39 percent. Due to budgetary constraints, Oakley is under a hiring freeze and cannot hire new staff to fill the vacancies, according to administration officials. During our tours, we noted that the staff at Oakley, including the facility management, appeared to be under stress and overworked. The documentation we received indicated that the Division of Youth Services was notified as early as January 2002 that these shortages compromised the safety of both staff and youth on Oakley's campus. Specifically, during an incident that resulted in the use of pepper spray, a staff person had to enlist the assistance of a youth to defuse a fight in one of the cottages. The facility investigator wrote to the administrators at the Division of Youth Services that "[t]here is a serious need for additional staff members which [sic] are adequately trained in juvenile justice and security requirements before a staff member or student is critically injured or killed."

Staff and administration are typically required to work overtime. On the weekends, youth are sometimes distributed to other living units due to staffing shortages. In Units One and Two, one staff person supervises 30 or more juveniles on every shift. This ratio substantially departs from generally accepted professional practices. During our tour, staff and senior managers repeatedly told us that Oakley is a dangerous place to work. Staff repeatedly stated that they are unable to protect youth from harm. Some senior managers admitted that all critical incidents were not being reported because the facility cannot afford to fire abusive staff. Line staff accused other staff of assaulting youth and stated that nothing is done about the abuse.

Similarly, Columbia has staffing shortages and an inability to fill vacant positions. At the time of our on-site

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[11] We were told that the Attorney General's Office could not initiate its own inquiry without prior court approval or in conjunction with the Department of Human Services. See MS ST §§ 43-21-353; 43-21-261.

investigation, Columbia had a hiring freeze and a vacancy rate of approximately 30 percent. The result of the shortage is particularly harmful for the girls. The girls' cottage is severely overcrowded. Girls are made to sit in a confined lobby area or on the day room floor every evening for at least four hours in silence because staff shortages prevent them from staying in their rooms. Our expert noted a critical shortage of direct care workers. Like Oakley, Columbia's staffing patterns substantially depart from generally accepted professional practices.

B. Mental Health Care

The Constitution requires that confined juveniles receive adequate medical treatment, including adequate mental health treatment and suicide prevention measures. Hott v. Hennepin County, 260 F.3d 901, 905 (8th Cir. 2001) (citing Williams v. Kelso, 201 F.3d 1060, 1065 (8th Cir. 2000)); Young v. City of Augusta, 59 F.3d 1160, 1169 (11th Cir. 1995); Horn v. Madison County Fiscal Court, 22 F.3d 653, 660 (6th Cir. 1994); Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977).

Oakley and Columbia house a large population of juveniles who suffer from mental disorders, substance abuse, and suicidal thoughts.[12] A July 2001 study funded by the Mississippi Department of Public Safety Division of Public Safety Planning and the Department of Mental Health Division of Children and Youth Services found that between 66 and 85 percent of the incarcerated juvenile offenders in Mississippi "met *DSM-IV* diagnostic criteria for a mental disorder."[13] The study added that "multiple, co-occurring mental health and substance abuse diagnoses were evident . . . [and] 9% [of the juveniles] had suicidal thoughts and plans." Oakley and Columbia do not provide adequate services for this vulnerable population. Lack of training, resources, program structure and staffing shortages

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[12] However, as indicated previously, these youth should be committed to rehabilitation facilities operated by the Mississippi Department of Mental Health. See supra, p. 2.

[13] Angela Robertson & Jonelle Husain, Prevalence of Mental Illness and Substance Abuse Disorders Among Incarcerated Juvenile Offenders (2001) ("the Mississippi State University Study"). Robertson and Husain are researchers at Mississippi State University.

have severely affected Oakley and Columbia's counseling programs and as a result youth with mental health concerns receive haphazard and cursory treatment.

1. Administration of Psychotropic Medications

The care of youth with severe mental illness requires assessment and management by a psychiatrist, and where medications are prescribed before confinement, the continuation of medications without interruption upon admission to the facilities. The management of youth with mental illness and the administration of psychotropic medications is seriously deficient at Oakley and Columbia.

Many youth on psychiatric medications are not allowed to continue to receive those medications when they are admitted to Oakley or Columbia. The physicians, not the psychiatrists, determine which youth with mental illness will continue to receive their psychotropic medicine while committed. For example, before his admission to Columbia, a youth was treated at a psychiatric hospital and discharged with a prescription for risperdal, which treats the symptoms of schizophrenia. His risperdal was continued in detention and his medicine was sent to Columbia when he was transferred. However, the facility physician discontinued the youth's risperdal without referring him to the psychiatrist for follow-up treatment. In another case, a youth was hospitalized for mental health treatment and upon release was prescribed psychotropic medications. Upon admission to Columbia, the physician discontinued these medications and made no referral to the psychiatrist. After staff reported the youth's unacceptable behavior, he was referred to the psychiatrist who, apparently either ignoring or being unaware of the youth's prior history, prescribed a different medication altogether. The youth was still taking the facility-prescribed medication at the time of our visit, and staff continued to find the youth's behavior unacceptable.

Physicians should not make decisions about whether a child will continue on most prescribed psychiatric medications. A psychiatrist should evaluate the youth's medication needs based on a diagnostic interview, a review of records of prior care, and, if necessary, in consultation with the youth's psychiatrist in the youth's home community.

Rarely are the contracted psychiatrists and staff psychologists informed when a child is admitted with or has a history of treatment with psychiatric medicine. Youth with mental illness often are untreated while in the facilities, even though they are admitted with a history of mental illness.

2. Managing Suicidal Youth

Oakley and Columbia fail to employ adequate suicide prevention measures. Activity, positive relationships between staff and youth, individual attention, school, exercise, reading, and counseling are necessary aspects of an adequate adolescent suicide prevention program. Instead, at Columbia, suicidal youth are isolated in SIUs in stripped cells, sometimes naked, are not allowed outdoor exercise, and receive very little schooling or counseling. As previously discussed, some suicidal girls at Columbia are placed in the "dark room." Furthermore, in the isolation units or SIUs at both facilities, children's mattresses are taken away during the day, leaving them with the option of lying or sitting on concrete or standing.

Boys at Oakley who are judged to be suicide risks are placed in an empty day room adjacent to the control room where they sit on the floor all day without access to books, school, or outdoor exercise. They also are not permitted to interact with other boys in the room. The counselor assigned to counsel suicidal youth attempts to see each youth once per day, but if she is unavailable, no one provides mental health counseling in her absence.

C. Rehabilitative Treatment

The Constitution requires that youth confined at Oakley and Columbia receive adequate rehabilitative treatment. Morgan v. Sproat, 432 F. Supp. 1130, 1135-36 (S.D. Miss. 1977); Pena v. New York State Division for Youth, 419 F. Supp. 203, 207 (S.D.N.Y. 1976). Oakley and Columbia youth, however, receive inadequate rehabilitative treatment. We found that counselors and psychologists are the staff responsible for rehabilitative treatment. Psychiatrists are contracted for only one day a month at both facilities. The majority of their time is spent conducting forensic evaluations for the court, rather than providing mental health or rehabilitative treatment to youth. Staff assigned to the housing units, such as juvenile correctional officers, function as security and play no role in

the youths' rehabilitative treatment. There is little or no interaction between the various disciplines regarding youths' strengths and needs or rehabilitative treatment. The lack of communication between staff hampers their ability to provide a rehabilitative environment. Indeed, the programs' current focus on discipline, control, and negative reinforcement fosters an atmosphere where staff demean, belittle, and abuse youth and is not conducive to rehabilitative treatment.

Oakley and Columbia counselors have masters degrees and the qualifications to provide effective rehabilitation, however, with the average caseload of between 20 and 30 youth, individual goals are impossible to achieve. For example, counselors routinely are unable to see youth individually or in group sessions. Moreover, therapy continuity is not maintained because counselors are reassigned when youth move from the basic to the advanced program. Furthermore, counselors are responsible for implementing youths' individual treatment plans, but are not involved in the development of the plans. Counselors, typically, decide which goals they will work on with the youth and as a result youths receive canned group sessions, such as, "obey authority" or "value an education," which have little rehabilitative value. A senior mental health employee at Oakley admitted that youth do not receive individualized rehabilitative treatment.

1. Individual Treatment Plans

Both facilities rely solely on individual treatment plans ("ITPs") provided by the youth court, rather than developing an individualized plan once the youth arrives at the facility. Unfortunately, the courts' ITPs are not comprehensive and fail to evaluate the youth's mental health status. Youth are not involved in their own treatment planning, nor are the counselors or the youths' parents. In addition, youths' ITPs repeatedly contained the diagnosis of "conduct disorder, alcohol abuse, cannabis abuse, strong borderline and antisocial personality traits." Given the time constraints, lack of information, and the absence of individual sessions with youth, it is not clear how the youth courts' psychologists could make appropriate diagnoses. The fact that many diagnoses are remarkably similar heightens this concern.

2. Anti-Therapeutic Conditions

Many of the conditions at Columbia do not promote rehabilitation or good mental health, but instead cause depression and mental deterioration. In the evenings, youth are required to sit in silence for large blocks of time while they sort their clothes, clean their boots, or for girls, braid each other's hair. This time could be better spent productively engaged in activity and learning. The environment as it currently exists invites acting out by youth and the abusive institutional practices that too often follow. For example, youth are forced to perform physical exercise and threatened with SIU if they are caught talking to each other. In fact, youth expressed frustration at the wasted time and lack of rehabilitation services being offered in the evenings. Lack of activity, social interaction, and counseling assistance put youth at risk for depression.

Many of the conditions at Oakley and Ironwood, similarly, are harsh and do not promote rehabilitation. Oakley's SIU is purportedly used to address the needs of the most vulnerable boys, but instead, functions like an adult prison. Instead of addressing the boys' mental health or rehabilitative treatment needs, boys are either locked in isolated cells (where they are sometimes also shackled) or shackled and forced to perform work details around the campus in order to earn their way out of the SIU. They are not permitted to attend school or receive any educational instruction, and are provided limited access to counseling. Except for work details, the boys are permitted out of their cells only once a day to exercise in the hallway, but must eat their meals in their cells.

On the day of our arrival to Oakley, we observed a 13-year-old boy sitting in a restraint chair near the Ironwood control room. Reportedly, he was placed in the restraint chair to prevent self-mutilation. No staff approached him, and he was not allowed to attend school or receive programming, counseling, or medication. This boy had been severely sexually and physically abused by family members and had been in several psychiatric hospitals prior to being sent to Ironwood. Just before our arrival, he had been locked naked in his empty cell. His cell smelled of urine, and we observed torn pieces of toilet paper on the concrete floor that he had been using as a pillow.

3. The Military Program

The use of paramilitary programs at youth training schools is not, in itself, unconstitutional. However, our experts noted, and it is generally accepted, that four segments of the youth population at Oakley and Columbia are particularly unsuitable for paramilitary programs: younger boys, girls, youth with developmental disabilities, and youth who are emotionally or physically fragile.

The disciplinary practices are particularly harmful to the younger boys at Columbia who are physically, emotionally, or psychologically unable to participate fully in the training program. Young boys at Columbia are not developmentally suited to benefit from the military approach. Many staff perceived that this particular population was noncompliant and anti-authority, when in reality, many of the boys are merely active third, fourth and fifth graders with short attention spans. The result is that the younger boys stay at Columbia longer because they are considered behavior problems. A Columbia counselor told us:

> You can't change developmental stages. They are not ready. They are playful . . . . The young kids usually stay longer, usually four to six months -- there is no tolerance for their silly behavior, so they have to start over. Many have ADHD [Attention Deficit Hyperactivity Disorder], and they have an especially hard time, partly because the doctor here usually takes them off medication -- they are not really defiant, but they can't be judged the same as the older kids. I do a lot of counseling with young kids who cry and really miss their families. They get depressed.

Additionally, the counselor stated that a suggestion had been made by other counselors to place at least the younger boys in a separate unit. However, they were told there was insufficient staff to run it. In our experts' opinions, the military program is ineffective and harmful for younger boys.

Columbia's paramilitary program also is unsuitable for some of the troubled girls it serves. Our expert noted that girls may make some self-esteem gains in physically challenging programs but the girls at Columbia are deriving no benefits, physical or otherwise, from the program that is currently being administered. Harsh disciplinary practices are characterized as training. A June 2002 log book entry shows that a facility manager punished a girl by requiring her to sleep one hour and walk one hour for two

successive nights. This same girl also had to eat every meal standing for one week thereafter. These punishments are largely unregulated and in some cases endorsed by supervisory personnel because they are considered military training. From a juvenile justice and mental health perspective, the military program is inappropriate for girls who have a history of being victimized and abused either physically or sexually.

A paramilitary program also is inappropriate for youth with learning or developmental disabilities. Youth are only permitted to move to the 'advanced' unit once they have met behavioral objectives and passed a written and oral test on military procedures. Youth with learning or developmental disabilities have difficulty passing the test and serve longer commitments because they cannot move beyond the basic phase of the program. One counselor stated that, "[a]t least ten percent are developmentally slow, and the staff don't understand low-functioning kids. They can't make it." For example, staff made fun of a girl who had both physical and cognitive impairments. This girl was just learning to read and was unable to earn a grade higher than 70 on the military test the youth must pass in order to move from the basic to the advanced phase of the program. Her peers were concerned that she would never be able to pass the test. Youth with learning and developmental disabilities are particularly inappropriate for the programs offered at Oakley and Columbia.

Finally, youth who are physically or emotionally fragile are singled out and made to feel worse because of their fragility. Boys at Oakley reported staff routinely picked on boys who were small in size, emotionally sensitive, or had difficulty adjusting to the military program. Some, but not all, of these boys may be placed in Unit Two's Magnolia Cottage for boys who for medical or psychological reasons are considered inappropriate for the physical training component of the military program. However, boys in Magnolia Cottage are verbally and physically abused by staff during non-physical components of the military program as often as the emotionally and physically vulnerable boys in other cottages. A 15-year-old former resident of Magnolia Cottage who was moved to the SIU told us that he tried to perform well in the non-physical aspects of the program but was sensitive to being teased by staff and had difficulty controlling his reactions, which precipitated his being sent to isolation in SIU. The Magnolia Cottage residents confirmed his account. Again, from a juvenile justice and a mental health perspective, the

paramilitary training program, even when the physical aspects are eliminated, is not only ineffective, but harmful to such youth.

D. Medical and Dental Care

Youth at Columbia and Oakley receive inadequate medical and dental care.

1. Quality of Care

Staff shortages and a lack of medical leadership have greatly affected the ability of staff to provide necessary medical services to youth at Oakley and Columbia. No one is accountable for Oakley and Columbia's medical program. Neither the facility director nor anyone in the Division of Youth Services or the Department of Human Services is directly responsible for primary care at either facility.

Columbia has only two full-time Licensed Practical Nurses (LPNs) providing services for a 200 bed juvenile facility with an average of 13 new admissions every week. Oakley has five full-time LPNs and a full-time contract RN servicing a population that can reach up to 400 with 15 to 25 new admissions every week. At Oakley and Columbia, LPNs are unsupervised and given responsibilities beyond their scope of practice. In short, the LPNs are practicing medicine without a license.

Oakley and Columbia do not have full-time physician assistants or nurse practitioners on staff and both have several vacant nursing positions. Oakley's contract physician sees patients approximately four hours per week with half of his time performing clinical exams on new admissions; Columbia's contract physician sees patients three hours per week. The physicians at Oakley and Columbia are contracted solely for clinical care and have no responsibility for the nursing staff or ensuring that policies and procedures are followed. The result is that access to adequate medical care is very limited. Also, responses to health issues such as chronic disease care and health education are virtually non-existent.

Columbia and Oakley routinely fail to continue youths' pre-existing medical regimens after they are committed to the training schools. At Columbia, medicines are often discontinued upon arrival. Even asthmatic youth do not receive follow-up care to ensure that their cases are being managed. For example, a

girl was admitted to Columbia with a history of asthma. She was not asked about her medical history during her initial exam. She subsequently told the nurse about her inhaler and that it prevented asthma attacks if used prior to exercise. The youth never received an inhaler. While performing exercises, she began to have an asthma attack. She was not allowed to see the nurse and was told to continue to exercise or be punished for disobedience. In a highly restricted environment where access to medical services is limited, acutely asthmatic youth must have routine, scheduled follow-up care.

We found that nurses at Oakley do not routinely follow-up with youth after providing rescue inhalers. Poor care can cause severe illness in youth as the following example illustrates: A youth was admitted to Oakley in May 2002. He had a history of asthma and was hospitalized for acute asthma one month prior to his admission to Oakley. Several asthma medications were sent with him to Oakley including singulair and maxair. These and all other medications were discontinued upon his arrival. Moreover, medical staff made no attempt to find out his prior medical history. Two days after his admission, he developed acute asthma and suffered from shortness of breath, coughing, and wheezing for at least a week. The only treatment provided by the nurse was a rescue inhaler. The youth was finally examined by the physician who noted that his vital signs were significantly abnormal, but sent the youth back to his cottage without treatment. Another five days passed before the youth was permitted a consultation with an asthma specialist who subsequently prescribed singulair and maxair.

The facilities fail to maintain equipment or lack equipment to provide essential emergency services. Columbia’s medical clinic contained old, rusty, dirty, and sharp equipment stored in easily-accessible places such as unlocked drawers and trays on the counter in the examination room. Equipment that could be stolen easily and used as weapons such as scissors, razor blades and even a scalpel blade were left unattended and readily accessible to youth on a cart in the exam room rather than securely stored. The medical clinics at both facilities do not carry adequate emergency or medical equipment. For instance, the clinics do not carry oxygen or syringes which are necessary for emergencies, or basic medical equipment such as needles with engineered controls used to prevent injury to health staff.

Staff fail to follow basic universal precautions which have led to dangerous health hazards for youth in the facilities. A nurse at Oakley was observed by our expert giving one resident a pre-filled syringe of the hepatitis B immunization. She accidentally inserted the same needle into the arm of the next resident before realizing her mistake. Moreover, a scalpel blade is repeatedly used by Columbia's facility physician to shave warts, permitting the transmission of blood-borne pathogens from patient to patient. In violation of standard medical practice and at the risk of contamination, Oakley staff store food in the same refrigerator as pharmaceuticals such as immunizations and control solutions to analyze blood. Our expert noted that the Oakley physician conducted nine examinations in one day and never changed the roll of paper that lined the surface of the examination table.

2. Health Assessments

Columbia and Oakley's health assessments are incomplete, and necessary intake services are not provided. Both facilities fail to give tuberculosis skin tests upon admission even though Mississippi is in the top quartile of states with annual incidence of the disease. Moreover, identified medical histories are not pursued. For example, a girl at Columbia had a history of thrombocytopenia.[14] No platelet count was obtained upon admission to assess the status of disease activity or to determine risk of internal bleeding. This is of great concern because she is expected to be a full participant in the military program. Furthermore, abnormal medical findings are not pursued. For example, a youth at Columbia with a significantly low hematocrit[15] did not receive further evaluation by the contract physician or a specialist, nor did the youth receive any treatment. A female patient, also at Columbia, with a green vaginal discharge noted during her admission physical examination was neither referred to the gynecologist nor provided treatment. At Oakley, a patient who had blood in his urine was not referred to the contract physician and received no evaluation or treatment. Another boy with a history of asthma was admitted to

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[14] Thrombocytopenia is a disease of the blood in which there are too few platelets. It is a condition that interferes with clotting.

[15] A low hematocrit means that there is a lower than normal level of red blood cells.

Oakley. Intake medical staff did not note this on his initial health assessment and other staff were reportedly unaware of his asthma until he suffered from shortness of breath for several days while in military training. At both facilities, past health records from medical providers and basic but necessary health information from parents or guardians are almost never obtained or requested.

3. Sick Call

Youth must be provided sick call in a clinical setting where they can discuss health problems confidentially with a qualified clinician. Neither Oakley nor Columbia have an adequate sick call protocol. At Columbia, youth must verbally tell cottage staff that they need to see the nurse. Staff sometimes disregard the requests, and other times call the nurse to evaluate the problem. The nurse may or may not see the child depending on what the staff tells her about the problem over the telephone. Youth may have an opportunity to see the nurse when she makes medication rounds in the cottages or at other times she happens to be in the cottages. This evaluation is not done confidentially, but where cottage staff and other residents are present. The Acting Head Nurse reportedly curses at youth, ignores medical requests, fails to provide medical advice to girls about their female conditions, and consistently prevents youth's access to the doctor. This nurse has denied assistance to girls who felt faint and dizzy from exercising in the heat. In one instance, a girl was injured after falling on her knee which swelled into a large knot. Staff allowed her to see the Acting Head nurse in the cafeteria. The nurse did nothing for her knee. When this youth saw another nurse, she referred her to the physician who treated her knee.

4. Inadequate Dental Care

Columbia and Oakley do not have adequate dental programs. The medical policies and procedures for both facilities do not require routine initial dental assessments. Initial dental assessments and treatment should be part of the overall health assessment of every youth admitted to Oakley and Columbia. Columbia has not had a contract dentist since December 2001. Therefore, dental screening, examination, and oral hygiene, among other important components of an adequate dental care program, were non-existent. It appears that when Columbia did have a dentist, the only services that were provided were extractions.

Dental treatment is necessary to both maintain and restore oral structures.

The dental program at Oakley raised additional concerns. The dentist did not provide adequate dental examinations. His dental assessments involved a simple inspection of the mouth without the aid of a light or a dental explorer. We learned that the dentist's contract was not renewed after our first tour. However, it is unclear whether Oakley has contracted with another dentist for services. In any case, no dentist should provide services to youth in the dental clinic we observed. The clinic was extremely dirty and contained mouse droppings and cob webs. Medications in the cabinets had expired between 1991 and 1995. Needles and other instruments were lying on counters and in unlocked drawers. We recommended during our first tour of Oakley that the dental clinic be shut down immediately until it is thoroughly cleaned.

E. Education

Youth at Oakley and Columbia are entitled to an adequate education and vocational training during commitment. Morgan v. Sproat, 432 F. Supp. 1130, 1140-41 (S.D. Miss. 1977) (Oakley must provide sufficient education, vocational training and recreation). The State also is obligated to provide a free and appropriate education to qualified students under the Individuals with Disabilities Education Act ("IDEA") and Section 504 of the Rehabilitation Act of 1973. Some of the core provisions of the IDEA include parental notification, identification of students who may be eligible for special education, evaluation of new admissions, and individual education plan development and revisions. However, Oakley and Columbia fail to provide these and other general education services such as ensuring that youth receive the required number of class hours per day and educational services within a reasonable amount of time after commitment. They also fail to provide most special education services and fail to properly screen for youth who may be in need of such services.

1. Delay in Providing Educational Services

Oakley and Columbia youth do not attend school for several weeks after admission. At Oakley, the administrator, school principal, staff, and youth told us that youth committed for the first time receive no education for three weeks. Youth who are

re-committed receive no education for five weeks. We also found that youth were denied access to education services for periods longer than three and five weeks. We found that Oakley did not have any policies governing these practices, which violate the Mississippi Compulsory School Attendance Law.[16] Pursuant to policy, Columbia youth do not attend school for the first three weeks or more after admission which also is a violation of state compulsory attendance laws and the Equal Protection Clause of the Fourteenth Amendment. See Donnell C. v. Illinois State Board of Education, 829 F. Supp. 1016, 1018-19 (N.D. Ill. 1993). Unless unforeseen circumstances occur, youth should be provided with educational services soon after admission in accordance with state and federal law.

2. General Education

Although we encountered some well-intentioned teachers and school administrators at both facilities, the structural problems of the school program coupled with the absence of support and resources results in an education program that is sorely inadequate and fails to meet the needs of students.

(a) Programming at Columbia and Oakley

Columbia has strengths that can be improved upon, such as a school environment that is conducive to learning, properly certified teachers who are given adequate time for planning, adequate space and educational materials, a computer lab, a well-equipped library, and a GED program for age-appropriate girls. In comparison, Oakley's program suffers from a serious lack of leadership and little staff support. Oakley's principal admitted that his focus is on Unit Two, leaving the Unit One school program to be administered by an interim facility administrator and Ironwood to be run by a teacher. Oakley's SIU has no school program. Youth in Unit Two at Oakley were observed simply sitting in class rooms and not engaged in any school work. Teachers typically provide little instruction there or in

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[16] We have been informed since our education tour of Oakley that it was changing the structure of its military and education programs to provide youth with education services within one week of admission. We were not provided with documentation of how this transition was to occur nor the current status of its implementation.

Ironwood. The youth in Unit One, however, appeared to be engaged in class room activity.

Most youth at Oakley and Columbia are not receiving the full state mandated class time, which is a violation of Mississippi's compulsory education laws.[17] Youth routinely are pulled from class for significant periods of time to perform work details or participate in "recreation" such as card playing, contributing to this violation.

Oakley and Columbia do not have policies to ensure that youth are placed in appropriate classes, have balanced class sizes or are taught appropriate subject matter. Moreover, an analysis of class subjects taken by youth shows that youth are not receiving the full benefit of class instruction in core subjects at either Columbia or Oakley. The population of youth at Columbia and Oakley include those with severe academic deficiencies who function well-below grade level. Yet, only 40 percent of Columbia youth attend classes in the four core academic subjects: math, English, social studies, and science. Otherwise, youth are enrolled in classes such as "Life Skills" and "Family Dynamics." In light of the population that Columbia serves, these elective courses should be a supplement to the four core subjects, not in place of them. Some core academic courses at Columbia were linked into one class such as "math/science" and "reading/social studies." While there is a logical integration of these subjects, youth are unable to master all of the competencies required for both courses during a single class period. This is troubling because youths' grades are forwarded to home schools, reflecting credit for two core classes when they instructionally receive less than that.

Furthermore, Columbia does not employ substitute teachers to cover classes when teachers are sick or on vacation. When a teacher is absent, youth are regularly placed in "overflow" which means that youth are divided into other classes in session during that time period. Youth reported that they were not given any work to do in these situations, but were required to sit in the class and be silent. There also are no substitute teachers employed at Oakley for absent teachers.

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[17] Even though Oakley's and Columbia's education structure provides for the State mandated 330 minutes of instruction, a majority of the students do not receive 330 minutes of instruction per day.

School records from youths' home schools should be obtained so that youth are placed in appropriate classes at Oakley and Columbia. However, we found that youths' files rarely contained public school records. Neither facility had a protocol for receiving records from non-responsive school systems. We were told during our tour at Columbia that the school planned to be linked to the Mississippi Student Information System which will provide access to youths' most recent transcripts. However, until that connection is made, Columbia and Oakley must develop a system for receiving and maintaining permanent and cumulative records containing academic information.

(b) Education services for youth in disciplinary isolation

Youth are not provided with adequate education in the SIUs at Oakley and Columbia. The lack of education in the SIUs at Columbia was the most glaring denial of access to education services in the facilities. Youth can be locked up for two or more weeks without attending school. If a youth is "committed" to the SIU program, then a youth is in lock-up for several months and education is limited and often-times sporadic. The boys in SIU who had access to educational programming received approximately 45 minutes to an hour of class time less than two days per week and did not receive any instruction the week prior to our visit. In addition, all of the boys in the SIU class received the same work assignments despite differences in their ages, abilities, and academic levels. Girls received only two hours of education per day, except on Tuesdays when no academic classes were held.

At Oakley, youth in the SIU are denied education for the duration of their confinement. Confinement may be for one to seven or more days and students may be sent back to the SIU successively, causing even more disruption in their education. The Ironwood program has one unsupervised teacher responsible for teaching up to 25 youth. Youth in Ironwood receive approximately three hours of instruction two days per week, but not all students receive the benefit of this minimal programming. Some who had been locked in Ironwood 90 days or more reported rarely being taken out of their cells for class and others reported being given materials in their cells, but given no pencils, which limited their ability to do the assignments. We respect the facilities' legitimate security concerns, however, youth committed to the SIUs should have access to the full range of

educational services in order for Columbia and Oakley to be in compliance with Mississippi compulsory education laws.

3. Special Education

The problems we encountered with the provision of special education services at both facilities were pervasive. Oakley and Columbia fail to follow key provisions of the IDEA and other special education services mandates. School administrators at both facilities were either unaware of the IDEA or erroneously believed their schools were exempt from its requirements. For instance, Oakley's principal believed Oakley was exempt from core IDEA provisions because of an agreement between the Mississippi Department of Human Services and Mississippi Department of Education. Oakley and Columbia are not exempt from the IDEA.

(a) Screening, evaluation and identification

Pursuant to the IDEA, Oakley and Columbia are responsible for screening, evaluating, and identifying youths suspected of having a qualifying disability which would entitle them to special education services. Yet, neither facility has a structured mechanism to screen potentially eligible youth. The facilities rely heavily on school records from community schools to identify youth eligible for special education services. However, youth may not have been attending school regularly prior to their commitment, so reliance on school records alone is not enough. Furthermore, as discussed earlier, we found that youths' files rarely contained public school records. The IDEA requires that eligibility be determined by a team of qualified professionals, the child, <u>and</u> the parent or guardian, if available.

Furthermore, we found that ineligible youth are being placed in special education while many other students who may be eligible are never identified and denied access to services in violation of federal law. At Oakley, a youth was given four segments of special education services a day, but the special education teacher could not identify the student's eligibility for these classes. The student's file contained no information regarding the reason for placement in special education courses. When asked why this student was in special education, the teacher responded that the student did not do well in math. Six other students' files contained no information documenting the reason for their placement in special education classes. Another

student was receiving four segments of special education services per day as required by his expired individual education plan. However, his psychological report indicated that his IQ was 66 which brings the appropriateness of his placement at Oakley into question, given that youth with mental retardation are not supposed to be placed at Oakley or Columbia.

(b) Individual Education Plans

The foundation of the special education process is the development and implementation of an individual education plan ("IEP") for each qualified youth. See Honig v. Doe, 484 U.S. 305, 311 (1988); see also 34 C.F.R. § 300.341(a). The facilities have failed to create a system of developing, implementing, monitoring, and reviewing students' IEPs. None of the special education teachers at Oakley were able to produce a current, valid IEP for any of the youth in their classes. Furthermore, IEPs contained identical, rather than individualized, goals and objectives. IEPs did not contain, for example, statements of present levels of performance or measurable annual goals and objectives as required by law, and no IEP meetings have been held, in part, because teachers and administrators were unaware that youth must be re-evaluated periodically to keep IEPs current. Eligible youth must have an IEP completed for each school year. Schools must offer a continuum of placement options for special education students. Oakley only has two of the four options available while Columbia has no options available for eligible youth.

Parents and guardians at Columbia and Oakley are not notified regarding evaluations, eligibility determinations, placements, or provision of special education services. Parent or guardian participation in every step of the process is a guiding principle of the IDEA which is being violated by both facilities.

(c) Related and Transition Services

Related services, such as individual and family counseling, speech pathology, and psychological services, must be provided where indicated so that youth receive the maximum benefit of special education. See 34 C.F.R. § 300.24. The few related services that had been available at Columbia have been discontinued and they have never been provided at Oakley.

Children eligible for special education 14 years of age and older also are entitled to transition services. Transition services include vocational training, continuing education, or employment services. Columbia provides no transition services for students' re-entry into their home communities -- another violation of federal law. Oakley offers some limited opportunities for vocational training. However, only students who achieve a certain score on the Test of Adult Basic Education are permitted to take the vocational courses. This requirement typically excludes special education children and limits Oakley's ability to provide legally-required transition services. The vocational program should be expanded and made more inclusive, particularly in the provision of transitional services to special education students.

F. Religion

Religious activities can further a juvenile facility's rehabilitative mission. Moreover, Oakley and Columbia must allow youth to engage in religious exercise through voluntary religious activities, unless the facilities can demonstrate that curtailing such activities would be the least restrictive means of achieving a compelling governmental interest. See Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc. However, Oakley and Columbia's interests in affording youth the benefits of religious activities have led to the "establishment" of religion in violation of the First Amendment by coercing youth to engage in specific religious activities.

During our first visit to Oakley, we observed youth-led prayer during the graduation ceremony which occurs every Wednesday morning and which youth in Unit Two are required to attend or face discipline. Furthermore, Oakley staff informed us that for two weeks following our visit, the youth would be attending Vacation Bible School. We observed posters containing religious material such as the "The Lord's Prayer" and other Bible verses hanging on the walls in military training classrooms and in counseling rooms in the cottages. Mandatory prayer and the posting of religious literature in the common areas of state facilities for youth violates the Establishment Clause. See Engel v. Vitale, 370 U.S. 421 (1962) (holding that classroom prayer at the beginning of each school day violates the Establishment Clause); Stone v. Graham, 449 U.S. 39, 39 (1981) (finding that posting the Ten Commandments on the walls of classrooms violates the Establishment Clause).

At Columbia, youth are required to attend religious services at the church every Sunday. Some girls reported they would be subject to discipline if they did not sing during services. The facility administrator stated that youth had the option of not attending the Sunday worship services if they chose not to, but both boys and girls indicated that attending Sunday worship services was a requirement or they would be disciplined. Youth also must participate in a religious service in their cottages every Tuesday evening or face discipline. The only reading material the children in the SIUs and some of the housing units are allowed to possess is the Bible. We witnessed a mandatory group counseling session in the boys' SIU in which youth were required to read Bible verses and sing religious songs.

In each of these cases, youth were required to engage in specific religious activities and were subject to disciplinary action if they did not participate. As discussed above, these are the same types of activities that the Supreme Court has found to amount to the State sponsorship of particular religious beliefs. Moreover, none of these activities are required to maintain facility security or for any other operational purpose. Therefore, these activities violate the Establishment Clause.

We emphasize that we are not suggesting that all religious practices at Oakley or Columbia must stop. In fact, the Free Exercise Clause of the First Amendment protects the youths' rights to engage in voluntary religious activity. In light of the unique nature of the correctional setting, facilitating juveniles' religious exercise may require a degree of State involvement in religious activities that would not be appropriate in other settings. For example, courts have held that it is permissible for the State to pay for chaplains in order to accommodate the religious exercise of those under State custody and control. See Katcoff v. Marsh, 755 F.2d 223 (2d Cir. 1985) (upholding military chaplaincy program); Carter v. Broadlawns Medical Center, 857 F.2d 448 (8th Cir. 1988), cert. denied, 489 U.S. 1096 (1989) (holding the county hospital's hiring of chaplain did not violate the Establishment Clause). Likewise, while having a chapel in a public school would clearly violate the Constitution, chapels are present in most large correctional facilities. Similarly, substance abuse programs that incorporate faith, such as Alcoholics Anonymous, are used by correctional facilities and probation departments throughout the country. Such programs are permissible under the Establishment Clause, though participants objecting to the religious elements must be

given a secular alternative if participation is mandatory. See Warner v. Orange County Dep't of Probation, 115 F.3d 1068 (2d Cir. 1997).

To comply with the Constitution, Oakley and Columbia need not excise religion from their facilities or programs. However, they must ensure that they do not coerce the youth to engage in religious activities by making all such activities voluntary. Also, the exhibition of religious posters in common areas should be limited to areas where the juveniles are voluntarily present, such as a room where a religious service or religious instruction is being held.

G. Safety and Sanitation

1. Oakley

Oakley's buildings and grounds are unsafe and unsanitary, creating unconstitutional confinement conditions for youth.

(a) Physical Plant

Oakley's campus contains old administration buildings and housing units which require constant upkeep and maintenance. Unfortunately, Oakley's maintenance staff consists of four employees who have received little or no training. These four individuals are required to maintain all of the buildings, control pest and rodent infestation, and mow and landscape the expansive grounds. There is no facility safety officer.

(1) Administration Buildings

The medical and dental clinics pose numerous safety hazards to Oakley's youth and staff. The Unit II Medical Clinic is a decrepit building with many water leaks that have created structural damage. The isolation room within the building is not equipped or constructed for its purpose which is to isolate youth with respiratory or gastrointestinal problems. Even more concerning is that there is no sterilization equipment in the clinic to clean medical instruments. Moreover, supplies and equipment were not properly stored to maintain any kind of sterilization. The dental clinic had not been cleaned in many months because we observed dirt, spider webs, mouse droppings, and dead roaches everywhere. It was apparent that the clinic has a major insect and rodent infestation.

The kitchen had several deficiencies. First, rodent and insect infestation are causing unsanitary conditions. We saw mouse droppings in the food storage areas and live and dead cockroaches in the kitchen. Kitchen staff stated that they had to cover food while cooking to prevent cockroaches from falling in from the hood above the stove. Youth also complained about finding roaches in their food. Many areas of the kitchen were unclean and some areas invited roach infestation. Second, water temperatures in the kitchen created unsafe conditions. The temperatures were high enough to cause first degree burns in a matter of seconds. Also, the water temperature and pressure in the dishwashing machine were improperly set so that dishes were not always clean.

The vocational training area, which includes the auto-body, small engine repair, welding, and carpentry shops, had a number of safety hazards. Our expert observed numerous mislabeled or unlabeled chemicals stored around the trade areas. There were no “Material Safety Data Sheets” relating to the chemicals in these areas, which inform staff how to handle and store this type of material. The sheets also provide important safety and emergency information on the chemicals. For example, a “chemical reducer” was located uncovered on a shelf in the auto-body shop, where the warning label clearly warns against this. Also, gas cylinders used for torches and welding were not properly secured. This fact, coupled with the fact that the areas have no fire sprinkler system and that the fire extinguishers have not been properly inspected, creates an extreme fire hazard. Furthermore, the exhaust system in the painting booth was inoperable.

The gymnasium at Oakley is supposed to be used for recreation. Unfortunately, during our visit much of it was unuseable because of water leaks from the roof. The locker rooms, showers, and stage area were not operable because of disrepair and flooding. The boy’s restroom was dirty and the floor was in disrepair. The girl’s restroom was in poor repair and had no hot water.

(2) Housing Units

The housing units at Oakley are divided into dormitories and cottages in Unit II and pods in Unit I, Ironwood, and the SIU. Two older cottages in Unit II, Cypress and White cottages, are in extremely poor physical condition. Cypress and White cottages suffer from age and deterioration and are not regularly

maintained. We observed the following problems in Cypress: paint peeling from ceiling and walls, three out of the four urinals were not operational, three of the eight showers were not operational, and showers were only operable through the control room. In other Unit II, SIU, and Ironwood housing, many bathrooms had not been maintained properly with walls and ceilings in poor repair and many washbasins, showers, and toilets not operable. Furthermore, SIU and Ironwood's housing set-up does not allow youth access to toilets or washbasins without getting the attention of staff. Youth also share one bar of soap during showers.

The housing units suffer from numerous other problems. Lighting in the living units varied greatly. There were numerous areas in which the lighting was so poor that it invited accidents and certainly eyestrain. Hot water temperatures varied substantially between the housing units. Temperatures varied between 81 and 135 degrees. Air temperature and humidity were generally in the acceptable range, but a few living units were extremely cold because of too much air conditioning. There were numerous examples of mis-stored chemicals and cleaning supplies, such as, a dirty mop head stored next to clean sheets and underwear. Many of the youth's mattresses were worn far beyond their useful life. In this condition, they cannot be adequately cleaned or sanitized and are fire safety risks. Youth sleep on the floor in crowded housing units or if the youth is on suicide precautions.

(b) Pest Control

In addition to what has already been discussed above, pest control in the housing units at Oakley is woefully lacking. There were rat burrows behind Cypress cottage, mice and roaches in the Unit I medical clinic, and roach infestations in Elm cottage and the SIU.

(c) Fire Safety

In an April 2002 fire inspection report, a fire marshal determined that four of the living units and the Unit II school did not have an operable fire alarm system. The report also found that the staff lacked adequate training and understanding for emergency situations. At the time of our visit three months later, these issues still had not been addressed. Other fire safety concerns included: emergency generators that required

hand cranking; Pine cottage's only fire extinguisher was partially discharged; Cypress cottage's only fire extinguisher was behind a locked door and the fire exit was locked and barred; and generally staff had a difficult time finding the right keys for fire extinguishers and fire exits.

2. Columbia

In general, we found the Columbia facility in better condition than the Oakley campus,[18] but found the following problems: (1) potentially dangerous areas in the housing units for youth with suicidal ideation;[19] and (2) sweltering temperatures in the girl's SIU with girls having no access to water.

H. Other Juvenile Justice Issues

1. Lack of Due Process

Youth routinely are locked in isolation in the SIUs at Oakley and Columbia, and in Ironwood at Oakley, without adequate due process. As a general rule, juveniles may be isolated and locked briefly in their rooms as an immediate response to out-of-control behavior that may endanger the youth, other children, or staff. However, extended isolation for punitive purposes may only be imposed if the youth is afforded notice of the charges and after an informal hearing before a staff member not involved in the incident. Moreover, the youth should be able to appeal adverse results of the due process hearing. Cf. H.C. v. Jarrard, 786 F.2d 1080, 1082 (11th Cir. 1986); Gary H. v. Hegstrom, 831 F.2d 1430, 1443 (9th Cir. 1987); Patterson v. Hopkins, 481 F.2d 640, 641 (5th Cir. 1973). Both Oakley and Columbia have policies detailing adequate due process procedures to which youth are entitled before being placed in disciplinary isolation. However, actual practices at both facilities deviate substantially from written policy. For example, a disciplinary committee at

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[18] At Columbia, there were some general maintenance issues for some of the older housing units.

[19] For example, we observed metal hooks for hanging uniforms in the hallways of most of the basic and advanced housing areas. Metal grating with openings large enough to tie off a hanging device was found in several cells in the girls' SIU.

Columbia hears complaints against youth. However, if a youth appears before the Committee and testifies to something other than what the staff attests to, the youth is typically given added time or punishment. Youth sent to the SIUs do not receive the benefit of the committee hearing prior to removal from the cottages and in fact may be confined in isolation for several days before they receive word regarding their punishment or release back to the cottages. Hearings are not provided to students at Oakley when they are removed from the open cottages and sent to Unit One, the SIU, or Ironwood. Youth reported, and the documentation we reviewed showed, that youth are routinely removed to the secure, locked units based on recommendations from the psychologist, the facility administrator, or the director of the Division of Youth Services, without the opportunity for a hearing.

2. Grievance Process

Columbia and Oakley youth have no ability to access a grievance system designed to address their complaints regarding their treatment at the facilities. Generally accepted professional standards mandate that youth should have readily available access to a grievance process. Where courts have considered this, they have uniformly found that detained youth have a constitutional right to file grievances with facility administrators regarding their treatment. Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995); D.B. v. Tewksbury, 545 F. Supp. 896, 905 (D.Or. 1982); Morales v. Turman, 364 F. Supp. 166, 175 (E.D. Tex. 1973). An objective grievance system should be well known to youth at Oakley and Columbia and be easily accessible. Grievances also provide an important quality-control mechanism by which Oakley and Columbia administrators can monitor whether facility staff are adhering to policies and procedures.

3. Staff Training

Many of the deficiencies we identified at each facility can be directly attributed to lack of training. Staff at both facilities lacked adequate training in behavioral management techniques, assessment of suicidal youth, crisis management, psychiatric medications, therapeutic techniques, verbal communication and de-escalation, and working with violent juveniles. Staff also need to be trained in properly documenting serious incidents, use of physical and chemical restraints, and visual checks of youth locked in cells. Nurses at Oakley and

Columbia are not provided training to improve their skills and clinical competency and are not regularly trained and certified in CPR. Staff at Oakley had not received any training in CPR, first aid, or other medical issues in recent years. Staff at both facilities are ill-equipped to handle emergencies.

4. Mail, Telephone, and Visitation

Youth have the right to send and receive written communications through the postal service. See Milonas v. Williams, 691 F.2d 931, 939 (10th Cir. 1982). Both Oakley and Columbia's policies state that incoming and outgoing mail will not be read by staff unless there is reasonable cause to believe the mail is a threat to the security of the institution or another individual, or contains sexually explicit or obscene matter. Youth at Columbia reported that their mail was censored. Reportedly, correspondence to family or to youth court judges which mentioned anything negative about Columbia or the Columbia staff was not mailed. At both facilities, many youth indicated that they were not given regular opportunities to write their families. Overly-restrictive practices with respect to mail, telephone, and visitation work together to deny youth in both facilities the ability to communicate with their families, communities, and attorneys.

Additionally, youth cannot make or receive telephone calls at Oakley and Columbia. Families are permitted visits for only two hours on Sunday. Many youth reported that families could not visit because of the youth's placement in a facility far from home combined with such limited visitation opportunities. This forced estrangement from their families negatively impacts youths' abilities to achieve success at the facilities.

5. Lack of Opportunities for Exercise at Ironwood

Ironwood staff do not allow youth to go outside for exercise in the recreation yard attached to the building. During our first tour, more than half of the youth had been in Ironwood longer than 90 days. One youth had been confined in Ironwood for nearly two years and reported that he had never been allowed

outside even though there is a secure court in the back of the facility. This is unhealthy and inhumane, and unlawful.[20]

III. REMEDIAL MEASURES

In order to rectify the identified deficiencies and protect the constitutional and statutory rights of the youth confined at Oakley and Columbia, the facilities should implement, at a minimum, the following measures:

A. Protection from Harm

1. Ensure that any imposition of discipline is appropriate and justified by a legitimate, appropriate penological interest. Ensure that abusive institutional practices such as hog-tying, pole shackling, "sitting in a chair," "guard duty," making youth run with tires around their bodies, use of the "dark room" in the girls' SIU at Columbia, and requiring youth to strip naked before being placed in isolation, are ceased immediately.

2. Ensure that juveniles are adequately protected from staff abuse. Employ sufficient trained and independent investigators to ensure that all incidents of violence, use of force, or serious injury are adequately investigated and that appropriate personnel actions are taken in response to substantiated findings. Ensure that OC spray is used only where there is an imminent risk of serious bodily harm and no other less intrusive restraint is available. Ensure that all uses of OC spray or mechanical or chemical restraints are well-documented and reviewed in a timely manner by senior administrators.

3. Develop and implement adequate quality assurance mechanisms and review to ensure the efficacy of corrective measures.

B. Mental Health Care

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[20] Youth in confinement "must receive at least an hour's physical exercise out of the [unit] or in the gym . . . ." <u>Morgan</u> v. <u>Sproat</u>, 432 F. Supp. 1130, 1140 (S.D. Miss. 1977). Youth "should have at least one to two hours of recreation each weekday and two to four hours on weekends, when they are not in school." <u>Id.</u> at 1154.

1. Provide adequate mental health and rehabilitative treatment.

2. Ensure that there are an adequate number of counselors and psychologists and an adequate amount of contracted psychiatric hours to provide adequate mental health and rehabilitative treatment services to all youth who require such services.

3. Ensure that all youth with mental health needs have current comprehensive individual treatment plans, and that the youth, and facility counselors, are involved in their development.

4. Develop and implement policies and procedures that comply with generally accepted professional standards for the management of suicidal youth.

5. Ensure that restraints and isolation other than disciplinary isolation are used only when a youth presents a clear and present danger to him/herself or others. Provide adequate positive behavior management programs.

6. Cease placement of youth in isolation cells for prolonged periods. Ensure that youth placed in isolation cells receive adequate exercise and recreation outdoors.

7. Cease placement of mentally ill youth in programs and units where they cannot receive adequate mental health care or where they face a likelihood of punishment or other harm in response to their mental illness. Cease placement of youth with suicidal ideation at Ironwood or in the SIUs at Oakley and Columbia.

8. Provide appropriate rehabilitative activities during non-school hours and days.

9. Cease placement of youths into paramilitary programs when, by reason of mental or physical disability or maturity level, the youth cannot reasonably be expected to obtain any significant benefit or the placement will likely result in physical or psychological harm to the youths.

C. Medical Care

1. Staff all medical units with sufficient medical staff to screen and evaluate incoming youth, and provide adequate treatment and monitoring of youth with medical needs.

2. Ensure that nurses provide medical care within the scope of their training and licensure.

3. Train staff to conduct medical and mental health assessments properly and to look for signs of mental and physical illness in the youth interviewed.

4. Revise and implement procedures to ensure that youth reporting or exhibiting possible signs of significant medical or mental health problems during the initial assessment are seen promptly by a doctor or psychiatrist, where appropriate, and receive follow-up care.

5. Develop and implement procedures for validating and continuing, if appropriate, current prescriptions for medications of incoming youth within the prescriptions' clinically indicated time period.

6. Ensure that the medical clinics at each facility are equipped with adequate equipment to provide essential emergency services. Ensure that medical equipment that could be used as weapons is not accessible to youth.

7. Provide for an appropriately confidential environment in which to conduct medical and mental health assessments. Ensure that youth have adequate opportunities to contact and discuss health concerns with health care staff in a setting that affords privacy.

8. Develop and implement policies, procedures, and practices to ensure that youth receive care from the appropriate level and specialty of practitioner in a timely manner.

9. Ensure that all youth receive a full dental examination at the time of the initial health assessment, and provide adequate treatment and monitoring of youth with dental needs.

10. Cease the use of the dental clinic at Oakley until such time as the risks of infection from the contaminated instruments,

and equipment, and dirt, pests, and other vermin are removed.

D. Education

1. Ensure that all students receive appropriate education instruction within a few school days of their arrival at the facility.[21]

2. Ensure that all students receive 330 minutes of classroom time per day and that all students receive the benefit of class instruction in math, English, social studies, and science.

3. Provide adequate qualified substitute teachers.

4. Provide youth in disciplinary confinement with the full range of educational services.

5. Provide all youth reasonable access to reading and writing materials in their cells.

6. Provide adequate screening of youth for special education needs. Obtain prior education records from school systems in a timely fashion. Provide special education services to all youth identified by the screening process.

7. Implement procedures to identify all youth with mental retardation or mental illness and ensure that they are transitioned out of Oakley and Columbia as quickly as possible. Implement procedures to prevent the placement of youth with mental illness or mental retardation at the facilities.

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[21] One way Oakley and Columbia could provide this remedy is to set up a special "intake" education class. This classroom could focus on basic education skills such as literacy, current events, and math skills. The curriculum would be applicable to children with a broad range of education backgrounds. It would also provide the facility with an opportunity to evaluate the children's education abilities before all relevant education records had been obtained. After an appropriate period of time in this intake classroom, children could be integrated into the general school population.

8. Ensure parent or guardian involvement in evaluations, eligibility determinations, placement and provision of special education services.

9. Ensure that all eligible youth have current, valid IEPs. Create a system of routinely developing, implementing, monitoring and reviewing youth's IEPs.

10. Provide juveniles with adequate related services at Oakley and Columbia and ensure that special education students have access to transition services specified in the IDEA, such as the vocational training program at Oakley.

E. Religious Freedom

1. Revise the policies regarding the exercise of religion to clarify the proper role that religious activities can play at the facilities. The policies shall provide that youth be allowed to engage in voluntary religious activities unless the facilities can show that curtailing such activities would be the least restrictive means of achieving a compelling governmental interest. At the same time, the policies must not coerce youth to engage in specific religious activities. Provide adequate training to all staff on the policies and protocols described above. Monitor facility programs and the decorations on the units to ensure that the policies described above are being followed.

F. Environmental Health

1. Correct deficiencies in maintenance and sanitation at Oakley. Appoint a facility safety officer to ensure accountability in the areas of safety and sanitation.

2. Repair all safety hazards in administrative buildings and housing units at Oakley. Remedy all suicide hazards in areas where youth with suicidal ideations may be potentially housed.

3. Ensure that Oakley provides proper water temperatures in the kitchen and housing areas.

4. Obtain Material Safety Data Sheets for all applicable chemicals used in the facilities.

5. Develop written policies and procedures specifically addressing the handling, storage and use of flammable, caustic and toxic chemicals in compliance with applicable state and federal regulations.

6. Correct structural problems in Oakley's gymnasium.

7. Repair and replace all malfunctioning toilets, lavatories and showers at Oakley.

8. Ensure that adequate sleeping accommodations are provided such that no youth is required to sleep on the floor at Oakley.

9. Implement proper sanitation and maintenance control of cockroaches, spiders and mice throughout Oakley, including housing and medical areas.

10. Ensure that bi-annual fire safety inspections are conducted at Oakley by state and local fire officials.

11. Address all issues identified by the Fire Marshal at Oakley immediately.

12. Ensure that Oakley staff are adequately trained quarterly in fire and emergency procedures.

13. Ensure adequate ventilation throughout the boys' and girls' SIUs at Columbia so that youth receive an adequate supply of fresh air and reasonable levels of heating and cooling. Maintenance staff should review and assess compliance with this requirement at appropriate intervals.

G. Other Juvenile Justice Issues

1. Ensure that youth are afforded a due process hearing before imposing confinement for disciplinary purposes in the SIUs at both facilities, Unit One at Oakley, and Ironwood.

2. Develop and implement an adequate grievance system at Oakley and Columbia.

3. Employ sufficient trained staff to ensure safety and to satisfy the individual treatment, training and

rehabilitative needs of juveniles confined in these facilities.

4. Train existing staff so that they perform their positions adequately and ensure that all staff demonstrate an understanding of and/or demonstrate the application of applicable skills. For all staff working with juveniles, the areas of training and demonstrated competence should include: passive restraint; stages of adolescent development; communication skills; therapeutic intervention skills; basic rights of residents and staff; report writing; basic medical terminology; recognizing and responding to seizure disorders; common side effects of prescription and non-prescription medication; universal precautions to prevent infection of TB or HIV/AIDS; confidentiality of medical information; the provision of health education for residents; basic information concerning learning disabilities; certification in first aid and CPR; and adaptive activities for physically and developmentally challenged juveniles.

5. Provide juveniles with adequate access to mail, telephones, and visitation.

6. Ensure youth confined to Ironwood are permitted access to adequate outdoor exercise.

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During the exit interview at our on-site tours, we provided State officials with preliminary observations made by our expert consultants. State officials and facility staff reacted positively and constructively to the observations and recommendations for improvements. The collaborative approach the parties have taken thus far has been productive. We hope to be able to continue working with the State in an amicable and cooperative fashion to resolve deficiencies previously noted. In addition, due to the State’s cooperation in this matter, and State officials’ expressed desire to improve conditions in these facilities, we will send, under separate cover, reports from our experts which provide their more detailed findings and recommendations to address the inadequacies they found in the operation of the facilities. Although the expert consultants’ evaluations and work do not necessarily reflect the official

conclusions of the Department of Justice, their observations, analysis, and recommendations provide further elaboration of the issues discussed in this letter and offer practical assistance in addressing them.

In the unexpected event that the parties are unable to reach a resolution regarding the concerns outlined above, the Attorney General may initiate a lawsuit pursuant to CRIPA, to correct deficiencies or to otherwise protect the rights of Oakley and Columbia residents, 49 days after the receipt of this letter. See 42 U.S.C. § 1997b (a)(1). We have every confidence, however, that this matter will be resolved cooperatively. Accordingly, Civil Rights Division attorneys will soon contact State officials to discuss in more detail the State's implementation of these remedial measures.

Sincerely,

/s/ Ralph F. Boyd, Jr.

Ralph F. Boyd, Jr.
Assistant Attorney General

cc: The Honorable Mike Moore
Attorney General
State of Mississippi

Thelma Brittain
Interim Executive Director
Mississippi Department of Human Services

Willie Blackmon, Director
Division of Youth Services
Mississippi Department of Human Services

Dr. Nanolla Yasdani
Executive Director
Oakley Training School

Mr. Michael Morris
Executive Director
Columbia Training School

The Honorable Dunn O. Lampton
United States Attorney for the
Southern District of Mississippi

The Honorable Roderick R. Paige
Secretary
United States Department of Education

Mr. Robert H. Pasternack
Assistant Secretary
Office of Special Education and Rehabilitative Services
United States Department of Education

Ms. Stephanie S. Lee
Director
Office of Special Education Programs
United States Department of Education