



U.S. Department of Justice

Civil Rights Division

JCP:JA:CNC:NS:pc
DJ 168-35-46

*Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530*

February 19, 2015

Stuart M. Nathan, Esq.
Principal Counsel
Department of Public Safety
Hampton Plaza
300 East Joppa Road
Suite 1000
Towson, MD 21286 – 3020

Re: Baltimore City Detention Center

Dear Mr. Nathan,

This letter is to provide a written update regarding the United States, Department of Justice's investigation of the Baltimore City Detention Center. Specifically, this letter provides the Department's views regarding the State of Maryland's efforts to improve conditions for juveniles at BCDC.

Our juvenile detention expert reviewed documents, interviewed staff, interviewed juveniles, and conducted an on-site inspection from August 19-20, 2014. Please extend again our appreciation to BCDC staff and administrators for their assistance throughout this process.

On previous occasions, the Department has evaluated the State's compliance efforts against the terms of a voluntary Settlement extension ("Settlement") entered in April 2012. Although that Settlement has expired, the State has continued to cooperate with our office. Given the State's cooperation and the procedural posture of our investigation, we have elected to base our evaluation on the Settlement terms, rather than utilizing the full range of federal statutes, regulations, and case law that govern the treatment of juveniles by state agencies.

Although we found continued improvements at BCDC, we also identified three significant continuing deficiencies that must be remedied. These violations involve: 1) seclusion and disciplinary practices, 2) inadequate staff training, and 3) inadequate recreation and structured rehabilitative programming.

I. CONTINUING VIOLATIONS OF FEDERAL LAW

The State has maintained many of the improvements required by the Settlement in regards to juveniles housed at BCDC. For instance, the State continues to house juveniles in their own facility, which keeps the juveniles out of sight and sound from adults. The State has also increased educational programs and staff training, so that staff is better able to manage

juveniles. These improvements resulted in progress on addressing the issues pertaining to juveniles that were noted in our April 2014 compliance evaluation letter. See also Settlement par. 42-48. We write now to identify our remaining, but very significant, concerns.

1. Seclusion and Disciplinary Practices

BCDC's disciplinary practices result in the inappropriate seclusion and punishment of juveniles. The problem has several facets. First, the use of seclusion on juveniles is itself misguided. Separating juveniles and housing them in isolated, harsh conditions merely suppresses behavior on a temporary basis. In the long-term, such practices may result in mental deterioration, lead juveniles to engage in self-harm, or exacerbate behavioral issues. Seclusion also tends to interrupt required programming and education. So seclusion should only be imposed for short periods of time, allowing a juvenile to calm down and the immediate crisis to pass. At BCDC, staff use seclusion so frequently that some juveniles with behavioral issues have extraordinary, cumulative lengths of stay. For instance:

- Between 7/28/13 and 8/14/14, RC spent a total of 143 days in seclusion. This amounts to 37% of his time in custody during that calendar year (143 of 382 days).
- EM spent a total of 53 days in seclusion between 4/8/14 and 7/22/14. This amounts to 50% of his time in custody (53 of 105 days).
- AP spent a total of 36 days in seclusion between 4/29/14 and 7/8/14. This amounts to 51% of his time in custody (36 of 70 days).
- AJ spent a total of 42 days in seclusion between 5/16/14 and 8/14/14. This amounts to 47% of his time in custody (42 of 90 days).

Moreover, BCDC imposes periods of seclusion for specific incidents that are excessive in their own right. For example, in 76% of the cases where juveniles were held in seclusion prior to a disciplinary hearing, the average length of stay was 13 days. In comparison, State policy places a 7-day limit on the use of seclusion prior to a disciplinary hearing. So even when measured against the State's own internal benchmarks, the lengths of stay in seclusion are long. In the 21% of cases where juveniles were sanctioned with disciplinary seclusion time, the average length of stay in disciplinary seclusion was over 8 days. Of course, such additional disciplinary seclusion would be in addition to any time spent in administrative seclusion prior to adjudication.

BCDC's disciplinary process is also seriously flawed. For discipline to be effective, sanctions need to be imposed in a timely manner. This is especially true for juveniles, who may have difficulty connecting actions with consequences because of their developmental status. Instead, BCDC's disciplinary process has so many delays, that the average length of time between an incident and a juvenile's disciplinary hearing is *80 days*.¹ This is grossly excessive and violates basic principles of Due Process. BCDC staff confirmed that there are significant delays in conducting the disciplinary hearings, but the data suggests the delays are much longer

¹ Hearing date information was provided for 15 of the 38 incidents.

than even the staff may acknowledge. Just as adults who have not been convicted of a crime have more rights under the Due Process Clause than convicted prisoners, juveniles also have more Due Process rights than prisoners. By the time BCDC holds a disciplinary hearing, a juvenile may have already been placed in seclusion for many days. For juveniles who have violated facility rules, such lengthy seclusion without a hearing is problematic enough. It is even more troubling for the 24% of juveniles in seclusion who are ultimately found not guilty under the disciplinary process.

Finally, the facility's threshold for using seclusion on juveniles is low. The facility uses a relatively mechanical punishment matrix that imposes 7-14 days of seclusion for the first infraction level, and up to 60 days for the fourth. The matrix is inconsistent with sound juvenile practice. We note, as a matter of technical assistance, that juvenile standards allow the use of seclusion on juveniles only as a short-term measure to restore calm. Once the situation has de-escalated and juveniles can return safely to general population, they should be re-integrated into the less restrictive setting promptly. This more age-appropriate disciplinary system requires frequent staff interaction and a frequent assessment process while juveniles are in seclusion, neither of which occurs at BCDC. Instead, BCDC's matrix and disciplinary system are not only inflexible; they likely contribute to the excessive use of seclusion in general.

2. Training

The State has not yet provided adequate training for staff who interact regularly with juveniles. The training curriculum does include various topics that are responsive to our past recommendations. However, the curriculum still does not adequately cover three important topics - Adolescent Development, Trauma, and Mental Health and Developmental Disabilities. Moreover, the State has only recently begun training staff on the curriculum. Only two of the staff working in BCDC's Juvenile Service Program have completed some of the courses included in the curriculum. One additional staff member has completed the course on Crisis Prevention and Management Training. In sum, of the two administrators and 21 staff who are currently assigned to the juvenile units, fully 87% had not yet received any of the training.²

3. Recreation and Structured Rehabilitative Programming

BCDC's ability to provide treatment and programming remains very limited. BCDC does provide educational services, and juveniles receive exercise about one hour per day.³ The Baltimore School District also occasionally provides juveniles with after-school programs. However, juveniles generally have little access to other types of structured juvenile programs and treatment, such as substance abuse and anger management classes. BCDC also does not offer pro-social activities often found in juvenile facilities (e.g. organized recreation programs), which can be helpful for teaching children and adolescents the interpersonal skills required to conform

² To the extent staff may be pulled from adult units to work in juvenile units, the coverage listed here may actually understate the number of qualified, trained staff working with the juveniles.

³ In juvenile facilities, exercise should be offered for two hours/day on the weekends. This reflects in part the lack of other programming and activities outside of the school week. We note also that in the corrections and juvenile context, exercise is more than just an optional recreation program. It can be considered a constitutionally required activity. Exercise is often deemed essential to alleviating unhealthy and violent conditions which develop when prisoners are held for long periods of time in confined conditions.

to society's expectations. Instead, at BCDC, juveniles have a lot of time on their hands with very little adult guidance, interaction, or treatment. The facility's schedule for juveniles includes about seven hours of unstructured time each weekday, and nine hours of unstructured time each day on Saturdays and Sundays. Juveniles in seclusion receive even less treatment than those in general population, and can be denied recreation entirely. Ironically, juveniles in seclusion may actually be the individuals most in need of the types of structured programming we have recommended in the past.

II. RECOMMENDATIONS

To address our remaining concerns, we request that the State continue with ongoing efforts to improve services and programs for juveniles. In doing so, we recommend that the State consider the following specific measures:

1. Revise the facility's disciplinary and seclusion practices so that they are consistent with the physical/mental development and needs of children and adolescents. Such revisions should include eliminating the routine use of disciplinary seclusion. In determining appropriate responses to misconduct, BCDC needs to ensure that penalties do not eliminate programs or exercise, which would be counter-productive.
2. Complete development and implementation of the training program for staff assigned to the Juvenile Service Program.
3. Continue development and implementation of juvenile rehabilitative programs so that they are consistent with the physical/mental development and needs of children and adolescents.

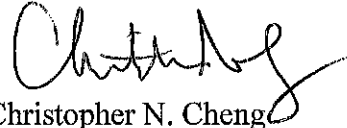
During our exit conference, state officials asked whether we had any views regarding whether BCDC juveniles should be placed in the Baltimore City Juvenile Justice Center or other more age-appropriate placement alternatives. Theoretically, the State can make improvements to BCDC's Juvenile Service Program so that it more closely parallels those offered in its juvenile facilities, which in turn are more consistent with professional standards. However, as a practical matter, we have concerns about both the efficiency and capability of BCDC to provide all of the necessary programs.⁴ Our consultant recommends that the State should place all juveniles facing adult charges in juvenile facilities, rather than using BCDC, a facility which is neither designed nor staffed to manage juveniles and has continuing significant deficiencies.

In conclusion, we again thank the State for cooperating with our review and making improvements to juvenile services at BCDC. We encourage the State to adopt and implement our remaining recommendations in this area as soon as possible, so that we may consider these issues resolved.

⁴ Given limited resources, existing alternatives, and the difficulties of bringing a new facility on-line, we also recommend that the State take a much closer look at a plan to build a new juvenile detention center near BCDC. As with trying to upgrade BCDC itself, constructing another new juvenile detention center that largely mimics conditions at BCDC is inefficient and may very well result in the same ineffective, harsh conditions of confinement.

We will be contacting your office shortly to follow-up on this letter. If you have any questions or wish to discuss this matter further, please feel free to call me directly at (202) 514-8892.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher N. Cheng". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Christopher N. Cheng
Attorney
Special Litigation Section