



Legislative Study Group

Texas House of Representatives

Chair Garnet Coleman Vice Chair Lon Burnam Vice Chair Abel Herrero
Treasurer Elliott Naishtat Secretary Rafael Anchia Legal Counsel Dora Olivo

Legislative Study Group Committee on State Schools

LSG Committee Co-Chairs Abel Herrero, Solomon Ortiz Jr.

LSG Chair Garnet Coleman

Interim findings and recommendations to improve the conditions at the Corpus Christi State School

The Legislative Study Group (LSG) conducted a hearing in Corpus Christi on 9/4/07 at Corpus Christi City Hall to hear testimony from individuals with concerns about the conditions at the Corpus Christi state school. The committee then conducted a site visit to get a first hand view of the operations and condition of the facility. The committee then spoke individually with advocacy groups and staff at the Department of Aging and Disability Services (DADS) as well as the Department of State Health Services (DSHS). Staff researched the current state policy for the operation of Texas state schools. The following represents the results of the committee's review.

Introduction to State Schools

DADS currently runs 13 state schools in Texas to provide care to 4,886 Texans with severe or profound mental retardation and people with mental retardation who are medically fragile or who have behavioral issues.

The clients of state schools often have very serious medical needs and represent one of the most vulnerable populations in the state. The State of Texas has both a legal and moral obligation to provide a minimum standard of care. As such, it is incumbent upon lawmakers to ensure that they receive the highest level of care available while maintaining their respect and dignity.

The Lubbock State School is currently being investigated by the United States Department of Justice for civil rights violations related to its failure to provide a professional standard of care. Based on previous review of documents provided by both DADS and DFPS and conversations with credible witnesses, concerns were raised that conditions similar to those found at the Lubbock State School may exist at the Corpus Christi State School. In 2007, two clients of the state school died while at the facility.

The Legislative Study Group Committee on State Schools was formed in response to such concerns. Long term, the LSG plans to develop a report on areas of improvement for recommendation to the 81st Legislature. In the short term, the following findings are areas in need of improvement that can significantly benefit the conditions and level of care found at the facilities.

Olmstead

The Americans with Disabilities Act (ADA) was passed in 1990 to ensure that no person, in any government administered program, was discriminated against based on disability. Language in Title II of the Act contains a requirement for public agencies to provide services "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." When applied to institutions such as state schools, it requires government agencies to extend services to disabled persons in the community, as opposed to keeping them in the institution.

In 1994, the state of Georgia kept two women with mental disabilities in a psychiatric hospital, after it was recommended to integrate them into group homes. When it was determined that this policy was in violation of the Americans with Disabilities Act (ADA) integration mandate, Georgia appealed to the Supreme Court. In 1999, the Supreme Court ruled in the *Olmstead v L.C. and E.W.* case against the state of Georgia's appeal to enforce the institutionilization of individuals with disabilities. Justice Ruth Bader Ginsburg ruled under the ADA "states are required to place persons with mental disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

The *Olmstead* decision has changed the way states deal with individuals with disabilities. With the affirmation that states are required to provide integration services to eligible individuals, the state of Texas developed a plan, named the Promoting Independence Plan, that has moved 958 clients out of state schools in the 8 years since the *Olmstead* decision. As the state has moved some clients into community and home based programs, the remaining population at state schools now tends to have a higher concentration of more severely afflicted and vulnerable clients that require more advanced care. At present, an important issue regards the quality of care received by the current, more vulnerable clients in state schools. Allegations of abuse and neglect at various facilities in Texas, coupled with investigations by the US Department of Justice (DOJ) and complaints from advocacy groups and families has pointed out the need for improvement in the current system in Texas that administers to this population.

While the state effectively planned and executed a measure to integrate more independent members of the population into the community, it failed to address the issue of increasing care to the more vulnerable clients that remained at the state schools. Ensuring that direct care staff are qualified, compensated fairly, and relieved of some stress, levels of care can be increased and the possibility of future abuse and neglect can be diminished.

Corpus Christi State School

The Corpus Christi State School provides 24 hour care to its population with mental retardation/developmental disabilities, who often have severe physical disabilities or mental health and behavioral challenges. As of 2006, 371 individuals resided at the Corpus Christi State School. During testimony, Interim Superintendent Al Barrera described the current population at the Corpus Christi State School. As a result of the *Olmstead* court decision, the clients that currently reside at the state school pose more challenges, demand more care, and are more vulnerable than clients 10 years ago.

Findings

I. Staffing shortages and a high turnover rate result in increased stress levels for employees already performing a difficult and demanding job. Between 6/15/07 and 9/14/07, 96 employees at the Corpus Christi State School worked 16 hour shifts on consecutive days. There are required minimum staffing numbers, and staff were required to work these long hours due to the lack of staff and lack of funding.

The 80th Legislature approved an additional \$110 million in funding to hire 1,690 more employees across the state in the coming biennium. Corpus Christi will receive 94 new positions: 5 psychologists, 74 positions in medical nursing professional services, 20 positions in administration and support. There are currently 809 employees at the school. While an important step, this additional funding for more Full Time Equivalent (FTE) employees simply improves conditions that have been in place at state schools since 2001. The state has failed to address these issues in the previous biennial budgets and is only now beginning to address issues that have existed for the previous 6 years. With a more vulnerable population than in previous years, more employees should be hired to reduce stress on existing employees and enhance care. (Testimony showed that there are staffing problems at other state schools, and as indicated by the interim superintendent of the Corpus Christi, this has resulted in a lower quality of care.)

II. Entry level direct care staff begin work with an annual salary of \$8.48/hr – \$9.29/hr. Due to the low level of pay, long hours, and the high stress rate of the job, turnover rates are approximately 34%. It is difficult to attract additional employees, much less skilled and qualified employees, with such low salary ranges.

The additional funding in the current budget also provides for additional employees at the same level of compensation. With a 34% turnover rate, it is obvious that an increase in pay is needed as an important first step towards attracting and maintaining quality staff.

III. During testimony, the interim superintendent expressed a need for increased training for staff. Policy created by DADS imposes a refresher course in training after one year. With the high stress rates and low standards of qualification for employment, proper and effective training and counseling are needed to ensure quality of care.

IV. As a result of the high turnover and low pay, the minimum qualifications to be employed as a direct care staff member include an 8th grade education, without a GED or high school equivalency. Additionally, criminal backgrounds with arrests of DWI, resisting arrest, prostitution and vehicle theft are only considered “possible” contraindications to employment. Higher standards should be imposed to ensure the quality of employees that provide direct care to clients.

V. Concern has been expressed about the oversight of investigations of abuse and neglect at MHMR facilities. In 1992, the Legislature gave authority to DFPS (then PRS) to conduct investigations of abuse, neglect, and exploitation of consumers in state schools. With the reorganization of agencies in 2003, DFPS falls under the umbrella of the HHSC enterprise. When a complaint is filed at a state school, DFPS has specific authority to investigate and issue reports to DADS or HHSC. This leaves the investigation, reporting, and any subsequent recommendations

and actions placed under the oversight of the same agency. Without an outside, independent authority assisting or overseeing such investigations, the potential for abuse or coverup exists.

VI. A additional point of concern is the mixed population consisting of individuals with criminal background, such as individuals with charges pending for mental incompetence in their trial. This opens up the possibility for individuals with dangerous history, sex crimes or violent crimes, to be living in mixed quarters with other individuals that have severe mental retardation.

Preliminary recommendation to DADS for immediate action to improve the care for clients at the Corpus Christi State School

- I. Increase number of FTA while reducing turnover rates, insuring continuity of care for clients.
- II. Increase pay for direct care workers to attract and maintain quality employees.
- III. Training procedures and refresher courses should be reviewed and improved to ensure quality of care. More frequent training and refresher courses should be instituted.
- IV. Minimum quality standards for employment must be raised in order to insure that state schools are safe and provide the best care possible.
- V. More accountability and discipline must be enforced for allegations of abuse. The state should respond swiftly to allegations and investigate abuse. If the claims are found to be valid, steps should be taken immediately. To prevent conflicts of interest, it would be best to establish an independent authority outside of the HHSC enterprise to assist and oversee investigations of potential abuse.
- VI. Better care should be taken to monitor and supervise interaction between clients and the population of individuals with violent or sexual criminal histories found incompetent to stand trial. If possible, a separate forensic facility should exist to maintain the population of those with sex offender status and violent crimes.

The recommendations found in this report should be used to review and take action at every state school. In the short term, if conditions similar to our findings at the Corpus Christi state school exist in other facilities, the recommendations should be extended. Additional hearings will be held and a more exhaustive and final report on improving the conditions of Texas state schools will be presented to the 81st Legislature.