



COMMONWEALTH OF VIRGINIA

Secretary of Public Safety and Homeland Security

AUGUST 13, 2018

VIRGINIA DEPARTMENT OF
JUVENILE JUSTICE REPORT OF
FINDINGS

**SHENANDOAH VALLEY
JUVENILE CENTER**

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EXECUTIVE SUMMARY

BACKGROUND

In fall 2017, three migrant children detained by the federal government's Office of Refugee Resettlement (ORR) at the Shenandoah Valley Juvenile Center (SVJC) filed a federal class action lawsuit alleging abuse by the guards at SVJC. In early 2018, out of concern for the safety of the residents, Virginia Department of Juvenile Justice (DJJ) certification team reviewed prior certification documents and visited SVJC to monitor and observe conditions in the facility. The certification team did not find any immediate concerns regarding the health and safety of the residents.

On June 21, 2018, a story was published reporting the alleged abuse contained in the lawsuit. The Governor takes these allegations very seriously and, recognizing the severity of the information contained in the lawsuit, directed Secretary Brian J. Moran to initiate an inquiry. The Secretary immediately contacted the director of Department of Juvenile Justice and the Governor's Chief of Staff to identify a plan of action and commenced the investigation.

Findings and the process of the investigation are contained below.

ROLE OF THE DEPARTMENT OF JUVENILE JUSTICE

Pursuant to regulations issued by the State Board of Juvenile Justice, DJJ has oversight but not operational responsibility for locally operated juvenile detention centers. According to 6VAC35-20-36.1, whenever the DJJ becomes aware of a health, welfare, or safety violation in a locally operated detention center, the Department shall take immediate action to correct the violation, if not already done by the program or facility.¹ The actions include reporting the situation to child protective services (CPS), the Virginia State Police, or the local law enforcement agency as applicable. Additionally, 6VAC35-20-37 provides for the DJJ Director to take immediate administrative actions when evidence is found of health, welfare, or safety violations to include but not limited to:

- The immediate removal of juveniles from the program. The immediate removal by DJJ would be limited to court involved youth who are in local or state custody. The Director would notify ORR of the action and ORR is responsible for any removal of youth in federal custody.
- Placing the facility on probationary certification status.

¹Virginia regulation, 6VAC35-101-95, requires the juvenile detention center staff to report all known criminal activity by residents or staff to the facility administrator. The facility administrator shall notify the appropriate persons or agencies to include law enforcement, child protective services and DJJ, if applicable and appropriate, of suspected criminal violations by residents or staff. The law enforcement agency and CPS would determine necessary action.

- Issuing a preliminary order to suspend the certification of the detention center when conditions or practices exist in the facility that pose an immediate and substantial threat to the health, welfare, or safety of the residents.

After DJJ's thorough investigation, it did make referrals to local child protective services, but based on their investigation, determined that no further action was necessary. See Department of Juvenile Justice Report.

The SVJC is an independent juvenile detention facility for youth managed by the Shenandoah Valley Juvenile Center Commission. SVJC staff are not state employees. Furthermore, DJJ does not have any official relationship or jurisdiction over the ORR, nor the federally supervised youth at SVJC. The ORR is a federal program under the U.S. Department of Health and Human Services (HHS) that works with unaccompanied minors while their immigration cases are pending.

Unaccompanied minors are immigrant youth under the age of 18 who have no parent or legal guardian in the United States. Unaccompanied minors are placed at SVJC when ORR has determined that a less secure placement would not be appropriate. The DJJ has no contractual relationship with ORR, nor auditing or monitoring authority or responsibility over the federal youth housed at SVJC. The federal youth program is audited and overseen solely by ORR. Pursuant to a cooperative agreement that SVJC entered with ORR and HHS, ORR monitors SVJC for compliance with their requirements through announced and unannounced monitoring visits. These are not the youth who have been subject to the recent family separation policies of the Trump administration.

SECRETARY OF PUBLIC SAFETY AND HOMELAND SECURITY AND DEPARTMENT OF JUVENILE JUSTICE INQUIRY

On the evening of June 21, 2018, upon the Governor's directive, Secretary Moran and DJJ Director, Andrew Block, met with the SVJC Superintendent and toured the facility, including visiting the units housing the youth in ORR custody.

On June 21, 2018, with permission and conditions set by ORR, the DJJ certification and quality assurance teams conducted interviews with SVJC staff and all federal residents at SVJC at that time. According to the SVJC, none of the youth originally named as plaintiffs in the October '17 lawsuit were still present at SVJC during the visits and interviews. Additionally, a protective order had been entered in March 2018 that prohibits SVJC and ORR from disclosing the identities of any of the plaintiffs in the litigation. The following day, the Secretary participated in a call with DJJ detailing the results of their interviews at the facility. The team, with the addition of DJJ investigators who are sworn law-enforcement officers, returned to SVJC on June 25 to continue their interviews and review the files of federal residents.

On June 22, 2018, Secretary Moran communicated with Virginia’s Congressional delegation and other government leaders, including all members of the Virginia General Assembly. He provided them with a fact-sheet and other details relevant to the investigation and the facility’s relationship with the Commonwealth.

On June 27, 2018, Secretary Moran and Governor’s Office staff completed a conference call with Scott Lloyd, Director of ORR, and Laura Trueman, Principal Deputy Director of the Office of Intergovernmental and External Affairs at HHS, regarding standard overview of facilities in Virginia and other background and operational information.

THE FINDINGS

On June 28, the DJJ submitted a preliminary report and Child Protective Services (CPS) provided an update to their investigation to Secretary Moran. The conclusions of their investigations indicate that there were no life, health, or safety concerns for the residents at SVJC.

As of July 3, CPS completed its investigation into the allegations of abuse and found that there was no evidence of abuse or neglect (*see accompanying DJJ and CPS reports*).

INTRODUCTION

On June 21, 2018, Governor Ralph Northam requested Brian J. Moran, Secretary of Public Safety and Homeland Security, and the Department of Juvenile Justice (DJJ) to conduct an inquiry into the allegations contained in a lawsuit regarding the safety of federal residents housed at the Shenandoah Valley Juvenile Center (SVJC). At the time of the inquiry there were 22 residents placed by the Office of Refugee and Resettlement (ORR) at the facility. As reported by the residents, one resident has been there since September 30, 2016, and the other 21 residents were admitted between November 12, 2017, and June 12, 2018. According to the SVJC, the residents who were named plaintiffs in the October '17 lawsuit were no longer in the facility at the time of the interviews.

While the DJJ team found SVJC in compliance with applicable regulations and certification standards, they did identify areas where SVJC could improve programming for the youth in the custody of ORR. Accordingly, this memo includes both a description of the investigative process and findings, as well as a set of recommendations for SVJC.

The memo also includes a recommendation that DJJ will forward to the Board of the Virginia Department of Juvenile Justice: to amend current certification standards so that DJJ can better track the youth who are housed in local detention centers but in the legal custody of a different agency.

REVIEW PROCESS

Following the Governor's directive, a DJJ team of certification and quality assurance staff visited SVJC on June 21, 2018, and June 25, 2018. It is also worth noting that subsequent to the initial filing of the lawsuit in October of 2017, DJJ staff monitored ongoing conditions at SVJC. Specifically, DJJ certification staff conducted a modified certification visit to SVJC to monitor and observe conditions in the facility in March of 2018, and also reviewed prior certification documents to determine if any problems similar to those alleged in the lawsuit had been flagged. Neither the review of prior reports, nor the visit in March identified any immediate concerns about the life, health, and safety of the residents in the facility.

During the June 21 visit, DJJ staff interviewed all of the federal residents at SVJC. The team was not able to substantiate the conditions described in the lawsuit concerning the operations of SVJC or the mistreatment of residents. After obtaining permission from ORR, the team returned on June 25 and reviewed case files, medical files, room confinement forms, and other documentation to assess compliance with regulations relating to the quality of care. For the case review process and interviews, ORR placed the following restrictions:

- Case files are federal property and cannot be duplicated or copied;
- Audit team could not keep written notes of information in case files; and
- A SVJC staff member had to be present for all interviews.

FINDINGS

During interviews, three residents reported that they had experienced abusive behavior by staff. A further review of documentation revealed that two of these complaints were reported by the facility to Child Protective Services (CPS). CPS determined that these complaints did not meet the legal definition of abuse and neglect. Upon further consideration, CPS reopened the two cases and was on-site for a further review to include interviews with all of the federal residents. The third report was an initial complaint that occurred during the interview process and was reported to CPS by DJJ staff.

SVJC uses room confinement as part of its behavior management system to ensure the safety and security of residents, staff, and the facility. During interviews with the federal residents, and supported by room confinement records in the case files, there were no instances where residents were confined more than 24 hours. With the exception of one 23-hour confinement, confinements lasted approximately 4 hours. Pursuant to the case file records, in each instance of confinement, visual inspections of the residents by staff were made at least once every 30 minutes.

The facility uses approved restraints pursuant to the Regulations Governing Juvenile Secure Detention Centers, 6VAC35-101-1130. Review of training records indicated that all staff are trained in the use of restraints through a behavioral management system titled “Handle With Care.”² Per regulation, mechanical restraints shall not be used as punishment; however, they are used for the protection of resident and staff. The regulation requires that SVJC train staff in the use of mechanical restraints including but not limited to the restraint chair and mesh spit guards. The restraint chair is used for out-of-control residents who cannot be safely restrained by less intrusive methods. While in the chair, a mesh spit guard can be placed on the resident’s head to prevent spitting or biting. No residents interviewed had knowledge of the use of the restraint chair. In two instances reviewed, staff were disciplined for using an unapproved physical restraint technique that did not follow “Handle with Care” guidelines. Neither of these restraints related to the use of the restraint chair.

Interviews with staff and residents revealed due process is not well understood and this lack of understanding appears to be related to language barriers. A review of resident files showed disciplinary reports where federal residents acknowledge by noting and signing their right to appeal or not to appeal disciplinary action.

A review of files documented that medical concerns are responded to immediately. However, there was one incident wherein one resident did not receive medication as prescribed because the medication ran out. The resident missed one day of medication.

Regarding nutrition, residents stated they receive three meals a day and one evening snack. A review of resident files indicated special diets are documented and prepared for residents as required.

² See, “Behavioral Management System, Inc.”, Mark Chapman, 1984.

Interviews revealed that residents generally understood the grievance process and how to get issues resolved. Documentation in the files indicated the same.

Two DJJ investigators accompanied the team on June 25 and were tasked with identifying any gang activity. The investigators toured four housing units and observed three gang identifiers relating to MS-13. Two were drawings of the devil horn hand sign used by MS-13 and one was a "MS-13" etched in the window of one of the resident's doors. A fourth gang identifier was an 18th Street symbol scratched into the door of a resident's room. Overall, the housing units were very clean and free from graffiti. When identified by ORR prior to placement at SVJC, the file records indicated that SVJC received the notification of potential gang involvement upon admission.

CHILD PROTECTIVE SERVICES FOLLOW-UP

Based on the referrals from DJJ staff, Child Protective Services (CPS) staff from Shenandoah Valley Social Services conducted follow-up investigations, including individual interviews with a staff member who had allegedly engaged in abusive behavior.

Following these investigations, CPS found no abuse or neglect had taken place.

CONCLUSION AND RECOMMENDATIONS

On June 21, 2018, a DJJ team consisting of five members from the Certification Unit and the Quality Assurance Unit visited SVJC.³ On June 25, 2018, an eight member team from the Certification Unit, the Quality Assurance Unit, and the Investigative Unit also visited SVJC.⁴ CPS staff from Shenandoah Valley also conducted follow-up visits.

During this investigation DJJ staff found no life, health, or safety violations for youth in ORR's custody who have been placed at SVJC. Likewise, CPS, in their investigation, did not find evidence to support allegations of abuse or neglect. The team did find that the SVJC is a well-run facility that attempts to treat its staff and residents with respect and dignity.

While DJJ staff did not find sufficient evidence to support the conditions described in the lawsuit, the DJJ staff nevertheless identified areas where SVJC could strengthen its programming for this uniquely challenging group of youth— young people who have been frequently exposed to high levels of trauma, who are separated from their families, and who confront numerous language and cultural barriers, among others, to succeeding in SVJC and upon their release.

In addition, DJJ identified a gap in its certification authority over local detention centers which is that, without permission from the custodian agency (in this case ORR), DJJ does not have access to the records of youth, nor the youth themselves, who are in the custody of ORR

³ On June 21 2018, the team members included Shelia Palmer (team leader), Clarice Booker, Mark Lewis, Andrea McMahon, and Leah Nielsen.

⁴ On June 25, 2018, the team members included Shelia Palmer (team leader), Clarice Booker, Mark Lewis, Andrea McMahon, Deidre Davis, Nina Joyner, Dennis Sullivan, and John Rohde.

or other third parties. Accordingly, in this memo DJJ has also included a recommendation that it intends to propose at the next DJJ Board meeting.

Finally, while DJJ staff found nothing to indicate their misuse or abuse at SVJC, given the concerns raised by the allegations in the lawsuit about physical restraints more generally, and the fact that the Board of DJJ is charged with regulating their use, DJJ will inform and educate the Board about their use in Virginia in order that the Board may properly consider the current regulations and whether any changes might be necessary.

RECOMMENDATIONS FOR SVJC

RECOMMENDATION 1

SVJC should provide staff with training and professional development in the areas of positive youth development, cognitive behavioral interventions and trauma informed care.

It would benefit SVJC to invest in training for the administrative, management and line staff in the areas of positive youth development, cognitive behavioral interventions and trauma informed care. SVJC operational tenets are geared more toward a correctional philosophy and environment than a therapeutic model. SVJC currently operates a Community Placement Program for DJJ that incorporates the tenets of DJJ's community treatment model. The Missouri Youth Services Institute (MYSI) has trained all staff in the CPP in the principles of a therapeutic environment. As the youth placed by ORR are typically long term residents and similar to DJJ youth in that they have significant exposure to trauma, it would be of value for SVJC to adopt a similar community treatment model framework into the units housing the federal residents. Consistent staff and interactions with residents can diminish aggressive behaviors. If ORR were willing to collaborate with DJJ in this effort, it would promote a consistent philosophical approach within SVJC.

RECOMMENDATION 2

SVJC should increase the staff's understanding of and sensitivity toward the unique cultural backgrounds of the youth in the federal program, expand the culturally relevant programming for these youth, and increase the number of bilingual staff.

Culturally competent practices are crucial for ensuring effective services and treatment delivery to the Latino population at SVJC. SVJC staff need increased awareness of cultural factors that influence the federal residents' behavior and thinking patterns. A lack of social and emotional support networks impact stress and anxiety for the Latino youth and frequently is displayed as aggressive and negative behaviors. SVJC should reach out to and collaborate with local Latino serving agencies for assistance in the development of culturally relevant training and resources, and for assistance with recruitment of bilingual staff. Additional bilingual line staff and mental health counselors that understand the variations in the Spanish language within different Latino cultures would assist in addressing miscommunication and misunderstandings by the federal residents.

RECOMMENDATION 3

SVJC should strengthen the procedures for the use of mechanical restraints and re-train staff on the use of physical and mechanical restraints.

Although SVJC's procedures for mechanical restraints meet certification regulations, the procedure could be clearer and specific to the use of mechanical restraints. The use of a restraint chair and spit guards, as well as when and how it is used, should be better defined. DJJ suggests re-training all staff on the use of all restraints both physical and mechanical to include enhanced training on de-escalation techniques (*see Recommendation 4*).

RECOMMENDATION 4

SVJC should provide ongoing training in the effective use of de-escalation techniques for all staff at SVJC.

SVJC staff require additional training on effective de-escalation practices. De-escalation techniques can prevent disruptive behavior, reduce the need for physical or mechanical restraints, and enhance the safety of the resident and staff. As many de-escalation techniques require effective communication this recommendation is linked to the need for additional bilingual staff.

RECOMMENDATION 5

SVJC should explore design and furniture modifications to create a setting more conducive to working with a population that has high rates of trauma.

SVJC was designed and constructed as a secure juvenile detention center meant to provide short-term confinement for pre-adjudicated youth. At the forefront, it must provide a safe and secure environment for residents and staff and protect the public safety. The physical design of the facility is based on a more traditional correctional setting. Housing units and individual rooms are designed for direct supervision of residents and monitoring by staff inside and outside of the housing areas. As SVJC is not able, without considerable cost, to change the physical design of the housing units or rooms, it should explore other options with regard to furniture styles, arrangement of furniture and paint colors that could help modify the environment and make it more developmentally appropriate and trauma responsive.

RECOMMENDATION FOR VIRGINIA BOARD OF JUVENILE JUSTICE

RECOMMENDATION 1

The Board of Juvenile Justice should promulgate an amendment to the regulations governing local juvenile detention centers to require that any time such a center enters into a contract with a third-party to house youth in the custody of the third-party, the contract must allow for DJJ staff to have the same access to the youth and their records as DJJ has to all other youth in that facility.

RECOMMENDATION 2

DJJ will inform and educate the Board about the use of mechanical restraints in juvenile correctional centers and locally operated juvenile detention centers in Virginia in order that the Board may properly consider the current regulations regarding the use of mechanical restraints and whether any changes might be necessary.

MEMO FROM CHILD PROTECTIVE SERVICES (CPS)

On 06/22/2018, the Shenandoah Valley Department of Social Services (SVDSS) began receiving numerous calls regarding allegations of abuse/neglect, which had been outlined in media reports released on 06/21/2018, as referenced within the executive summary of the DJJ report preceding this appendix. Specific to the calls received were allegations of abuse/neglect by guards against unaccompanied migrant children being detained at the SVJDC. These reports alleged the migrant children to having been “beaten and handcuffed” while also being “tied to chairs with bags placed over their heads”. Additional allegations referenced these minors as being left “nude and shivering within their concrete cells”. While none of these current reports identified any specific alleged abuser(s)/neglector(s), two previous reports had alleged physical abuse by one facility guard in the attempt to restrain two migrant children. As both of these previous reports had been determined invalid of meeting the requirements for a CPS response, it was suggested this decision be reconsidered. Therefore, on 06/22/2018, the SVDSS initiated an investigation into all allegations received.

The SVDSS began the process of interviewing all migrant children on 06/25/2018. This included eighteen children, again, all migrant children housed at the SVJDC. Interviews continued on 06/27/2018 and 06/28/2018 to include both migrant children and a number of administrative and supervisory staff. A final interview with the alleged abuser took place on 07/03/2018.

The interview process with all children included the CPS investigator employed by the SVDSS, the use of an interpreter retained by the SVDSS in addition to oversight by the CPS Regional Consultant with the Virginia Department of Social Services. Interviews with administrative and supervisory staff in addition to the alleged abuser involved the CPS investigator and the CPS regional consultant. The investigative process also included a full tour of the juvenile facility in addition to the review of hard record files for each migrant child. Also reviewed was video footage relating specifically to one of the allegations of physical abuse. Video footage relating to the second allegation of physical abuse was no longer accessible.

In conclusion of the CPS investigation, no information was obtained to implicate any additional alleged abuser(s)/neglector(s). Furthermore, the information obtained through child interviews found no evidence to support the allegations of any mistreatment or neglect. This was further evidenced by a complete tour of the SVJDC and visual inspection/demonstration of the restraint and protective equipment utilized by the facility, which, according to the DJJ, does meet certification regulations. Finally, a face-to-face interview with the alleged abuser and a review of the available video footage specific to the allegations of physical abuse found no preponderance of evidence to support a CPS finding. Verbal notification of these preliminary findings being in support of an unfounded CPS disposition was provided to the alleged abuser and the SVJDC on 07/03/2018. The final report documenting all evidence obtained and including all required, written notifications will be completed by 08/03/2018.