



Nathan Woodliff-Stanley, Executive Director
Mark Silverstein, Legal Director

April 11, 2013

SENT VIA U.S. MAIL and Email

Reggie Bicha
Executive Director
Colorado Department of Human Services
1575 Sherman St., 1st Floor
Denver, CO 80203
reggie.bicha@state.co.us

Dear Director Bicha:

We write to ask the Colorado Department of Human Services (DHS) to take immediate action to stop a Colorado residential child care facility from routinely confining children in solitary confinement for days, and sometimes weeks. The facility is El Pueblo Boys & Girls Ranch (“El Pueblo”) in Pueblo, Colorado. El Pueblo is licensed by DHS as a residential child care facility serving at-risk youth, including many children with developmental and mental disabilities. El Pueblo’s routine seclusion of children not only violates regulations promulgated by DHS’s Division of Child Care,¹ but also likely violates the United States Constitution. Moreover, El Pueblo’s practice is plainly out of step with prevailing norms in the treatment of at-risk youth. By this letter, the American Civil Liberties Union Foundation of Colorado (ACLU) urges immediate action: DHS must either bring El Pueblo into full compliance with state regulations or rescind the facility’s license to operate as a residential child care facility.

The DHS regulation, entitled “Quality Standards for 24-Hour Child Care,” sets out mandatory standards for all licensed residential child care facilities in Colorado, including El Pueblo.² The regulation explicitly prohibits the “seclusion”³ of children except in emergency situations and only after all less restrictive alternatives have been exhausted.⁴ Further, the regulation mandates that children must be released from seclusion once the emergency passes,

¹ DHS’s Division of Child Care is now called the Division of Early Care and Learning.

² See 12 Colo. Code Regs. 2509-8.

³ “Seclusion” is defined in the Regulation as “the placement of an individual, six (6) years old or older, alone in a room from which egress is involuntarily prevented.” *Id.* § 7.714.1.

⁴ Seclusion is prohibited except “in an emergency after the failure of less restrictive alternatives or after a determination that such alternatives would be inappropriate or ineffective under the circumstances.” *Id.* § 7.714.532(A).

and, except in the most extraordinary cases, the regulation forbids seclusion that lasts more than two hours.⁵ In essence, the regulation identifies seclusion as a management tool of last resort.

The ACLU's investigation has revealed that El Pueblo fails to meet this and other regulatory mandates governing the use of seclusion in a residential child care facility. As an initial matter, El Pueblo routinely places children in solitary confinement in the absence of any emergency, for far longer than two hours. Pursuant to El Pueblo's policy, children are confined in seclusion for a minimum of two days when they begin the residential treatment program. It is our understanding that all children are secluded in this manner and that El Pueblo does not consider the age of the child, the emotional state of the child, whether the specific behavior of the child justifies any time in seclusion, or whether seclusion poses any particular risk of emotional harm to the child.

In seclusion at El Pueblo, children are confined in so-called "reflection cottages – a small concrete room with no other feature than a concrete slab that serves as a bed. These children spend 23 hours per day alone in this room, and they often take their meals alone in the room. Children may not leave the room without permission and are prohibited from speaking to one another. Children in isolation are barefooted or in socks, and they do not receive bedding of any kind until late in the evening. Access to reading and writing materials is extremely limited. Children are denied art supplies, games, television and social time, and they must pass their days alone, quiet and bored. Shockingly, children in seclusion at El Pueblo are denied any outdoor time, and in fact are not given the opportunity to recreate or exercise at all.

One youth we interviewed – a girl placed in El Pueblo as a condition of her probation who had exceptionally good behavior during her time there – arrived at the facility and spent over a week in solitary confinement. She was later placed back in isolation when she contracted scabies at the facility. At the end of March, her parents, with the help of her public defender, appealed to the court for the girl's release from El Pueblo because of the unconstitutional conditions of confinement.⁶ The judge acknowledged in open court the seriousness of the concerns raised by this girl's case and ordered her release from El Pueblo.

We understand that El Pueblo also regularly uses solitary confinement as a disciplinary and/or behavior management tool in response to what are sometimes minor infractions, such as when a child verbally disrespects a teacher. One student with whom we spoke was attending only the day school at El Pueblo when he verbally disrespected a teacher and was placed in solitary confinement for nearly 24 hours. Because he had planned to be home with his family that night, he had no hygiene supplies or change of clothes for the night. He was denied reading and writing materials, and the staff refused to provide him with a mattress to sleep on. Clearly, El Pueblo does not limit its placement of children in isolation to two hours and only when an

⁵ "The individual shall be released from seclusion when state of emergency has ceased. Seclusion shall not exceed two (2) hours) per incident unless required by the individual's treatment plan or individual child plan." *Id.* § 7.714.534.

⁶ See *Enclosed Motion Requesting Emergency Placement Order and Objecting to Juvenile Subjection to Ongoing Solitary Confinement Conditions at El Pueblo Residential Treatment Center in Violation of the 8th Amendment Protections against Cruel and Unusual Punishment.*

emergency arises, as is required by DHS regulations. Unfortunately, we have received credible reports of children spending days and sometimes weeks in isolation for a single fighting incident.

Experts agree that for youth and adults alike, solitary confinement is extremely stressful and produces significant levels of anxiety and discomfort. Young people are at particular psychological risk of adverse effects from being confined in isolation.⁷ Youth have fewer psychological resources to manage the stress, anxiety and discomfort of solitary confinement. For at-risk youth in particular, developmental immaturity is often compounded by mental disabilities and histories of trauma, abuse, and neglect. These factors often dramatically exacerbate the negative mental health effects of solitary confinement for youth,⁸ and they at least partly explain why “the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.”⁹ As I am sure you are aware, last year two youth committed suicide in a period of five weeks after spending only a short time in isolation while incarcerated in Colorado’s Youthful Offender System.

For the developmentally disabled and mentally ill, the mental health effects of solitary confinement can be particularly devastating. Every court to consider the solitary confinement of individuals with serious mental disabilities has found the practice to constitute cruel and inhuman punishment, in violation of the Constitution. Yet it is precisely this population – the developmentally disabled and the mentally ill – that El Pueblo serves. El Pueblo’s website boasts that the school has programs specifically designed to serve developmentally disabled and mentally ill adolescents, including those “who have a DSM-IV diagnosis and a history of trauma who are acting out of distress with defiant or self-destructive behaviors.”¹⁰ In fact, it is our understanding that the majority of El Pueblo residents are mentally impaired. Yet El Pueblo residents are routinely subjected to seclusion.

Through the ACLU’s investigation, we learned of a severely developmentally disabled boy – one who has never been adjudicated because he has been declared incompetent by courts on three separate occasions – who was placed in solitary confinement at El Pueblo for three full weeks. It was only when his public defender finally learned of the boy’s plight that she was able to secure a court order for his release to a state hospital. For youth like this young man struggling to cope simultaneously with the psychological vulnerabilities associated with their

⁷ GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, Human Rights Watch and American Civil Liberties Union, October 2012, *available at* <http://www.aclu.org/blog/criminal-law-reform-prisoners-rights/growing-locked-down-youth-solitary-confinement>.

⁸ It is because of these concerns that the American Academy of Child & Adolescent Psychiatry issued a policy statement in April 2012 concurring with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty that solitary confinement should not be used in juvenile correctional facilities, and that any such use “would be considered an 8th Amendment violation.” POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, American Academy of Child & Adolescent Psychiatry, approved April 2012. Of course, El Pueblo is not a juvenile correctional facility, and many of its residents have never been adjudicated. Any justification for seclusion of youth is weaker in such facilities than in a juvenile detention center.

⁹ POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, American Academy of Child & Adolescent Psychiatry, approved April 2012; DEP’T JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY (2009), *available at* <https://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf>.

¹⁰ “About Us.” El Pueblo...An Adolescent Treatment Community, *available at* <http://www.elpueblokids.org/site/index.php/about-us/>.

developing brains and mental disabilities, solitary confinement can be particularly dangerous. Moreover, for the many at-risk youth who have endured child abuse, solitary confinement may trigger memories of past trauma, making it yet more difficult to cope with the experience.

El Pueblo’s routine use of solitary confinement for days and sometimes weeks at a time to manage and punish developmentally disabled and/or mentally ill children is an inexcusable dereliction of the facility’s duty to treat its young residents humanely and to foster their social-emotional growth.

This practice may also violate the United States Constitution. In a remarkably analogous case involving a private residential facility for at-risk youth, the federal court of appeals in this circuit upheld a permanent injunction barring “placing boys in isolation facilities for any reason other than to contain a boy who is violent.” *Milonas, et al. v. Williams, et al.*, 691 F.2d 931, 925, 940-41 (10th Cir. 1982) (cited approvingly in *DG v. DeVaughn*, 594 F.3d 1188, 1196-97 (10th Cir. 2010)). Although the facility in *Milonas* limited its use of solitary confinement to a period of twenty-four hours, the court nevertheless found that practice violated the Due Process Clause. *Id.* at 941-43. This case strongly suggests that, particularly given the special vulnerabilities of youth and their correspondingly stronger legal protections, El Pueblo’s practice of isolating children for *in excess* of 24 hours also violates the Constitution. Thus, when it comes to El Pueblo’s routine seclusion of mentally ill and/or developmentally disabled children, the inference of unconstitutionality is even stronger.

We are pleased that DHS’s regulations appropriately place broad restrictions on the use of seclusion at licensed residential child care facilities like El Pueblo. El Pueblo, however, is not complying with many of DHS’s mandates. As detailed above, El Pueblo secludes youth in non-emergency situations for far longer than two hours, in clear violation of section 7.714.534(A) of 12 CCR 2509-8. El Pueblo also fails to provide the procedural protections enumerated in the regulation. Specifically, section 7.714.533(E)(12) requires El Pueblo to notify a child’s legal guardian whenever the facility uses seclusion and to provide the legal guardian with a “written report” related to the use of seclusion “by the next business day.” Our investigation has revealed that El Pueblo *sometimes* notifies the legal guardian by phone when it secludes a child, but El Pueblo routinely fails to provide the legal guardian with any written report related to the seclusion. Further, we harbor serious doubts as to whether El Pueblo is complying with the following requirements in DHS’s regulation:

1. Designation of a qualified seclusion room supervisor who authorizes seclusion every time it is used pursuant to section 7.714.533(D);
2. Creation of a written policy related to seclusion that complies with section 7.714.533(E);
3. Refusal to place any child in seclusion absent notification of a neutral reviewer of the placement each and every time El Pueblo plans to place a child in seclusion pursuant to section 7.714.534(B);
4. Specialized training requirements for those staff specified to place children in seclusion pursuant to section 7.714.535(B);

5. Review of use of seclusion of any child after any five hour period in seclusion pursuant to section 7.714.537(2)(a); and
6. Documented wellness checks on the secluded child every fifteen minutes pursuant to section 7.714.553(E)(8)(a).

Given all of the above, the ACLU is gravely concerned that El Pueblo is further damaging already vulnerable children charged to its care, in violation of state regulations and federal law.

Director Bicha, we are directing this complaint to you, as executive director of DHS, because we believe that Pueblo County's Department of Human Services (PDHS) is fully aware of El Pueblo's routine misuse of solitary confinement but has failed to intervene. In fact, PDHS has repeatedly chosen to place children who are in DHS custody at El Pueblo, knowing these children will be forced to endure seclusion that violates DHS regulations. We expect you will agree that the concerns raised in this letter require swift action by DHS to protect children at El Pueblo, many of whom are in the custody of DHS. We ask that DHS immediately put a stop to El Pueblo's routine placement of children in solitary confinement and that DHS demand that El Pueblo comply with all state regulatory standards related to the use of seclusion. Absent immediate compliance by El Pueblo, we ask that DHS fulfill its mandate by rescinding El Pueblo's license as a residential child care center. Finally, we ask that you respond to this letter by Monday April 22, 2013.

Sincerely,



Rebecca Wallace
Staff Attorney, ACLU OF COLORADO



Mark Silverstein
Legal Director, ACLU of Colorado

encl.: *Motion Requesting Emergency Placement Order and Objecting to Juvenile Subjection to Ongoing Solitary Confinement Conditions at El Pueblo Residential Treatment Center in Violation of the 8th Amendment Protections against Cruel and Unusual Punishment*

cc: Mary Anne Snyder, DHS Director of the Office of Early Childhood -
maryanne.snyder@state.co.us
David Collins, DHS Interim Director of the Division of Early Care & Learning -
david.collins@state.co.us
Julie Krow, DHS Director of the Office of Children, Youth & Families -
julie.krow@state.co.us
Tim Hart, Interim Director of Pueblo County DHS -
tim.hart@dss.co.pueblo.co.us
Sherri Baca, President & CEO of El Pueblo Boys & Girls Ranch -
sherri.baca@elpueblokids.net