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## Uncared for in State Care

Ashli Giles-Perkins

In October 2016, staff at Woodsworth Academy in Philadelphia struggled with, and killed, 17-year-old David Hess.<sup>1</sup> Due to his behavioral problems and medical needs, David was sent to Woodsworth, a residential facility for youth struggling with emotional, behavioral, or academic challenges.<sup>2</sup> The autopsy, reports, and investigation told the story of staffers pinning David to the ground, placing him in a chokehold, and after a loss of consciousness, he was given chest compressions and even compressions administered with a foot when their arms tired.<sup>3</sup> Accused of stealing an iPod, David was restrained by one staffer, being repeatedly punched by a second, while the third staffer tossed his bed and other belongings.<sup>4</sup> Witnesses who heard the screams later told state investigators that David was gasping for air, saying, “Get off me, I can’t breathe.”<sup>5</sup> A spokesperson for the Medical Examiners’ Office confirmed David died from a lack of oxygen and ruled it a homicide.<sup>6</sup> Had David not been killed at Wordsworth that night, he would have been released to his adoptive family a week later.<sup>7</sup> To date, no charges have been filed.<sup>8</sup>

<sup>1</sup> Chris Palmer, *Teen found dead at West Philly’s Wordsworth Academy after altercation with staff*, THE PHILA. INQUIRER (Oct. 14, 2016), [https://www.inquirer.com/philly/news/20161015\\_Teen\\_found\\_dead\\_at\\_West\\_Philly\\_s\\_Wordsworth\\_Academy\\_after\\_altercation\\_with\\_staff.html](https://www.inquirer.com/philly/news/20161015_Teen_found_dead_at_West_Philly_s_Wordsworth_Academy_after_altercation_with_staff.html).

<sup>2</sup> *Id.*; Alicia Victoria Lonzano, *New Probe Launched Into David Hess’ Asphyxiation Death at Philadelphia’s Wordsworth Academy*, NBC10 PHILADELPHIA (July 11, 2019), <https://www.nbcphiladelphia.com/news/local/New-Investigation-David-Hess-Death-at-Philadelphia-Wordsworth-Academy-511140592.html>.

<sup>3</sup> Julia Terruso & Chris Palmer, *Two years after Wordsworth teen’s death, more details released but no charges*, THE PHILA. INQUIRER (Dec. 20, 2018) <https://www.inquirer.com/news/words-worth-philadelphia-david-hess-death-dhs-report-charges-20181220.html>.

<sup>4</sup> *Id.*; Nancy Phillips & Chris Palmer, *Death of teen at Wordsworth in fight over iPod ruled homicide*, THE PHILA. INQUIRER (Feb. 10, 2017), <https://www.inquirer.com/philly/news/Death-of-teen-at-Wordsworth-was-homicide-Medical-Examiner-says.html>.

<sup>5</sup> Phillips & Palmer, *supra* note 4.

<sup>6</sup> *Id.*

<sup>7</sup> Alicia Victoria Lonzano, *New Probe Launched Into David Hess’ Asphyxiation Death at Philadelphia’s Wordsworth Academy*, NBC10 PHILADELPHIA (July 11, 2019), <https://www.nbcphiladelphia.com/news/local/New-Investigation-David-Hess-Death-at-Philadelphia-Wordsworth-Academy-511140592.html>.

<sup>8</sup> *Id.*

Less than a year earlier, charges were filed against a different staffer for institutional sexual assault, corruption of minors, and more.<sup>9</sup> Police say this staff member repeatedly assaulted girls between the ages 15 to 17, luring them into the basement, having them perform sex acts, and obtaining nude photos.<sup>10</sup> The Pennsylvania Department of Human Services (“PA-DHS”) received these reports and ordered Wordsworth Academy to “step up security and surveillance.”<sup>11</sup> After David’s murder, PA-DHS ordered the facility to close, but Wordsworth still offers educational programs, mental health services, foster care, and serves as case management to the city’s DHS.<sup>12</sup> These particular incidents were just two tragedies within the decade; police had been summoned to Wordsworth over 800 times, there were 23 accounts of sexual abuse, and almost 50 other sex crimes reported.<sup>13</sup>

It has been well documented for decades that youth in foster care are at a disadvantage; physically, emotionally, and educationally, they are at risk.<sup>14</sup> Each year, almost 4,000 youth in Pennsylvania are placed in residential facilities, including psychiatric residential facilities, institutions, state-run detention centers, shelters, and group homes.<sup>15</sup> These youth are disproportionately children of color and students with disabilities: over 50% are Black, and they are 2.5 to 3.5 times more likely to have disabilities than their peers.<sup>16</sup> Tragically, many youth in these residential placements are subject to abuse and neglect, improper restraints, emotional harm, subpar conditions such as beds without mattresses, and widespread civil rights violations.<sup>17</sup> Facilities charged with providing rehabilitative care instead cause severe harm.<sup>18</sup> Recent tragedies in Pennsylvania have led to calls for reform by youth groups such as Youth Fostering

<sup>9</sup> Phillips & Palmer, *supra* note 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The Inquirer Editorial Board, *State DHS shares blame for teen’s death*, THE PHILA. INQUIRER (Apr. 24, 2017), <http://www2.philly.com/philly/opinion/editorials/state-dhs-shares-blame-for-teens-death.html>.

<sup>14</sup> ELISSA GLUCKSMAN HYNE, CHILDREN’S RIGHTS, ET AL., UNSAFE AND UNEDUCATED: INDIFFERENCE TO DANGERS IN PENNSYLVANIA’S RESIDENTIAL CHILD WELFARE FACILITIES (2018).

<sup>15</sup> *State of Child Welfare: Pennsylvania*, PA. PARTNERSHIPS FOR CHILD. 2019 (Apr. 2019), available at <https://www.papartnerships.org/wp-content/uploads/2019/04/2019-State-of-Child-Welfare-PA.pdf>.

<sup>16</sup> Glucksman-Hyne, *supra* note 14.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

Change, advocacy organizations like the Juvenile Law Center, and even the governor.<sup>19</sup>

Clients of the Education Law Center in Philadelphia (“ELC”), like Robert who had a disability was also in foster care, who possessed a right under the Pennsylvania Constitution to continue attending his typical school, yet his residential placement improperly forced Robert attend its one-room school.<sup>20</sup> Each day Robert spent five hours at a desk facing the wall, without teachers, special education, or social interaction, on a cyber program.<sup>21</sup> In 2011, ELC along with the Stoneleigh Foundation gathered data from over 400 surveys, 25 in-depth interviews, and dozens of focus groups with youth in residential facilities and found majority of the on-grounds “schools” lacked grade appropriate instruction and special education services.<sup>22</sup> This is consistent with the peer-reviewed literature in the field and other regional studies studying education offered in juvenile facilities, which they describe as inferior as compared to public schools.<sup>23</sup> A 2014 study conducted by the Southern Education Foundation found that less than half of youth in placements earned any high school credits, only 9% earned a GED or high school diploma, and just 2% enrolled in any kind of post-secondary education.<sup>24</sup>

Unfortunately, Pennsylvania is not unique. The Illinois Department of Juvenile Justice (IDJJ) confines approximately 400 youths, 75% of which were African-American or Hispanic, and all from low-income families.<sup>25</sup> In 2012, the ACLU of Illinois filed a lawsuit against the IDJJ alleging unconstitutional

<sup>19</sup> Lisa Gartner, *Gov. Tom Wolf orders state overhaul after abuses at Glen Mills Schools*, THE PHILA. INQUIRER (July 31, 2019), <https://www.inquirer.com/news/governor-wolf-pa-glen-mills-schools-executive-order-abuse-20190731.html>; *Foster Care*, JUV. L. CTR., <https://jlc.org/foster-care> (last visited Dec. 5, 2019); *Children in Prison: What We’re Doing*, JUV. L. CTR., <https://jlc.org/children-prison#paragraph-17> (last visited Dec. 5, 2019). x

<sup>20</sup> Interview with Margie Wakelin, Staff Attorney, Education Law Center (Oct. 3, 2019).

<sup>21</sup> *Id.*

<sup>22</sup> Glucksman Hyne, *supra* note 14; Palmer, *supra* note 1.

<sup>23</sup> Thomas G. Blomberg, George Pesta & Colby Valentine, *The Juvenile Justice No Child Left Behind Collaboration Project: Final Report 2008*, CTR. FOR CRIMINOLOGY AND PUB. POL’Y RESEARCH AT FLA. ST. U., <http://criminology.fsu.edu/wp-content/uploads/The-Juvenile-Justice-No-Child-Left-Behind-Collaboration-Project-Final-Report-2008.pdf>.

<sup>24</sup> Southern Education Foundation, *Just Learning: The Imperative to Transform Juvenile Justice Systems into Effective Educational Systems*, (2014), <https://www.southerneducation.org/wp-content/uploads/2019/02/Just-Learning-Final.pdf>.

<sup>25</sup> *Formerly R.J. v. Bishop*, ACLU OF ILL., <https://www.aclu-il.org/en/cases/rj-v-jones> (last visited Dec. 4, 2019).

conditions and inadequacy of services.<sup>26</sup> *R.J. v. Jones* centered on five core violations:

- (a) Youth do not receive minimally adequate mental health services, including assessment and individualized treatment.
- (b) Youth do not receive minimally adequate education services, including general education and special education.
- (c) Youth are subjected to room confinement when not warranted, for excessive periods of time, and in improper conditions.
- (d) IDJJ staff fail to protect youth from each other, and use excessive force against youth and encourage youth to attack each other.
- (e) Youth are subject to months of confinement in IDJJ youth centers beyond their anticipated release dates because an appropriate community placement has not been secured.<sup>27</sup>

For the purpose of this article, I will focus on section (b), because education has been commonly known to allow for improved lived conditions and social mobility, yet the above research demonstrates a population of students, outside of the mainstream public school system, that are receiving an inadequate education, directly in contravention of state and federal laws.

These same or similar reports were found in investigations in Philadelphia over 700 miles away where David fell victim to circumstances connected to a residential placement outside of his control. Expert witnesses visited five of the six “secure” facilities operated by IDJJ throughout the state.<sup>28</sup> During these visits, the experts conducted interviews of students, staff, and reviewed documents.<sup>29</sup> Dr. Peter E. Leone looked specifically at education services and supports, and through interviews, found the IDJJ facilities to be operating “far below minimally accepted standards at comparable facilities across the country.”<sup>30</sup> This includes the online programs, which are “insufficient as a primary mode of instruction,” much like the one Robert and students like him were subject to.<sup>31</sup>

In fact, students interviewed by Dr. Leone described conditions where they never attended school, didn’t know how many credits they had towards

<sup>26</sup> *Id.*

<sup>27</sup> *R.J. v. Jones*, No. 12-CV-07289 (N.E.2d. filed Sept. 12, 2012).

<sup>28</sup> Peter Leone, *Education Services and Supports for Students in the Illinois Department of Juvenile Justice*, ACLU OF ILL. 2 (Sept. 20, 2013), [https://www.aclu-il.org/sites/default/files/field\\_documents/rj\\_v\\_bishop\\_expert\\_report\\_on\\_education.pdf](https://www.aclu-il.org/sites/default/files/field_documents/rj_v_bishop_expert_report_on_education.pdf).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Interview with Kristina Moon, Staff Attorney, Education Law Center (Oct. 4, 2019); Leone, *supra* note 28.

graduation, there were classrooms without teachers and only online programs, lack of special education, and for students who already had GEDs or diplomas, lack of access to higher level education.<sup>32</sup> Margie Wakelin, staff attorney at the Education Law Center, described in an interview that former clients, like Robert, who had cognitive or developmental delays, did not receive proper educational accommodations in their settings, even though they have a right to one.<sup>33</sup> Specifically, at facilities like Glen Mills (recently subject to lawsuits and license revocation by PA-DHA), there were only two tracks: the GED track, or accelerated credit recovery.<sup>34</sup> Clients of hers described these track as “lesser”, and were told to “keep practicing”, but no test was ever administered.<sup>35</sup> Margie explained that the statute specifies that there be a court order before system-involved youth can be placed on this track— otherwise, they should be on track for a high school diploma.<sup>36</sup>

For students on the self-directed accelerated recovery track at Glen Mills, there were no certified teachers.<sup>37</sup> They utilized coaches or paraprofessionals, who either tried to be helpful or were just plain abusive towards students.<sup>38</sup> This track was accessed purely through computers of which newer students often did not have access to for weeks, if ever.<sup>39</sup> Kristina Moon, Staff Attorney of the Education Law Center, is involved in the ongoing litigation against Glen Mills.<sup>40</sup> Moon described situations where students at Glen Mills were excused from school altogether for sports-related reasons, and these “extensive interruptions” as “functional exclusions” were “very clear violations”.<sup>41</sup> The Glen Mills complaint asserts, “in addition to persistent physical and emotional abuse” the student-plaintiffs suffered under a “one-size-fits-all substandard” online program that provided minimal hours of instruction, limited curriculum, and no live instruction.<sup>42</sup> Students with disabilities were being denied their “legally-protected interest in a free and appropriate public education.”<sup>43</sup>

<sup>32</sup> *Id.*

<sup>33</sup> Wakelin, *supra* note 20.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Derrick v. Glen Mills Schools, et al.*, No. 2:19-cv-01541-HB (Complaint filed April 11, 2019) [hereinafter “Complaint”].

<sup>38</sup> Moon, *supra* note 31.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Complaint ¶ 266, at 81.

<sup>43</sup> *Id.*

Moreover, plaintiffs in the Glen Mills lawsuit assert that their Due Process rights had been violated; the facility and the state deprived the plaintiffs of their state-law created property interest in a legally compliant free public education without affording them any due process of law.<sup>44</sup>

Above all, while specific individuals and facilities clearly played a role in the physical, emotional, and academic abuse experienced by students, there is an overarching issue, one in which attorneys Wakelin and Moon addressed: states have an obligation to do more.<sup>45</sup> It is the State that approves, licenses, and monitors all of its facilities, and therefore, is charged with correcting those institutions as well.<sup>46</sup> ELC and Children's Rights issued the report, *Unsafe and Uneducated*, charging PA-DHS with having failed "the state's most vulnerable children" through a shocking lack of oversight and accountability, even though the system was created to protect these children.<sup>47</sup> The report stemmed from publicly available violation reports from over 250 facilities, where children were placed outside the home either due to juvenile justice or child welfare issues.<sup>48</sup> Both attorneys Wakelin and Moon opined that people either are not asking the right questions, or don't care.<sup>49</sup> Together with the publicly available reports, investigative journalism by the Philadelphia Inquirer, and through first-hand accounts from clients, both attorneys are well-positioned to make these claims. For example, when the news broadcast incidents of about sexual abuse and illegal sexual intercourse in the basement of Wordsworth, it was the state that called for more surveillance.<sup>50</sup> When the problem is the staff and the culture of these facilities, surveillance does not fix the problem. After decades of reports of abuse by both facilities, it took the death of a teenager and a class-action lawsuit to get any semblance of change.

Ms. Wakelin pointed out the entire system and infrastructure as the main problem. The State responded to ELC's complaint with Motions to Dismiss, arguing they met a de minimus standard, more is not required of them, they

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<sup>44</sup> Plaintiffs' Omnibus Memorandum of Law in Opposition to Defendants' Motion to Dismiss-*Derrick v. Glen Mills Schools, et al.*, No. 2:19-cv-01541-HB (L.C.R. filed Aug. 30, 2019) as cited in *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

<sup>45</sup> Palmer, *supra* note 1.

<sup>46</sup> *Id.*

<sup>47</sup> Chris Palmer, *Report: Pa. DHS failing vulnerable children due to lack of oversight at placement facilities*, THE PHILA. INQUIRER (Dec. 13, 2018), <https://www.inquirer.com/news/report-pennsylvania-juvenile-abuse-dhs-glen-mills-wordsworth-philadelphia-20181213.html>.

<sup>48</sup> *Id.*

<sup>49</sup> Wakelin, *supra* note 20; Moon, *supra* note 31.

<sup>50</sup> Phillips & Palmer, *supra* note 4.

are not schools, and they do what they can with what they have.<sup>51</sup> More, Glen Mills argues they do not receive the funding to be a school; and because it's not a school, the state is not required to have the same checks-and-balances as they would with a public school.<sup>52</sup> The Bureau of Special Education says they cannot investigate outside of their scope, meaning general education is left mostly unmonitored.<sup>53</sup> Even those investigations as required by law, only need to occur every six years.<sup>54</sup> Therefore, it is partially just designed to fail, as youth experience barriers and limited access on a daily basis. Oversight should be happening at these facilities more than public schools, not less, especially given the history and what is at stake.

On one hand, the ELC and other educational advocacy institutions fight every day – through direct representation, policy work and research, and impact litigation like the one against Glen Mills. Despite this, there is another way to address the limited oversight, abuse, barriers to accessing education, the isolation, and more. “We need to stop telling ourselves that these facilities are safer for children, than in the communities. These placements are very disruptive, they isolate students away from their communities and schools, and the facilities leave long-lasting negative impacts.”<sup>55</sup> Even facilities like Glen Mills, “the oldest existing reform school in the United States”<sup>56</sup> had a series of complaints and violations made about it over decades. Youth who had to live there were silenced and had their bones broken; staff who tried to speak out were retaliated against and fired.<sup>57</sup> More than once, police were called to Glen Mills, and security staff physically prevented the police from entering and investigating.<sup>58</sup> After a while, it was clear the rumors were more than just talk; in 2012, the then Director of Connecticut Department of Children and Families ordered the state to stop sending boys out-of-state and to Glen Mills, given recent allegations of a resident that was severely beaten there.<sup>59</sup>

Attorney Moon of ELC said that not placing students outside of the home, unless it is truly necessary (and as the law states) is a solution to the problem. “We need to be educating judges who need to be more involved.

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<sup>51</sup> Wakelin, *supra* note 20.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Glucksman-Hyne, *supra* note 14.

<sup>55</sup> Wakelin, *supra* note 20.

<sup>56</sup> Gartner, *supra* note 19.

<sup>57</sup> *Id.*

<sup>58</sup> *Derrick v. Glen Mills et. al.*, *supra* note 42, at. ¶225

<sup>59</sup> Gartner, *supra* note 19.



Glen Mills sits on a nice estate, came ‘highly regarded’, and has nice brochures, but judges aren’t required to ever visit or look at the education being provided.”<sup>60</sup> Attorney Wakelin supported that recommendation, and stressed the need for community-based solutions. “The solutions are in the community. We can get rid of these centers altogether.”<sup>61</sup>

### CONCLUSION

The very facilities and individuals the state charges with taking care of system-involved youth have failed them. No longer should the most vulnerable youth be ordered to reside in facilities that keep them from adequate educations, and safe environments. This article calls attention to the myriad of problems they face from physical abuse to sexual assault to dismal educational outcomes. Attorneys working inside and outside the juvenile justice and child welfare systems must call on each other, decision makers, and policy makers to do more. Strengthen the laws and protections, but more importantly, create better systems of oversight, reporting, and accountability.<sup>62</sup> But what is truly needed is a shift in the culture; while reform schools and residential placements are necessary to an extent, too many children are placed there each year. Too many youth fall through the cracks and lack supports they need for success. The state is tasked with taking care of children, it must do exactly that, and we must ensure that happens.

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<sup>60</sup> Wakelin, *supra* note 20; Moon, *supra* note 31.

<sup>61</sup> Wakelin, *supra* note 20.

<sup>62</sup> Glucksman-Hyne, *supra* note 14.