

**State Human Rights Committee
Meeting Minutes**
The Crossroads Institute
1117 East Stuart Drive
Galax, Virginia, 24333
Friday, September 5, 2008

ADMINISTRATIVE MEETING
8:30 a.m.

COMMITTEE MEMBERS PRESENT

Kirby Wright, Chair
Christina Delzingaro, Vice-Chair
Angela Brosnan
Delores Archer
Carolyn M. DeVilbiss
Randy Johnsey
Joseph Lynch
Donald Lyons
Jannie Robinson

NOT PRESENT

Angela Brosnan
Delores Archer

HUMAN RIGHTS STAFF PRESENT

Margaret Walsh, State Human Rights Director
Kli Kinzie, Executive Secretary
BJ McKnight, Human Rights Advocate, SWVTC
Adrien Monti, Human Rights Advocate, Catawba Hospital and the Roanoke Valley
Deborah Jones, Human Rights Advocate, SWVMHI
Chuck Collins, Regional Human Rights Advocate, Region 1
Gianna Mitchell, Human Rights Advocate, Eastern State Hospital

OTHER STAFF PRESENT

Allyson Tysinger, Senior Assistant Attorney General
Karen Poe, Staff Development Director, RCSC Director, SWVTC

OTHERS PRESENT

Josephene Johnsey, Interested Person

Mr. Kirby Wright, Chair, opened the administrative session of the State Human Rights Committee meeting. All present introduced themselves.

Following brief discussion the SHRC agreed to move the standard starting time for regular sessions to 9:00 a.m.

The committee reviewed correspondence on a case involving a request for guidance from Chesterfield Community Services Board LHRC. The SHRC requested a copy of a letter from George Braunstein, Executive Director, Chesterfield CSB.

Margaret Walsh reviewed the agenda and technology for events on the agenda. The SHRC received copies of Commissioner Reinhard's letter in response to the SHRC recommendations for the case of CC v. Western State Hospital.

Margaret Walsh provided an update on the state budget situation.

Deborah Jones, Human Rights Human Rights Advocate, SWVMHI and Region 3, conveyed an apology from Nancy C. Neese, Regional Advocate, for her absence while she cares for her mother. Ms. Jones spoke about current issues in the southwest region, including Keystone Marion, a residential youth program that has experienced some elopements in recent months.

Gianna Mitchell, Human Rights Advocate, Eastern State Hospital and Region 4, spoke about elopements from Keystone Newport News in the eastern region. Following the incidents, citations were issued and staff changes were made, but the new staff were not given human rights training. Consequently, behavioral management techniques were used which were not in keeping with policies or the human rights regulations.

Chuck Collins, Regional Human Rights Advocate for Region 1, reported that the Local Human Rights Committees in his region meet together to talk about issues. Mr. Collins suggested that this is a good way to come together for problem-solving.

Margaret Walsh suggested the SHRC request information from Keystone on the history of the elopements and other issues. Ms. Walsh will draft a letter to go to Keystone Marion and Keystone Newport News inviting them to send representatives to the October 24, 2008 SHRC meeting. The SHRC will also invite the Licensing Office to send someone to the October meeting to join the discussion.

9:40 a.m. Break

Chairman Wright called for a break at 9:40 a.m.

REGULAR MEETING

9:50 a.m.

COMMITTEE MEMBERS PRESENT

Kirby Wright, Chair
Christina Delzingaro, Vice-Chair
Carolyn M. DeVilbiss
Randy Johnsey
Joseph Lynch
Donald Lyons
Jannie Robinson

NOT PRESENT

Angela Brosnan
Delores Archer

HUMAN RIGHTS STAFF PRESENT

Margaret Walsh, State Human Rights Director
Kli Kinzie, Executive Secretary
BJ McKnight, Human Rights Advocate, SWVTC and Region 3
Adrien Monti, Human Rights Advocate, Catawba Hospital and the Roanoke Valley
Deborah Jones, Human Rights Advocate, SWVMHI and Region 3
Chuck Collins, Regional Human Rights Advocate, Region 1
Gianna Mitchell, Human Rights Advocate, Eastern State Hospital and Region 5
Randy Urgo, Human Rights Advocate, Central Virginia Training Center

OTHER STAFF PRESENT

Allyson Tysinger, Senior Assistant Attorney General
Dr. Dale Woods, Executive Director, Southwestern Virginia Training Center
Karen Poe, Staff Development Director, RCSC Director, SWVTC
Sharon Rose, Qualified Mental Retardation Practitioner, Central Virginia Training Center
David Lyon, Executive Director, Southern Va Mental Health Institute

OTHERS PRESENT

Josephene Johnsey, Interested Person
Michael Gray, Staff Attorney, Virginia Office for Protection and Advocacy
Betty Meredith, Vice Chair, Southwest Virginia Training Center LHRC
Judy Padgett, Member, Southwest Virginia Training Center LHRC

PRESENT VIA TELECOM

Alex Gulotta, Tremblay & Smith, LLD, Attorney for CC
Nathan Veldhuis, Tremblay & Smith, LLD, Attorney for CC
Jack Barber, Executive Director, Western State Hospital

Gail Burford, WSH Liaison to the LHRC

Welcome / Call to Order

The September 5, 2008 meeting of the State Human Rights Committee was called to order by Mr. Kirby Wright, Chairperson.

Dale Woods, Ed.D., Executive Director of Southwest Virginia Training Center, welcomed the committee and staff to southwest Virginia and to the Crossroads Institute. Dr. Woods provided a copy of the SWVTC mission and vision statement and spoke about the training center and the surrounding community.

BJ McKnight, Human Rights Advocate, SWVTC and Region 3, welcomed the SHRC on behalf of Ms. Lisa Moore, Executive Director of Mount Rogers Community Mental Health and Mental Retardation Services Board. Ms. McKnight expressed Ms. Moore's apology for not being able to attend the meeting.

Mr. Wright asked that all present introduce themselves.

Minutes

Upon a motion made by Christina Delzingaro and seconded by Randy Johnsey the July 11, 2008 SHRC meeting minutes were unanimously approved with corrections to names and titles.

Variances

Hallmark Youthcare Richmond (extension request)

Margaret Walsh directed the committee's attention to a variance renewal extension request from Hallmark Youthcare Richmond. The variance allows for the use of the program's structured living protocol. Ms. Walsh stated that the program has not used the variance and that program staff understand they do not have an active variance until they come before the SHRC on October 24, 2008.

The SHRC accepted the renewal extension request from Hallmark Youthcare Richmond with the understanding that the program does not have a variance in the interim.

Keystone Newport News Youth Center

The SHRC reviewed a letter to Keystone Newport News Youth Center from Reginald T. Daye, Regional Advocate for Region 5. On behalf of Mr. Daye, Gianna Mitchell, Human Rights Advocate for Eastern State Hospital and Region 5, reported that Keystone Newport News has not submitted an annual report as required for continued use of the variance. Mr. Reginald Daye sent the referenced letter to Robert Lehman, Director for Keystone, who has not responded. Ms. Mitchell stated that the program is

using the variance and reiterated that they have not sent an annual report and they have not responded to Mr. Daye's letter.

Upon a motion made by Joe Lynch and seconded by Randy Johnsey the SHRC voted unanimously to withdraw the variance because they have not submitted an annual report as required and because of lack of communication with the human rights office.

Margaret Walsh will draft the letter for immediate mailing on Monday, September 8, 2008.

The Pines Residential Treatment Center

The SHRC reviewed the annual report from The Pines Residential Treatment Center for the use of their structured living protocol.

Upon a motion made by Joe Lynch and seconded by Carolyn DeVilbiss the SHRC unanimously accepted the annual report for continued use of the structured living protocol for The Pines Residential Treatment Center.

Upon a motion by Carolyn DeVilbiss and seconded by Jannie Robinson the SHRC unanimously voted to add to the agenda Commissioner Reinhard's response to the SHRC recommendations in the case of CC v. Western State Hospital.

Bylaws

Chester Regional LHRC

The State Human Rights Committee reviewed the Bylaws submitted on behalf of Chester Regional Local Human Rights Committee.

Upon a motion by Christina Delzingaro and seconded by Don Lyons the SHRC approved the Bylaws for Chester Regional Local Human Rights Committee.

Piedmont Community Services LHRC

The State Human Rights Committee reviewed the bylaws submitted on behalf of Piedmont Community Services Local Human Rights Committee.

Upon a motion by Randy Johnsey and seconded by Joe Lynch the SHRC unanimously approved the Bylaws for Piedmont Community Services.

Variance

Western State Hospital: CC

Kirby Wright announced the consideration of the Variance to 12 VAC 35-115-110, use of Seclusion, Restraint and Time Out, of *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services* for CC, a patient of Western State Hospital.

Upon a motion made by Christina Delzingaro and seconded by Joe Lynch the State Human Rights Committee convened in Closed Session pursuant to Virginia Code, 2.2-3711(15), for the purpose of discussion or consideration of medical and mental records excluded from the Virginia Freedom of Information Act, namely to consider the SHRC's letter in response to Western State Hospital's (WSH) request for Variance for CC, and Western State Hospital's variance report in response to the SHRC's letter.

SHRC members Kirby Wright, Chair, Christina Delzingaro, Vice-Chair, Carolyn M. DeVilbiss, Randy Johnsey, Joseph Lynch, Donald Lyons and Jannie Robinson were present. The SHRC was accompanied by Allyson Tysinger, Senior Assistant Attorney General, Margaret Walsh, Human Rights Director, and Kli Kinzie, Human Rights Secretary. Charles T. Collins, Regional Human Rights Advocate, was present to provide technical assistance. Alex Gulotta and Nathan Veldhuis, Tremblay & Smith, LLD, were present via telecom to represent the family of CC. Jack Barber, Western State Hospital Director, and Gail Burford, WSH Director's Liaison to the WSH LHRC, were present via telecom on behalf of Western State Hospital.

Upon reconvening in public session, the State Human Rights Committee unanimously certified that to the best of each State Human Rights Committee member's knowledge, only public business matters lawfully exempt from statutory open meeting requirements, and only public business matters identified in the motion to convene the Closed Session were discussed in the Closed Session.

The record notes that Alex Gulotta objects to the inability to respond to the Variance report. Mr. Gulotta asked if the SHRC is satisfied with the report. Chairman Wright responded that is it the type of report the committee was expecting to receive. Joe Lynch commented that the report was well done and informative. Kirby Wright thanked Jack Barber for the report.

The SHRC accepted Western State Hospital's Variance Report for CC.

Public Comment Period

Kirby Wright announced the public comment period and invited individuals to come forward to address the committee.

Nathan Veldhuis stated his objections to the SHRCs findings.

Alex Gulotta stated that CC's family has long advocated for CC to be allowed periods to get out for walks. Mr. Gulotta also voiced concerns about the Department's

mentioning of Central State Hospital as an option and his hope that the Department shows a good faith effort to find appropriate placement for CC closer to his family in Northern Virginia. Mr. Gulotta further stated that it will require a level of creativity to make progress on this case and for future variances.

End of public comment period.

Appeal

Findings 7 & 8 of the Opinion of WSH LHRC in the Matter of CC

This matter came before the State Human Rights Committee on September 5, 2008 for the sole purpose of ruling on two outstanding issues on appeal of a decision of the Western State Hospital Local Human Rights Committee (LHRC) in SHRC Case Number 08-02. The SHRC had previously heard the appeal on July 11, 2008 and August 1, 2008. In its decision made on August 1, 2008, the SHRC deferred issuing a decision on two issues pending receipt of more detailed findings of fact from the WSH LHRC on points 7 and 8.

On September 5, 2008 the SHRC reviewed the additional information submitted by the LHRC. Members present were Kirby Wright, Christina Delzingaro, Donald Lyons, Joseph Lynch, Randy Johnsey, Jannie Robinson, and Carolyn M. DeVilbiss. Alex Gulotta and Nathan Veldhuis, who participated via telecom, brought the case forward on behalf of CC and his family. At the request of Mr. Gulotta and Mr. Veldhuis on behalf of the family of CC, the appeal was held in open session.

Each party was given the opportunity to present additional argument on the two outstanding issues.

Upon a motion made by Joe Lynch and seconded by Randy Johnsey the SHRC unanimously accepts WSH LHRC findings 7 and 8 in the matter of CC to be valid.

A motion was made and passed unanimously that the SHRC upholds the decision of the LHRC that WSH did not violate 12 VAC 35-115-50, *Dignity*.

A motion was made and passed unanimously that the SHRC upholds the decision of the LHRC that WSH did not violate 12 VAC 35-115-100, *Restriction on freedoms of everyday life*.

The SHRC did not make any additional recommendations.

Alex Gulotta thanked the SHRC for the opportunity to participate in the discussion. Chairman Wright thanked Mr. Gulotta and Mr. Veldhuis for participating and providing comments.

Commissioner's response to the SHRCs findings for the case of WSH and CC

The SHRC reviewed Commissioner Reinhard's response to the SHRC's findings for the case of Western State Hospital and CC.

Christina Delzingaro stated that she was pleased to see Dr. Reinhard's statement about a plan to move CC to another location. Ms. Delzingaro also was pleased to see the development of cultural and linguistic competency at the department.

Randy Johnsey commented that there is technology readily available to help staff in learning to speak Spanish.

Christina Delzingaro objected to Dr. Reinhard's response because there is no timeline for items 2 and 3. Randy Johnsey seconded the objection. The SHRC decided to invite Commissioner Reinhard and the Director of Cultural and Linguistic Competency to attend the October 24, 2008 SHRC meeting.

Joe Lynch suggested asking the Office of Cultural and Linguistic Competency when the department will hire Spanish speaking staff, contractual or otherwise.

Regarding recommendation 1, Christina Delzingaro commented that human rights notification has been available in Spanish and should have been given to CC on or before August 10. Randy Johnsey indicated his support of the comment.

Variance

Central Virginia Training Center

Kirby Wright announced the consideration of the Variance to 12 VAC 35-115-50 C6a of *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services* for SR, a client of Central Virginia Training Center. Randy Urgo, Human Rights Advocate for Central Virginia Training Center, introduced Sharon Rose, Qualified Mental Retardation Practitioner (QMRP), Central Virginia Training Center.

A motion was made to convene in Closed Session pursuant to Virginia Code, 2.2-3711(15), for the purpose of discussion or consideration of medical and mental records excluded from the Virginia Freedom of Information Act, namely to consider Central Virginia Training Center's application for Variance for client SR.

SHRC members Kirby Wright, Christina Delzingaro, Carolyn M. DeVilbiss, Randy Johnsey, Joseph Lynch, Donald Lyons and Jannie Robinson were present. The SHRC was accompanied by Allyson Tysinger, Senior Assistant Attorney General, Margaret Walsh, Human Rights Director, and Kli Kinzie, Human Rights Secretary. Randy Urgo, Human Rights Advocate, was present to provide technical assistance. Sharon Rose, QMRP, CVTC, was present to represent the facility.

Ms. Rose provided history which led to the facility's application for Variance to 12 VAC 35-115-50 C6a of the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Operated or Funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services* (human rights regulations) for client SR. The Variance would allow the facility to open packages from SR's mother outside SR's presence in order to protect his health and safety. Packages would be opened in the presence of two (2) CVTC staff members and any inappropriate items would be sent back. Randy Urgo reported that the goal is for SR have a supportive relationship with his mother.

Upon reconvening in public session, the State Human Rights Committee unanimously certified that to the best of each State Human Rights Committee member's knowledge, only public business matters lawfully exempt from statutory open meeting requirements, and only public business matters identified in the motion to convene the Closed Session were discussed in the Closed Session.

Upon a motion made by Christina Delzingaro and seconded by Randy Johnsey the SHRC unanimously approved Central Virginia Training Center's application for Variance to 12 VAC 35-115-50 C6a of the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Operated or Funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services* (human rights regulations) for client SR. The variance was approved as submitted by CVTC with a change to add the following language to the "circumstances that will end the applicability" or discontinuation criteria: "The variance will end when SR strengthens and maintains a healthy relationship with his family". The SHRC approves this variance for a period not to exceed one year.

Appeal

Southern Virginia Mental Health Institute - JW v David Lyon

This case came before the State Human Rights Committee (SHRC) on appeal of a decision of the Southern Virginia Mental Health Institute Local Human Rights Committee (LHRC) and the action plan submitted by the Director of Southern Virginia Mental Health Institute (SVMHI) in response to the LHRC's decision. SHRC members present were Kirby Wright, Christina Delzingaro, Carolyn M. DeVilbiss, Randy Johnsey, Joseph Lynch, Donald Lyons and Jannie Robinson. The SHRC was accompanied by Allyson Tysinger, Senior Assistant Attorney General, Margaret Walsh, Human Rights Director, and Kli Kinzie, Human Rights Secretary. Michael Gray, Staff Attorney with the Virginia Office for Protection and Advocacy (VOPA), presented the case for JW. David Lyon, Director of SVMHI, presented the case for the facility.

On behalf of JW, Michael Gray raised the following issues on appeal. JW is dissatisfied with the LHRC's recommendations with regard to David Lyon's violations of the informal and formal complaint processes and of JW's dignity rights (recommendations 3 and 4). JW appeals Mr. Lyon's action plan because the plan is

incomplete, vague, insufficient and not properly designed to either remedy the violations the LHRC found in this case, or to adequately prevent similar violations in the future.

At the request of Mr. Gray on behalf of JW, the hearing was held in closed session.

A Motion was made and passed to go into closed session pursuant to Virginia Code, 2.2-3711, for the purpose of discussing matters excluded from the Freedom of Information Act, namely to consider the case of JW v. David Lyon.

Upon reconvening in public session, the State Human Rights Committee unanimously certified that to the best of each State Human Rights Committee member's knowledge, only public business matters lawfully exempt from statutory open meeting requirements, and only public business matters identified in the motion to convene the closed session were discussed in the closed session.

Upon a motion made by Christina Delzingaro and seconded by Jannie Robinson the SHRC unanimously approved and upheld recommendations 3 and 4 of the LHRC, with amendment of the recommendation as follows:

The Director of SVMHI is to send JW a letter of apology for violating her rights with an expression of the facility's commitment to protect individuals' human rights in the future. The letter should include information as to why the complaint process failed two years ago, as well as details of all actions that the Director is taking to ensure that all human rights complaints are responded to and managed in accordance with the Human Rights Regulations. The letter should also address how and when staff have been and will be trained on the Human Rights Regulations and a statement of assurance that the revised Regulations are fully implemented and understood by staff at SVMHI. In addition, an invitation should be re-extended to JW to join SVMHI's Recovery Committee.

Upon a motion made by Christina Delzingaro and seconded Jannie Robinson the SHRC unanimously opined that the Director's action plan does not adequately address the alleged violations. The SHRC recommends that the action plan be amended to include the following:

- 1. The Director is to review the cases of all current patients receiving treatment at SVMHI to ensure that there are not individuals similarly situated to JW who have:
 - i. human rights complaints that are not being managed in accordance with the Human Rights Regulations;**
 - ii. authorized representatives that are not appropriately designated; or**
 - iii. received medication over objection without appropriate notification to the LAR and explanation.****

2. **The Director is to develop a specific plan for the training of all staff on the requirements of each section of the Human Rights Regulations that SVMHI was found to have violated.**
3. **The Director is to revise all policies and practices to be in full compliance with each section of the Human Rights Regulations that SVMHI was found to have violated.**
4. **The Director is to include a plan for monitoring, correcting and reporting to the LHRC to ensure compliance with each section of the Human Rights Regulations that SVMHI was found to have violated.**
5. **The Director is to solicit input and response from JW on the revised action plan prior to its submission and presentation to the SHRC.**
6. **The revised action plan is to be presented to the SHRC at its meeting on December 5, 2008.**

Kirby Wright thanked all parties involved for their time, effort, and careful consideration in conducting the underlying hearing.

LHRC Membership

A motion was made and passed to go into closed session pursuant to Virginia Code §2.2-3711(1) for the purpose of discussion and consideration of appointments to Local Human Rights Committees.

Upon reconvening in open session, the State Human Rights Committee certified that to the best of each member's knowledge, only public business matters lawfully exempt from statutory open meeting requirements, and only public business matters identified in the motion to convene the closed session were discussed in closed session.

The motion was made and unanimously passed to appoint the following applicants to the specified local human rights committees.

Region 1

Region Ten CSB LHRC

Reappoint:

Mr. Alan Donaldson

Ms. Rhonda Quagliana

Ms. Mary Ann Barnes

Rappahannock -Rapidan CSB LHRC

Appoint:

Ms. Dorothy Sharon Adams

Western State Hospital LHRC

Appoint:

Ms. Hal Meyers

Rappahannock Area CSB LHRC

Appoint:

Ms. Janey Saylor

Commonwealth Center for Children and Adolescents LHRC

Appoint:

Mr. Greg Czyszczon

Region 2

Alexandria LHRC

Reappoint:

Ms. Kelly S. Hauck

Region 3

Blue Ridge Regional HRC

Appoint:

Rev. Jay L. Fields

Ms. Nancy S. Fields

Southwest Regional HRC

Appoint:

Ms. Margaret Schenck

Region 4

Central State Hospital

Appoint:

Mr. William H. Lightfoot

Ms. Jillian McNeil

Richmond Tri-Cities

Appoint:

Ms. Veronica E. Thweatt

Ms. Dona Edmondson

Hanover County LHRC

Appoint:

Ms. Lynn Goodale

Region 5

Peninsula Regional LHRC

Appoint:

Mr. Mark M. Jacob

Genesis LHRC

Appoint:

Ms. Yvette McDaniel

Eastern State Hospital LHRC

Appoint:

Ms. Mary Rickmond

Mr. Jason Mintel

Chesapeake Regional LHRC

Appoint:

Ms. Deborah S. Jones

Mr. Brodie Walker

Middle Peninsula-Northern Neck LHRC

Appoint:

Ms. Alice T. Coates

Region 6

Danville-Pittsylvania County LHRC

Reappoint:
Ms. Betty Brown
Piedmont Community Services LHRC
Appoint:
Ms. Peggy Sue Ferguson
Central Virginia Training Center LHRC
Reappoint:
Ms. Dolly Clingempeel

Appeal

Central State Hospital - CS v Charles Davis

This appeal was tabled until the October 24, 2008 SHRC meeting in Williamsburg.

Having no further business to discuss, the motion was made and unanimously passed to adjourn the meeting.

Respectfully submitted,

Kirby Wright, Chair