



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 09 2011

The Honorable Michael A. Delaney
Attorney General
State of New Hampshire
Department of Justice
33 Capitol Street
Concord, NH 03301

Re: United States' Investigation of the New Hampshire Mental Health System

Dear Attorney General Delaney:

We write in response to your December 6 letter, in which you disagree with the content of our findings letter, issued on April 7, 2011. We stand by the findings and conclusions set forth in our April letter. Our investigation and findings were based upon current data from a variety of sources, including information submitted to us directly by the State. Notably, public statements from New Hampshire leadership have confirmed that the State's mental health system is "broken" and "in crisis."

We are already aware of the information contained in your letter, and it does nothing to change our conclusion that the State is violating the civil rights of many persons with mental illness under the Americans with Disabilities Act (ADA). New Hampshire forces people with mental illness to obtain needed services at the State's institutional facilities, even though those services could be provided more effectively and more inexpensively in integrated community settings.

Your claims that New Hampshire's reliance on institutions is "entirely reasonable" and that the State's system compares favorably to national statistics are simply incorrect. New Hampshire's admission rate to New Hampshire Hospital is nearly 40% higher than the national average, and readmission rates are nearly double. This problem has gotten worse – not better – between 2009 and 2010 and is on the same trajectory for 2011. Moreover, your reliance on the short lengths of stay at New Hampshire Hospital is misplaced. Those short stays reflect the large number of people who are inappropriately admitted and who, in other systems, are diverted with community services that are lacking in New Hampshire.

New Hampshire's mental health system, as currently configured, not only violates the ADA, but also is an inefficient use of State resources and is bad policy. New Hampshire is spending about as much to serve 5% of people with mental illness in New Hampshire Hospital as it spends to serve the entire remaining 95% in the community. As described in our findings letter, the State could serve roughly six people in the community for each person it serves at New Hampshire Hospital. New Hampshire could clearly spend its dollars more effectively. Much of the remedial action needed in New Hampshire could be achieved through redirection of resources, resulting in greater community care at little or no increased cost to the State. We have successfully worked with other states, with both Republican and Democratic administrations, to implement innovative, comprehensive solutions and believe similar solutions are available in New Hampshire to meet your legal obligations under the ADA, your fiscal responsibility to taxpayers, and your moral compact with New Hampshire's residents with the most significant needs.

Systemic civil rights violations, such as those we outlined in our findings letter, call for prompt, concrete commitments, not general plans with indefinite timelines. While implementation of the State's Ten-Year Plan would be a step in the right direction, the State has not achieved many of the goals it established in the Plan, nor has the State made any binding commitment to do so. These failures account for the fact, noted above, that admissions have remained unacceptably high over the last several years.

As you know, for the past several months, we have spent considerable time and effort traveling to New Hampshire to meet with you and other State officials to try to resolve our differences. I personally travelled to New Hampshire to meet with you and your team to express our commitment to forging a comprehensive, mutually agreeable resolution. We regret that your current positions have created an impasse. We would have preferred to work with the State to develop a resolution to address outstanding needs. Unfortunately, as we have been unable to reach a resolution, we will now assess our enforcement options, including the initiation of litigation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. E. Perez', with a stylized flourish at the end.

Thomas E. Perez
Assistant Attorney General

cc: Anne M. Edwards, Esq. State of New Hampshire	Michael K. Brown, Esq. State of New Hampshire
John P. Kacavas United States Attorney District of New Hampshire	John Farley Assistant United States Attorney District of New Hampshire