

## **BILL ANALYSIS**

C.S.H.C.R. 155  
By: Burnam  
Civil Practices  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently there are 13 state schools that are overseen by the Department of Aging and Disability Services (DADS) under the Health and Human Services Commission. Denton State School (DSS) is one these schools. DSS is a residential facility for 653 people with mental retardation and developmental disabilities. According to DADS' website, "the bulk of the people who live at DSS have severe and profound retardation..."

On August 2002, Haseeb Chishty, a mentally handicapped but physically healthy young man, was brought to DSS to improve his behavioral and eating skills. While at the school, Mr. Chishty was severely beaten by Kevin Miller, a caregiver at state school. Miller confessed to victimizing Mr. Chishty and blames a culture of negligence and drug use on the job. Miller indicated that "the employees on that shift did either crack, powder cocaine, marijuana, Oxycontin, hydrocodone, valium" among others. Miller, a former drug addict, began using again after he was hired at DSS when he discovered three coworkers were using drugs on duty. This led to a recurrence in his drug use and to Miller's abuse of Mr. Chishty. Mr. Chishty was kicked and punched by Miller at least twenty times. When his Mr. Chishty's mother visited, she found her son in terrible pain; however, the school would not admit Mr. Chishty was hurt and would not wake up the on-call physician. They continued to deny the abuse and indicated that Mr. Chishty had been injured by a seatbelt in a van. Mr. Chishty was not transferred to a hospital for more than a day. Mr. Chishty's condition worsened, and he had to undergo four surgeries to reconstruct his internal organs. The abuse and neglect caused by Miller and DSS' attempt to cover up the situation have left Mr. Chishty nearly paralyzed and confined to a wheelchair. Miller was indicted by a Denton County grand jury and charged with reckless bodily injury to a disabled person; however, the family was not allowed to sue the state because they did not fall under the two exceptions that would allow them to do so. These two exceptions include injury by a state vehicle or negligent use of tangible property.

The Chishty family has encountered several hardships after the incident and has been unable to remove Mr. Chishty out of the DSS due to the lack of monetary resources. C.S.H.C.R. 155 will grant permission to the Chishty family to sue the State of Texas, the Department of Aging and Disability Services, and the Denton State School.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

WHEREAS, Farhat Chishty and Aqueel Chishty, both individually and as next friend for their son, Haseeb Chishty, allege that:

- (1) Haseeb Chishty was a disabled adult resident of the Denton State School, which is under the jurisdiction of the Department of Aging and Disability Services;
- (2) Kevin Miller was a direct care aide employed at the Denton State School;
- (3) the Department of Aging and Disability Services and the Denton State School had prior knowledge of Kevin Miller's inappropriate behavior toward mentally retarded and physically handicapped residents;

- (4) although Kevin Miller was not terminated for his inappropriate behavior, he was placed on decision making leave;
- (5) when Kevin Miller returned from decision making leave, the Denton State School transferred him to the housing unit in which Haseeb Chishty resided;
- (6) the Denton State School also had prior knowledge of illicit drug use by direct care aides and other Denton State School employees;
- (7) the Denton State School failed to remove Kevin Miller from the environment in which Haseeb Chishty resided and failed to have or to enforce policies to protect Haseeb Chishty and allowed Haseeb Chishty to reside in a dangerous environment;
- (8) some time before September 27, 2002, Kevin Miller physically abused Haseeb Chishty and as a result, Haseeb Chishty sustained life-threatening injuries to his lower abdomen and pelvic area which have left him unable to eat on his own, speak, walk, or interact with his family;
- (9) Kevin Miller may have been in a drug-induced state at the time he abused Haseeb Chishty;
- (10) the Department of Aging and Disability Services and the Denton State School attempted to conceal the source of Haseeb Chishty's injuries by asserting they were caused by a vehicle safety belt in August 2002;
- (11) on or about January 27, 2003, the Department of Aging and Disability Services and the Denton State School informed Farhat Chishty that her son may have been physically abused by an employee who was, at the time the information was provided, on leave of absence status;
- (12) Kevin Miller was on leave of absence in January 2003, and when he returned to the Denton State School from his leave of absence, he was permitted to work with Haseeb Chishty, even though the Denton State School knew that Kevin Miller may have been responsible for Haseeb Chishty's abuse; and
- (13) the Chishty family is entitled to an award for damages, including actual medical expenses, interest on any amounts due as may be authorized by law, and exemplary damages; now, therefore, be it

RESOLVED by the Legislature of the State of Texas, That Farhat Chishty and Aqueel Chishty, both individually and as next friend for their son, Haseeb Chishty, are granted permission to sue the State of Texas, the Department of Aging and Disability Services, and the Denton State School subject to Chapter 107, Civil Practice and Remedies Code; and, be it further

RESOLVED, That the commissioner of aging and disability services and the superintendent of the Denton State School be served process as provided by Section 107.002(a)(3), Civil Practice and Remedies Code.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

(13) The committee substitute deletes "prejudgment and postjudgment interest at the highest rate allowable by law," and replaces it with "interest on any amounts due as may be authorized by law" in the original. The committee substitute deletes, "reasonable attorney's fees" from the original.

All else in the committee substitute is identical to the original.