

Compliance Report Regarding DYS' PROGRESS Unit at the Scioto Juvenile Correctional Facility

Civil Actions 2:08-cv-00475 and 2:04-cv-01206

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Introduction

In October and November 2012, pursuant to the *United States v. Ohio* and *S.H. v. Reed* Stipulations, the U.S. Department of Justice (DOJ) and the *S.H.* plaintiff class each initiated a process for dispute resolution to address concerns regarding the purpose, structure, and operation of the PROGRESS Unit at the Scioto Juvenile Correctional Facility (the PU). The Monitors and Plaintiffs in both cases have expressed on-going concerns about DYS' operation of special management units since at least 2007. The Ohio Department of Youth Services (DYS) and DOJ negotiated and agreed upon a proposed Consent Order, filed with the Court on December 19, 2012. The Court did not sign the Order until January 18, 2013 when it was also incorporated into a broader settlement between DYS and the *S.H.* plaintiff class. The Consent Order sets standards related to PU policies, admissions screening, programming, out-of-room time, staffing, treatment planning, length of stay, and promotion and demotion between phases. The *S.H.* settlement supplements the Consent Order with additional standards related to PU behavioral health staffing and quality assurance.

Drs. Kelly Dedel and Daphne Glindmeyer were tasked with monitoring DYS' compliance with the Consent Order. In order to facilitate compliance in a more efficient manner than the standard 6-month monitoring period, the Monitors decided to issue status reports on a more frequent basis. The *1st Status Report*, covering the period November 2012 through February 2013, was issued to the Parties on March 27, 2013 and filed with the Court simultaneously with the DOJ Monitor's *Fourth Monitor's Report* on June 18, 2013.

In response to the *1st Status Report*, the Parties made some agreements designed to facilitate DYS' progress toward compliance, while also ensuring that the integrity of the monitoring process. Subsequent status reports would assign compliance ratings to each of the 17 subsections of the seven core areas of the Consent Order so that progress with component parts could be better recognized and deficits in other areas could be highlighted for additional attention. In addition, the requirements for satisfying the Consent Order were clarified. In order to reach substantial compliance with the Consent Order, DYS must first come into compliance with all of the core areas and subsections and then must maintain that level of performance for an additional six months. Once this threshold is obtained, monitoring of the PU's operation will once again be subsumed under the larger DOJ Agreement.

The Consent Order requires DYS to develop a Quality Assurance mechanism, designed to rigorously examine each of the PU's component parts using multiple sources of data so that program areas not meeting the requirements of the Order can quickly be identified and remediated. In March 2013, DYS took a major step toward meeting this requirement by agreeing to produce the *2nd Status Report* internally. For the March through June 2013 reporting period, using the same data submitted to the Monitors for review as required by the Consent Order, DYS constructed its first quality assurance report regarding the operation of the PU. [DYS' *Status Report* is attached to this *Compliance Report*.]

A draft was submitted to the Monitors and Plaintiffs for review and feedback. The Monitors reviewed the relevant data on their own to determine whether DYS' analysis and interpretation met generally accepted practices for quality assurance. Extensive feedback was provided to DYS

to improve the clarity, rigor and coherence of the *Status Report*. In nearly all cases, DYS accepted the Monitors' and Plaintiffs suggestions.

The assignment of compliance ratings remains the Monitor's responsibility, and thus is the purpose of this *Compliance Report*. For each of the 17 subsections, the Monitors indicate whether they agree or disagree with DYS' assessment of its level of compliance. In areas of disagreement, the Monitors explain the rationale for their compliance ratings.

Overall, DYS has made significant progress complying with the requirements of the Consent Order. Of the 17 subsections, 8 are in substantial compliance (47%) and 9 (53%) are in partial compliance. Many of the changes required to bring other parts into substantial compliance should be relatively simple to address.

Recent changes to DYS' use of the PU have brought into question whether the Consent Order still applies. Although DYS is currently using only the least restrictive of the PROGRESS units, the structure for the more restrictive units remains active in DYS policy and procedure. Absent a written commitment to decommission the entire Unit, or to remove the more restrictive units with the attendant permission to use programmatic restraints in a self-contained program environment, the Monitor will continue to conduct periodic reviews of DYS' compliance with the Consent Order, as it pertains to whichever of the PROGRESS Units are currently in use.

Over the next couple of months, for each component in partial compliance, DYS should craft a written Quality Improvement Plan (QIP) that addresses the underlying causes of the subpar performance. For example, youth in seclusion are not receiving the required one-hour of daily recreation. This could occur for many reasons—insufficient numbers of recreation staff; insufficient space; lack of interest or incentives among youth; etc. DYS' challenge is to accurately identify what is driving the problem and to craft strategies to address these contributing factors. The Monitor expects to receive QIPs for the following subparts rated in partial compliance:

- Daily Activities
- Graduate Programming
- Staff Numbers
- Treatment Planning
- IDT Composition
- IDT Substance
- Length of Stay
- CORB Substance

Technical assistance with crafting and implementing the QIPs is available from the Monitors if desired. Once the QIPs have been implemented, the 3rd *Status Report* can be drafted to determine whether the problems identified in the current report have been remediated.

What follows is a list of the 17 subsections and the compliance rating assigned to each one. In any area where the Monitors do not agree with DYS' self-assessment, the rationale for the Monitor's compliance rating is provided. Even where agreement exists, key issues related to each partial compliance rating are briefly summarized. The reader is referred to the attached 2nd *Status Report* for details surrounding the program's operation in areas where DYS and the Monitor agree on the level of compliance.

II.9 Admissions Screening

The Monitor agrees with DYS' assessment that it is in substantial compliance with this provision.

II.10(1) Daily Schedule: Out of Room Time

The Monitor agrees with DYS' assessment that it is in substantial compliance with this provision.

II.10(2) Daily Schedule: Daily Activities

The Monitor agrees with DYS' assessment that it is in partial compliance with this provision. In order to reach substantial compliance, DYS needs to ensure that structured activities are led by an adult; that leisure time is provided each day; and that youth in seclusion are afforded the opportunity for one-hour of recreation per day. *[Note: this last component, regarding recreation for youth in seclusion, was not included among DYS' list of issues in need of remediation.]*

In addition, the Monitor noted a calculation error regarding the "structured activities" component of the analysis. The report should read that "in the first group of cases sampled, 54% of activities were not led by an adult" and "in the second group of cases, 43% of the activities were not led by an adult."

II.10(3) Daily Schedule: Graduate Programming

The Monitor agrees with DYS's assessment that it is in partial compliance with this provision. While there was only one graduate on the PROGRESS Unit during the period of review, his schedule was followed only 65% of the time.

II.11(1) Staffing: Staff Numbers and Training

The Monitor does not agree with DYS' assessment that it is in substantial compliance with this provision; rather, the Monitor believes the DYS is in partial compliance with this provision, absent additional data analysis. DYS asserted that time Unit Managers spend in training should be included in the calculation of Unit Manager coverage because, since they are on campus, "they can respond if needed." The Monitor disagrees. Presumably focused on the content of the training session, Unit Managers cannot provide active supervision of the Youth Specialist (YS) staff assigned to the Unit. While they may be able to respond to a call for assistance, the negotiations surrounding the Consent Order emphasized the need for hands-on mentoring and oversight of YS staff, which clearly cannot occur if the Unit Manager is not physically present. It is possible that DYS' Unit Manager coverage exceeds the 80% minimum threshold for substantial compliance even once the training hours are subtracted out, but DYS did not provide these data and so compliance cannot be substantiated at this time.

The Monitor does agree that the level of YS staffing meets the requirements of the provision, though recommends that in future Status Reports, DYS should combine the ADP data with the staffing data to calculate a specific YS—youth ratio for each unit, each shift.

II.11(2) Staffing: Impact on Safety

The Monitor agrees that DYS is in substantial compliance with this provision. While the level of youth-on-staff violence remains a concern, it does not appear to be related to insufficient numbers of staff, which was the key caution behind this section of the Order.

II.12(1) Treatment Planning: Clinical Staffing

The Monitor agrees with DYS' assessment that it is in substantial compliance with this provision.

II.12(2) Treatment Planning: Treatment Planning

The Monitor agrees with DYS' assessment that it is in partial compliance with this provision. In the data analysis, DYS reviewed youth treatment planning goals and objectives. While goals and objectives were appropriately measurable and realistic, there were marked deficits in strengths based and skills focused objectives. In addition, a review of treatment documentation indicated that treatment (and its documentation) needed to utilize interventions that were more focused on the goals and objectives outlined in the treatment plan. In order to reach substantial compliance, these areas must be addressed.

Throughout the 2nd *Status Report*, skills acquisition is discussed. The Monitors acknowledge that deficits in skill acquisition are likely the precipitating factor in youth recycling through the PU phases. Skills acquisition must be addressed via a process that includes:

- Identifying skills that a particular youth requires;
- Outlining necessary skill development via treatment planning (i.e., goals, objectives, interventions);
- Implementing interventions that addresses the development of these skills in treatment;
- Documenting the interventions and the youth's progress with regard to skill development; and
- Addressing a lack of progress toward skill development via the treatment planning process in order to identify alternate interventions that may be beneficial.

II.12(3) Treatment Planning: Progress Reporting and Promotion

The Monitor agrees with DYS' assessment that it is in substantial compliance with this provision.

II.12(4) Treatment Planning: Interdisciplinary Treatment Team

The Monitor agrees with DYS' assessment that it is in partial compliance with this provision. In their review of the data, DYS recognized issues with staff attendance at Interdisciplinary Treatment Team (IDT) meetings. In order to reach substantial compliance, the facility plans to develop a Program Improvement Plan to address issues of attendance at IDT meetings. Furthermore, representatives from all disciplines must consistently attend and provide input on all Progress Units.

II.12(5) Treatment Planning: IDT Substance

The Monitor agrees with DYS' assessment that it is in partial compliance with this provision. In order to achieve substantial compliance, DYS must ensure that the IDT appropriately and regularly reviews the youth's behavioral expectations and treatment goals, focusing on skill acquisition. Both the IDT and the youth must be aware of the youth's progress (or lack thereof) toward meeting the treatment goals. When youth are not meeting treatment goals or are not acquiring necessary skills, the IDT must recommend alternate strategies for consideration.

II.12(6) Treatment Planning: Length of Stay

The Monitor agrees with DYS' assessment that it is in partial compliance with this provision. Using a 30-day maximum threshold for each of the three phases, 22% of the stays across all of the phases lasted longer than 30 days. Furthermore, 10 of the 16 youth reviewed (63%) had a total length of stay in excess of 90 days. Finally, "recycling" (being demoted to a lower phase) continues to be prevalent and brings into question whether youth are acquiring the skills they need to refrain from violent behavior.

II.12(7) Treatment Planning: Central Office Review Board (CORB)

The Monitor agrees with DYS' assessment that it is in substantial compliance with this provision.

Several months ago, the Monitors' gave their approval for DYS to cease completing CORB reviews for youth on the Transition Unit so that they could prioritize the reviews of Phase 1 and Phase 2 youth and complete them in a timely manner. However, the Monitors gave this permission without first consulting the Plaintiffs, who feel strongly that youth on the Transition Unit should be reviewed if they have not been promoted within 30 days. Moving forward, in order to maintain substantial compliance, the CORB will need to review Transition youth, as described in the Consent Order.

II.12(8) Treatment Planning: CORB Substance

The Monitor agrees with DYS' assessment that it is in partial compliance with this provision. In order to achieve substantial compliance, DYS must ensure that the IDT reviews with the youth the results of the CORB review and that CORB recommendations are implemented at the facility level.

II.13 Phase Demotions

The Monitor agrees with DYS' assessment that it is in substantial compliance with this provision.

II.14 Policies and Procedures

The Monitor agrees with DYS' assessment that it is in substantial compliance with this provision.

In order to maintain substantial compliance, DYS must update the SOP and Youth Handbooks to keep pace with the recent evolution of the program (i.e., a narrowing of the program that utilizes only the least restrictive of the PROGRESS Units, the Transition Unit). If, as DYS asserts, youth will no longer be admitted or demoted to the more restrictive units (i.e., Phase 1 on Cedar or Phase 2 on Sycamore), the written documentation for the program must be updated to reflect this significant change. As of the writing of this report, the policy and handbook revisions are in progress.

III.C.3 Quality Assurance

As noted in the Introduction, DYS took a major step toward complying with the consent order when it agreed to produce the 2nd *Status Report* internally. For this reason, DYS is in partial compliance with this provision. While the Monitor had feedback and suggestions about the content of the report, most of the comments were stylistic and intended to better communicate the information rather than to correct a misleading analysis. Moving forward, DYS should strive to improve the organization of the report (e.g., ensuring that all component parts are included and eventually synthesized into a single document that will provide the reader with a concise assessment of the PU's operation).

In order to reach substantial compliance with this subsection, DYS needs to actively engage in the process of remediating the identified deficits, via the Quality Improvement Planning (QIP) process. As noted in the Introduction, within the next couple months, the Monitor expects to receive written QIPs that address the underlying causes of the performance problems. QIPs need to be developed for the following subparts rated in partial compliance:

- Daily Activities
- Graduate Programming
- Staff Numbers
- Treatment Planning
- IDT Composition
- IDT Substance
- Length of Stay
- CORB Substance

Technical assistance with crafting and implementing the QIPs is available from the Monitors if desired. Once the QIPs have been implemented, the 3rd *Status Report* can be drafted to determine whether the problems identified in the current report have been remediated.