

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.) CIVIL ACTION NO:
) 2:08-CV-475-ALM
THE STATE OF OHIO, <u>et al.</u> ,)
)
Defendants.)
_____)

COMPLIANCE REPORT

Pursuant to provision V.H. of the Consent Order in U.S. v. Ohio, 2:08-CV-475, the United States Department of Justice ("United States"), as Monitor, submits its first report of its assessment of the State of Ohio's ("State") compliance with the June 4, 2008 Consent Order. For each substantive provision of the Consent Order, a recitation of the provision is provided, followed by a narrative describing the United States' analysis of the State's compliance efforts, and a compliance rating. Where possible, the United States provides recommendations to assist the State attain substantial compliance with a particular provision.

This Compliance Report represents the United States' assessment of the State's compliance with provisions A.1-7, D.1-3, E.1-11, and F.1-2, which relate to Ohio Department of Youth Services ("ODYS") policies, procedures, and practices governing the protection of youth from harm, grievances, special education and programming for youth at Scioto Juvenile Correctional Facility ("Scioto"). The Compliance Report is organized in this order and follows the language of the Consent Order. The United States' assessment is based upon document review (including but not limited to policies, procedures, training documents, and grievances), expert reports from Drs. Kelly Dedel and John Lloyd, and

Mr. John Platt, and three on-site compliance tours in November 2009, February 2010, and April 2010. The United States intends to provide a separate compliance report regarding the status of the State's compliance with mental health, general medical care, documentation, and special education¹ provisions (B.1-18, C.1-10, G.1-2 and E.1-11) following its upcoming compliance tours: October 7-8, 2010 and November 2-5, 2010.²

We are pleased to report that of the 23 provisions reviewed in this Compliance Report, the State has achieved substantial compliance with 7 provisions, partial compliance with 11 provisions, beginning compliance with 4 provisions and is non compliant with 1 provisions. "Non compliance" means that State has made no notable progress in achieving compliance on any of the key components of the provision. "Beginning compliance" means that the State has made notable progress in achieving compliance with a few, but less than half, of the key components of the provision. "Partial compliance" indicates that the State has made notable progress in achieving compliance with the key components of the provision, but substantial work remains. "Substantial Compliance" indicates that the State has met or achieved all of the components of a particular provision. Achieving "substantial compliance" with each of the provisions in the Consent Order will require time and effort going forward. However, we recognize and appreciate the State's significant efforts to date in working towards achieving substantial compliance with all the provisions in the Consent Order.

On November 23, 2009, the parties agreed that Dr. Dedel would serve as the United States' lead expert in its compliance review. Previously, the United States were

¹ The Parties have agreed to have Dr. Dedel serve as the expert to assess Scioto's compliance with the special education provisions for all future compliance tours.

² During our November 2010 tour, the United States will be accompanied by Drs. Kelly Dedel and Daphne Glindmeyer (adolescent psychiatrist).

assisted by other experts, Mr. John Platt and Dr. John Lloyd, in the fields of protection from harm and special education, respectively. We have attached to this Compliance Report the expert reports of Mr. Platt and Drs. Dedel and Lloyd.

GENERAL OBSERVATION

Prior to providing our assessments and recommendations, we note our general observation that Scioto is a dramatically improved facility compared to when the United States toured it during our investigation in June 29-July 1, 2005. To demonstrate the contrast, we refer to our May 9, 2007 findings letter in which we found that: (1) staff used restraint techniques that exposed youth to significant risk of harm; (2) investigations of youth grievances rarely resulted in corrective action for staff or youth or any attempt to recognize or identify patterns of behavior requiring intervention; and (3) youth at Scioto were subject to use of excessive physical abuse. These examples are not an exhaustive list of the United States' findings in 2007, but serve to highlight the stark differences between Scioto then and now. As discussed below, the State has made tremendous improvements in each of these areas. We commend the State and the administration and staff at Scioto for their accomplishments. The State's commitment to transforming its juvenile justice system into a model of rehabilitative justice, in a secure and safe environment, is abundantly clear at Scioto.

GLOBAL RECOMMENDATION

Although a few specific recommendations are noted below, as a global matter, we suggest the State invest time and effort in more thorough and comprehensive tracking and data collection. The data the State provided was extremely useful in demonstrating areas

of progress. In-depth self-assessments³ will enable the State to identify areas of strength to use as models and develop strategies to overcome challenges still existing in the program. The specific recommendations made by the United States are not to be interpreted as mandates, but rather possible options for the State to consider.

COMPLIANCE ASSESSMENTS AND RATINGS

I. PROTECTION FROM HARM

A.1 GENERAL PROTECTION FROM HARM

The State shall, at all times, provide youth in the facilities with safe living conditions. As part of this requirement, the State shall take appropriate measures to ensure that youth are protected from abuse and neglect, use of excessive force, undue seclusion, undue restraint, and over-familiarization. (See Consent Order III.A.1)

Overall protection from harm for youth and, by extension, staff is the single most important factor in the operation of a juvenile correctional facility. It is the cornerstone upon which all other programming is built. Based on our three compliance tours and review of documents it is apparent that the State has made great strides towards ensuring youths' safety. Most notably, physical and mechanical restraint usage has dramatically declined. (See Dedel Report at 5, 17-18). In fact, since the inception of ODYS' "Managing Youth Resistance Training," in June 2009, use of each of these restraints has been cut almost in one-half. This represents a major improvement since the United States issued its 2007 findings letter regarding deficient conditions regarding Scioto in 2005. It is apparent that the revised staff training has improved the staff's understanding of proper behavioral management techniques. Despite the fact that staff members appear to intervene

³ Section V.H. of the June 4, 2008 Consent Order requires the Monitor to report on: "(1) the steps (including documents reviewed, meetings attended, and persons interviewed) the Monitor took to assess compliance; (2) the *self-assessment steps the facility undertook to assess compliance* and the results thereof; (3) the level of compliance, i.e., "non compliance" or "substantial compliance"; and (4) the Monitor's recommendations, if any, to facilitate or sustain compliance." (emphasis added).

physically at the same rate as in the past, the data suggest that the interventions now are generally less severe and more protective of youth. We commend the State for revising and making training of its staff a priority.

The incident investigation process now in place is an appropriate method to respond to allegations of abuse and neglect. Additionally, we found that the rate of substantiated allegations at Scioto is not unusually high as compared to similar facilities. (See Dedel Report at 6). We commend the State on the progress it has achieved in revising and improving its investigations of allegations of abuse and neglect.

One specific concern the United States has is the length of duration of seclusions. This topic is discussed in further detail in section A. 3.

As provision A.1, in the Protection From Harm section, is composed of the subject areas in provisions A.2-A.7, namely, Use of Force, Seclusion, Restraint, Investigation of Serious Incidents, Staff Training, and Employment Practices, it will be the last provision in this section to meet substantial compliance. Stated another way, substantial compliance with A.1, "General Protection from Harm," is dependent upon the State reaching substantial compliance with provisions A.2-A.7. We highlight this fact to assist the State and the Court understand the rationale for the United States' compliance rating for this provision.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

In addition to the recommendations regarding provisions A.2-A.7, discussed below, the State should meet its requirement to self-assess by monitoring and analyzing the rates

of major events at Scioto. Specifically, the State should produce data on the rates of the following types of incidents: (1) violence; (2) allegations of abuse; (3) excessive force; and (4) use of seclusion. (See Dedel Report at 4). Lastly, the State's tracking of incidents should be coupled with an attempt to identify triggers or patterns for increases or decreases of incidents.⁴

A.2 USE OF FORCE

The State shall develop and implement comprehensive policies, procedures, and practices limiting use of force on youth to situations where it is objectively reasonable and necessary. Staff shall be required to adequately and promptly document and report all uses of force. (See Consent Order III.A.2)

In order to assess this provision, we interviewed youth and staff, reviewed data collected by the State, and reviewed incident reports, policies and procedures.⁵ We found that the State maintains comprehensive policies governing and minimizing the use of force ("UOF"). The State's UOF procedure provides staff with a hierarchy of appropriate responses to types of non-compliant behavior. The companion policy, "Managing Youth Resistance," explicitly prohibits the excessive use of force and requires staff to exhaust non-physical behavior management techniques before using force. If it becomes necessary to use force, staff may only use the minimum amount of force required to stabilize the situation. The planned intervention procedure provides an adequate mechanism for Scioto

⁴ For example, if youth are more apt to engage in violent behavior during the holidays because they are upset they are not home, the State could consider adjusting its practices to address that trigger. In response, the State could provide extra visitation days or calls home around the holidays. This example is offered only to underscore the usefulness of investigating and understanding the root cause or trigger of a problem, such as increased violence, beyond the actual violent incident. The United States does not state or imply that there is an increase in violence by youth at Scioto during the holidays.

⁵ The ODYS policies and procedures reviewed were: policy 301.05 "Managing Youth Resistance"; SOP #301.05.01 "Use of Force"; SOP #101.14.01 "Institutional Incident Review"; and SOP #301.05.02 "Planned Interventions."

staff to anticipate the need to use force in the event that a youth cannot be controlled through non-physical behavior management techniques. By allowing staff to plan the UOF, both youth and staff are protected, and other precautions, such as the use of video recording, are employed. The State has also developed appropriate procedures for reporting UOF incidents involving restraints and referring questionable practices or negative outcomes. Accordingly, we find that the State's UOF policies and procedures appear to be consistent with generally accepted national standards for secure juvenile correctional facilities.

The United States is encouraged by the positive steps the State has undertaken to adopt and implement these important policies. However, to ensure proper implementation over time, it will be critical to carefully monitor the types of physical and mechanical restraints as well as the prevalence of factors that might lead to the use of force. Ongoing staff training should also be required to ensure that staff comprehend the meaning of the policies and are able to effectively implement them.

Through interviews of staff and youth, we found that staff members demonstrate a strong commitment to using verbal de-escalation techniques and other non-physical interventions before physical force or restraint. We commend the State for achieving considerable progress in this area. We do note, however, that some staff members are confused as to whether physical force is ever an appropriate technique, highlighting a belief that physical force can never be preventative, but can only be a response to actual harm.

Compliance Rating: Substantial Compliance

While the State is in compliance with this provision, we encourage the State to develop a strategy for analyzing UOF data practices more comprehensively. We believe that

the State would benefit from better understanding situations when UOF is used, and just as importantly, when it is not used. Based on our review of documentation provided, we found that the reductions in UOF incidents generally track the reductions in the size of facility population and in the number of fights. Ultimately, a better understanding of the causes for reductions in UOF incidents will enable the State to sustain the reduction. Lastly, we suggest re-fresher and on-going training courses with an emphasis on asking questions by staff members without fear of it affecting their performance rating or of asking the “wrong” question.

A.3 SECLUSION.

The State shall develop and implement policies, procedures and practices so that staff use seclusion only in accordance with policy and in an appropriate manner and so that staff document fully the use and administrative review of any imposition of seclusion, including the placing of youth in their rooms outside normal sleeping hours. (See Consent Order III.A.3)

In order to assess this provision, we interviewed youth, and reviewed seclusion logs, monitoring sheets, and policies and procedures.⁶ We find that protection from undue and prolonged seclusion remains a significant challenge for the State. Based on document review, we found that while the frequency of seclusion has declined, the rate as it pertains to the population of youth remains constant. In other words, Scioto continues to use seclusion approximately at the same rate as it did previously despite a decline in the actual number of seclusions.

Our second concern is the duration of the seclusions we reviewed. Based on data provided by the State, we found that prior to June 2009, the average time in seclusion per

⁶ The ODYS policies and procedures reviewed were the following: SOP #301.05.03 “Seclusion Reporting, Monitoring and Documentation Requirements;” Policy #303.01 “Youth Rules, Interventions and Incentives;” SOP #303.01.01 “Rules of Youth Conduct;” SOP #303.01.02 “Youth Intervention Sanctions;” and SOP #303.01.03 “Youth Intervention Hearings.”

youth was 4.345 hours, compared to 17.875 hours since June 2009. This is an increase of approximately 400%. (See Dedel Report at 5). The increase in length appeared to correlate directly with the implementation in June 2009 of the ODYS policy, Consistent Response to Acts of Violence ("CRAVE"). Under CRAVE, involvement in aggressive acts of violent behavior resulted in immediate seclusion pending a disciplinary hearing, followed by a period of disciplinary confinement of up to five additional days. Data show that the CRAVE policy resulted in seclusions of eight days or longer. In early 2010, the State revised its protocol and created the Individualized Response to Acts of Violence ("IRAVE") that provides an array of individualized sanctions that may be implemented. The IRAVE policy was designed to make the duration of seclusion more proportional to the seriousness of the assault, reduce the use of pre-hearing confinement, and encourage the use of other types of sanctions. Because the IRAVE protocol was relatively new during our February and April 2010 tours, we will assess any outcome measures the State can provide on IRAVE during our November 2010 tour. We encourage the State to devise various types of alternate sanctions so as to avoid the "seclusion or nothing" issue discussed by Dr. Dedel in her report. (See Dedel Report at 14).

Our third concern about the use of seclusion is what situations trigger its use. From speaking with staff we learned that seclusion previously was permissible for both disruptive and violent misbehavior. As discussed above, the new IRAVE policy calls for individualized sanctions and, in theory, should address youth being placed in seclusion for behaviors that can be handled without seclusion. Again, we look forward to reviewing performance data the State compiles on this topic.

Lastly, we echo Dr. Dedel's concerns that the risk of self-harm increases when a youth is placed behind a locked door. Accordingly, staff must check on the youth

frequently. The monitoring sheets reviewed indicated that frequent checks were conducted in intervals that did not exceed 15 minutes consistent with generally accepted standards. We were concerned, however, that some staff claimed to check on the youth exactly every 15 minutes. Most experts recommend staggered or random safety checks not to exceed 15 minutes, but not every 15 minutes.

Compliance Rating: Beginning Compliance

Recommendation(s) to reach substantial compliance:

The implementation of the new IRAVE protocol requires close monitoring and tracking of triggers, frequency and duration of seclusion. While the policies in place may be sufficient, additional training or guidelines on the appropriate use of seclusion should be encouraged and provided for all staff. We recommend the State continually assess its use and reasons for use of seclusion as the analysis will permit the State to refine its use. We also recommend random quality assurance checks of footage of all shifts to ensure that staggered checks not to exceed 15 minutes are being conducted. We look forward to reviewing assessment data produced by the State on the effectiveness and use of IRAVE during our November 2010 tour.

Separately, we note that the Plaintiffs in the related matter, S.H. v. Stickrath, 2:04-CV-1206, have raised concerns about whether IRAVE is leading to excessive use of seclusion and consequently causing youth to be suspended from schooling. We echo their concerns about the over use of seclusion and the importance that youth at all ODYS facilities receive educational services while in the custody of ODYS. We understand that the Court has asked the monitor in S.H. v. Stickrath to provide an assessment on this issue.

The United States will review this issue in the context of our review of special education services.

A.4 *RESTRAINT*

The State shall develop and implement policies, procedures and practices so that only safe methods of restraint are used at the facility and only in those circumstances necessary for safety and security and, to the extent possible, when less restrictive means have been properly, but unsuccessfully, attempted or with respect to therapeutic restraints pursuant to a medical order to protect the health of the youth. (See Consent Order III.A.4)

In order to assess this provision we viewed videotaped footage, interviewed youth and staff and reviewed the relevant procedure.⁷ The State has implemented policies and procedures that provide staff with appropriate restraint techniques, discuss approved alternatives, and afford staff the latitude to evaluate the situation and adopt the most appropriate response. By early 2010, nearly all staff had received comprehensive training on Managing Youth Resistance (MYR). Where less severe measures are ineffective, the restraint techniques meet generally accepted standards. We were also pleased to find that there is a review of each UOF incident to ensure use was appropriate, and in cases where the restraint is found to be inappropriate, excessive, or unsafe, staff are subject to counseling or discipline, as warranted. This high level of internal monitoring and vigilance greatly ensures that staff utilize only appropriate and safe methods of restraint. We applaud the State and its staff for meeting the full requirements of this provision.

Compliance Rating: Substantial Compliance

A.5 *INVESTIGATION OF SERIOUS INCIDENTS*

The State shall develop and implement policies, procedures and practices so that appropriate investigations are conducted of all incidents of: use of force; staff-on-youth violence; serious youth-on-youth violence; inappropriate staff

⁷ The ODYS procedure reviewed was SOP #301.05.01 "Use of Force" in assessing this provision.

relationships with youth; sexual misconduct between youth; and abusive institutional practices. Investigations shall be conducted by persons who do not have direct or immediate indirect responsibility for the employee being investigated. (See Consent Order II.A.5)

In assessing this provision, we reviewed investigations of serious incidents, interviewed staff and youth, and reviewed relevant policies and procedures.⁸ We found that Scioto adopts a multi-pronged approach to investigation of serious incidents. One or more entities conduct a comprehensive investigation of all reported incidents. The ODYS Investigations Manual delineates various investigatory responsibilities between an internal Scioto investigation unit, the Chief Inspector's Office, and independent entities, including the Public Children Services Agency and the Ohio State Highway Patrol. The policies and the ODYS Investigations Manual sufficiently address investigation process and timing and meet the requirements of provision A.5.

Separately, we found that the investigations conducted by the Chief Inspector's Office are consistently of high quality. We commend the State for this achievement. We are concerned, however, that the facility level investigations are of inconsistent quality and often not timely. While we found that the majority of facility level investigations are adequate, certain investigations lacked basic aspects of an investigation, such as summaries of the youth and/or staff interviewed. As noted above, we found that the 14-day time line for facility investigations was not being met on a regular basis.⁹

⁸ The ODYS policies and procedures reviewed are the following: SOP #305.05.01 "Use of Force"; SOP #101.14.01 "Institutional Incident Review"; Policy #304.05 "Suspected Child Abuse and Neglect Reporting"; Policy #101.05 "Investigations."

⁹ We note that the 14 day timeframe applies only to UOF incident investigations and all other investigations require a 30 day turnaround.

Recommendation(s) to reach substantial compliance:

We recommend the State audit facility level investigations for completeness, and assess why the 14-day time frame for facility level investigations is frequently missed and how to correct that problem.

Compliance Rating: Partial Compliance

A.6 *STAFF TRAINING IN BEHAVIOR MANAGEMENT, DE-ESCALATION MANAGEMENT, DE-ESCALATION AND CRISIS INTERVENTION*

The facilities shall train all staff in behavior management, de-escalation techniques, appropriate communication with youth and crisis intervention before staff may work in direct contact with youth. (See Consent Order III.A.6)

In order to assess the provision, we reviewed training documentation, spoke with trainers, staff and reviewed the relevant policy.¹⁰ The State's training and development program in this area exceeds generally accepted practice. The initial five-phase training program includes a 40 hour New Employee Orientation, a 120 hour Basic Academy, a 40 hour Site Specific Orientation, 40 hours of De-escalation and Managing Youth Resistance training, and 80 hours of On-The-Job training. In addition, employees participate in 40 hours of in-service training annually, and Scioto employs a full-time Training Coordinator. We commend the State for committing its resources to providing this training to its staff. Based on a review of training documents, we found that by the end of 2009, between 96% and 100% of Scioto staff had completed most training programs. Further, we note that most staff members described the training as helpful and effective. (See Dedel's Report 23-24). Annual training plans further strengthen the program by calling for increased frequency of training, instructor availability, and additional on the job training opportunities. The 2009 and 2010 curricula include various skills training modules,

¹⁰ The ODYS policy reviewed for this provision is policy #104.01 "Staff Development."

including interventions, grievances, and the Strength Based Behavior Management System¹¹ ("SBBMS"). We are highly encouraged by the curricula and training plans. We look forward to speaking with staff during the November 2010 tour to assess what training they received during April-October 2010 related to the SBBMS and de-escalation management as well as crisis intervention. The State's commitment to training is clear.

Compliance Rating: Substantial Compliance

A.7 EMPLOYMENT PRACTICES

The State shall use reasonable measures, including background checks and criminal records checks, to determine applicants' fitness to work in a juvenile facility prior to hiring employees for positions at the facility. (See Consent Order III.A.7)

In order to assess this provision, we reviewed the relevant procedure,¹² and documentation created by the facility to track its background checks of potential employees. Pursuant to the relevant procedure, if a candidate is being recommended for employment after completing the screening and interview procedures, that candidate is required to pass a criminal background check prior to being employed. Candidates with various serious offenses are excluded from employment, while those with certain less serious offenses may be eligible pursuant to other requirements.

The four candidates who were recommended for employment during 2009 were each subject to, and passed, a criminal background check, consistent with the procedure. Each candidate was hired.

Compliance Rating: Substantial Compliance

¹¹ The SBBMS is a multi-level behavior motivation system that focuses on reinforcing desirable behavior and sanctions negative behavior.

¹² The ODYS procedure reviewed for this provision is SOP #103.03.04 "Pre-Employment Background Investigation."

II. GRIEVANCES

D.1 GRIEVANCES

The State shall develop and implement policies, procedures and practices to ensure that the facility has an adequate grievance system including: no formal or informal preconditions to the completion and submission of a grievance; review of grievances by the chief inspector; timely initiation and resolution of grievances; appropriate corrective action; and written notification provided to the youth of the final resolution of the grievance. (See Consent Order III.D.1)

Just as juvenile detainees have a constitutional right of access to the courts, they have a right to a grievance system that does not carry risk of punishment as the price for using it. A youth's ability to utilize an adequate grievance system is a critical component of any protection from harm structure and plays an important role in uncovering possible problems including threats, abuse, and neglect.

In our assessment of this provision, we spoke with youth and staff, and reviewed grievances and the relevant policy.¹³ The grievance system at Scioto appears to be functioning effectively, and the Grievance Coordinator seems well equipped to ensure a fair and just process. We were pleased to find that an already efficient system was bolstered by the January 2010 adoption of "Youth Grievance Process" policy, which provides broad filing and review guidelines for grievances. The new policy also provides a process for youth to appeal an unfavorable decision of a grievance. Staff and youth have already been trained in the new procedures.

Nearly all grievances are resolved within the mandated 14-day time frame. More serious allegations, including verbal or physical abuse, are referred for investigation and are cross referenced in both the facility level investigation and the Chief Inspector's investigation. As noted above, we found the investigations at the Chief Inspector's office

¹³ The relevant policy for this provision is policy #304.03 "Youth Grievance Process."

level to be consistently of a high quality. Most youth reported that the grievance process is an effective means to voice complaints. We commend the State for its work and its achievement in meeting the requirements of this provision.

Compliance Rating: Substantial Compliance

D.2 GRIEVANCE EXPLAINED TO YOUTH

A clear explanation of the grievance process shall be provided to each youth upon admission to the facilities during orientation and to their parents or guardians, and the youth's understanding of the process shall be at least verbally verified. (See Consent Order III.D.2)

In our assessment of this provision, we interviewed youth and reviewed the relevant policy.¹⁴ The policy requires that, when youth are admitted to Scioto, staff shall provide youth with a copy of the Youth Grievance Handbook, instruct the youth on the grievance system, and ensure the youth sign a letter of understanding regarding the process. Youth interviewed reported having received a copy of the Handbook and could describe the mechanics of the youth grievance process. During our April 2010 tour, we found that the Youth Grievance Handbook was updated to reflect the most recent policy, effective May 1, 2010.

Compliance Rating: Substantial Compliance

D.3 GRIEVANCE PROCESS

Without any staff involvement, youth shall easily be able to obtain grievance forms and submit grievances. (See Consent Order III.D.3)

In order to assess this provision, we interviewed youth, visited the living areas of youth and reviewed the relevant policy.¹⁵ We found grievance forms and locked boxes located throughout Scioto. We also found that the grievance forms are readily accessible to

¹⁴ The relevant policy for this provision is policy #304.03 "Youth Grievance Process."

¹⁵ The relevant policy for this provision is policy #304.03 "Youth Grievance Process."

youth without any staff involvement. Youth interviewed acknowledged knowing how to obtain a grievance form and how to submit that form. Youth interviewed did not report any concerns regarding their ability to participate in the process. The State has met the requirements of this provision. Again, we commend the State on revising and improving its youth grievance process.

Compliance Rating: Substantial Compliance

III. SPECIAL EDUCATION

The special education provisions were assessed initially by Dr. Lloyd based on a one two-day tour of the facility in November 2009, and with limited documentation provided by the State. Accordingly, the special education section of this compliance report is necessarily limited. Dr. Dedel has served as the court appointed monitor for Special Education in similar cases. As noted on page 2, the parties have agreed to Dr. Dedel as the subject expert in the area of special education for future compliance tours. Dr. Dedel is scheduled to assess special education at Scioto in October 2010.

E. 1 PROVISION OF SPECIAL EDUCATION

The State shall, at all times, provide all youth confined at the Facilities with adequate special education in compliance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400-1482 (West 2000 & Supp. 2006), and regulations promulgated thereunder, and this Stipulation. (See Consent Order III.E.1)

In assessing this provision, we reviewed the relevant policy¹⁶ and interviewed youth and staff. Although the State's policy affirms a responsibility and commitment to providing special education, data and statistical reviews are inconclusive as to whether the State is effectively providing students with disabilities access to a free appropriate education. We

¹⁶ The United States reviewed ODYS policy #504.04

note that our assessment of this provision was constrained by the State's difficulties in providing documentation, such as Individualized Education Plans ("IEPs"), on-site and then continued difficulties following the tour. The United States is hopeful that the State's difficulties in providing documentation will no longer be an issue. The limited available information reviewed indicates that the State is not yet able to properly evaluate students, either in appropriate depth or within the mandated timeframe, and efforts to provide appropriate education are still hampered. We look forward to assessing this provision with Dr. Dedel during the next compliance tour.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

The State should track and more fully report data related to special education, frequency and timeliness of initial assessments, and the effectiveness of the internal referral process for students with disabilities.

E.2 *OVERSIGHT*

The State shall provide adequate oversight of special education at the Facilities. (See Consent Order III.E.2)

In order to assess this provision, we interviewed staff, reviewed the State's 2007-2008 State Performance Plan (SPP), and reviewed the companion procedure to policy 504.04. Consistent with the IDEA, the Ohio Department of Education maintains adequate plans and procedures regarding the provision of educational services to students with disabilities. Further, staff at Scioto are generally aware of State policies and procedures, but do not necessarily integrate the standards into daily practice. Based on our review of the documentation provided, we were unable to identify evidence of full implementation of IDEA standards. More problematically, the evidence we have seen thus far raises

significant doubt whether the State is properly exercising oversight of the special educational system at Scioto, as well as at its juvenile facilities generally. Important data that the State is required to track and report, such as whether Scioto is performing initial evaluations for disabilities within legally mandated time frames, are not available. (See Lloyd Report at 2-6).

Compliance rating: Beginning Compliance

Recommendation(s) to reach substantial compliance:

We strongly recommend the State provide relevant information to satisfy all indicators required by the U.S. Department of Education Office of Special Education Programs (OSEP). As noted by Dr. Lloyd in his report, based on ostensible concerns of student privacy, the State did not provide information for the following indicators:

(1) Reading competence assessment; (2) School Age LRE; (3) Parent Involvement; (4) Child Find; (5) Secondary Transition; and (6) Post School Outcomes. Consequently, the annual report for the State's school district for its juvenile facilities, the Buckeye United School district, provides insufficient data to determine whether the State is meeting its educational obligations to the youth at Scioto. Therefore, in order for the State to achieve compliance with this provision of the Consent Order, the State will need to provide: (1) all the data required by the OSEP to satisfy its SPP, and (2) evidentiary support for its submissions to OSEP by providing its raw data for 2008-2009. We recommend the State make available during our tour an individual, for example the superintendent of education for ODYS, who compiles ODYS data for compliance with IDEA.

E.3 *SPECIAL EDUCATION UPON INTAKE*

The State shall ensure that all students who qualify for special education services receive such services within a reasonable time following intake at the Facilities. (See Consent Order III.E.3)

In assessing this provision, we spoke with staff, youth and reviewed the relevant procedure.¹⁷ Upon admission to Scioto, youth are interviewed about an array of previous experiences, including any prior special education enrollment. Staff also report that they request special education records from a youth's prior academic institutions. While the United States is encouraged that IEPs are developed and/or retrieved from outside organizations, based on our review of documents we found that the processing time required after intake often results in one month of lost schooling. (See Lloyd Report at 6).

Compliance rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

We strongly recommend the State streamline the intake process to ensure that students are not missing educational services for substantial periods of time. We also recommend the State create tracking and quality assurance mechanisms to assist it identify situations where a request for records has exceeded an acceptable timeframe.

E.4 *PARENT AND GUARDIAN INVOLVEMENT*

The State shall develop and implement policies, procedures, and practices to appropriately notify and involve parents or guardians in the provision of special education services, wherever possible. (See Consent Order III.E.4)

In assessing this provision we reviewed the policies and procedures related to parent and guardian involvement. Current Ohio policies direct staff to allow parents to participate in education meetings by telephone or other remote options. Based on our review of a

¹⁷ The relevant ODYS procedure is SOP #504.07.03.

limited number of sample student records, it appears that these policies are being implemented. Despite the appearance that the policy and procedure are being followed, we were unable to confirm this through any data produced or provided by the State, thus making our assessment difficult to complete.

Compliance rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

Based on the concerns describe above, we recommend the State track this information as part of its quality assurance process. This will enable us to assess whether the policy and procedure are being followed on a consistent basis. This can be accomplished by documenting all parental interactions and discussions of ODYS policies, procedures and practices.

E.5 STAFFING

The State shall develop and implement an education staffing plan to ensure adequate staff to comply with the terms of this Stipulation. (See Consent Order III.E.5)

Anecdotal evidence shows that Scioto schools are reasonably staffed with small classes taught by certified special education teachers. However, a staffing plan, supported by adequate documentation, would ensure long-term sustainability. During our review of documents and interviews with staff, it did not appear that the State has a plan, formal or informal, or a mechanism to track its staffing needs. We look forward to reassessing this provision during our next compliance tour in November 2010.

Compliance rating: Noncompliance

Recommendation(s) to reach substantial compliance:

Although the plan need not be overly formal, the State should strive to develop a written mechanism that provides some indication of how many teachers will be needed and to ensure that each core subject area – math, social studies, English, and science – is adequately staffed. There should also be consideration of staff absences (such as staff who are ill, on vacation or leave the position) to ensure planning for possible contingencies. Further, any type of “system” should prioritize ensuring that special education teachers and staff are available in appropriate numbers.

E.6 *SCREENING FOR SPECIAL EDUCATION NEEDS*

The State shall provide prompt and adequate screening of youth for special education needs and shall identify youth who, upon admission to the Ohio Department of Youth Services, were receiving special education in their home school districts or who may be eligible to receive special education services but have not been so identified in the past. See Consent Order III.E.6(a)

The State shall ensure that those staff conducting the screening, assessment and evaluation processes are qualified to do so. (See Consent Order III.E.6(b))

The Ohio Department of Education policies governing education screening and referral procedures at intake charges local facilities with developing comprehensive policies concerning youth who potentially have a disability. The multi-day intake process at Scioto includes student interviews, systemic assessment, and request for records. Evidence demonstrated that all reports compiled during the intake process rely on subjective reviews rather than standardized assessments. Although Scioto’s Intervention Assistance Teams are responsible for investigating any atypical occurrences during intake, there is no indication that the teams are prepared to address purely academic issues and instead tend to focus on psycho social problems.

During our tour and review of procedures¹⁸ and practices, we found that there is no clear evidence that the State has created or implemented an effective process for assessing the learning and behavioral characteristics of youths who come into the ODYS system. Statistical data demonstrate that the average youth at Scioto is reading way below his or her age. (See Lloyd Report at 8). This means that at least some youth at Scioto with disabilities are not being identified during the screening process.

Staff evaluations, while thorough, rely on general assessments, are lacking in precision, and do not demonstrate an adequate understanding of psychometric concerns. Evaluations rarely address systemic assessment procedures that are necessary to establish reliability and validity.

Compliance Rating: Beginning Compliance

Recommendation(s) to reach substantial compliance:

The State should provide additional staff training and youth screening that will be more comprehensive and ensure long-term effective staffing. We look forward to reviewing any revised screening tools and actual exemplar screening evaluations during our next tour in November 2010.

E.7 INDIVIDUAL EDUCATION PLANS

The State shall develop an IEP as defined in 34 C.F.R §300.320 for each youth who qualifies for an IEP. Following development of the IEP, the State shall implement the IEP as soon as possible. As part of satisfying this requirement, the State shall conduct required annual reviews of IEPs, adequately document the provision of special education services, and comply with requirements regarding participation by the professional staff, parents, and student in the IEP process. The State shall, if

¹⁸ The relevant procedures for this provision are #504.04.01, 504.07.03

necessary, develop, review or revise IEPs for qualified special education students. (See Consent Order III.E.7(a))

In developing or modifying the IEP, the State shall ensure that: the IEP reflects the individualized educational needs of the youth and that services are provided accordingly; each IEP includes documentation of the team's consideration of the youth's need for related services and transition planning, and identifies the party responsible for providing such transition services; the students' educational progress is monitored; teachers are trained on how to monitor progress toward IEP goals and objectives; and teachers understand and use functional behavioral assessment and behavior intervention programs in IEP planning and implementation. (See Consent Order III.E.7(b))

The use of IEPs in special education is a critical tool for teachers and administrators to monitor students progress and provided needed individualized attention. Policies we reviewed detail methods of monitoring and provide a framework for tracking progress and achieving goals. The IEPs in the schools at Scioto include relevant content and list goals for students to pursue. However, the quality across IEPs is inconsistent, and goals and objectives are generally lacking. More troubling is the duplication of objectives in multiple IEPs, undercutting the notion of an **individualized** plan. (See Lloyd Report at 11).

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

Staff should receive comprehensive training with a particular focus on development and use of IEPs. The State should carefully monitor IEPs to ensure quality. We strongly urge the State to create and implement quality assurance mechanisms for IEPs.

E.8 VOCATIONAL EDUCATION

The State shall provide appropriate vocational services that are required transition services for disabled youth under the IDEA. (See Consent Order III.E.8)

Throughout all ODYS facilities, the rate of student enrollment in vocational education classes has increased, and Scioto is no exception. We found that the ODYS policy

calling for vocational services is bolstered by engaged students and instructors. Indeed, the United States is encouraged by the energetic youth, prepared instructor, and a well-equipped classroom, and urges the commitment to vocational services to continue.

While we commend the State on its achievement in creating a vocational service, we cannot make a full determination based on the one observation during our November 2009 tour.

We look forward to re-assessing this provision in November 2010.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

The State should expand the vocational education program and build on the model already in place. We strongly recommend that during our November 2010 tour, the State make available data regarding youth participation, assessment regarding successful participants and any recent revisions to the program. This will greatly assist the United States' assessment of this provision.

E.9 FORWARDING SCREENING AND ASSESSMENT INFORMATION UPON TRANSFER

The State shall ensure that, when a youth is discharged from the Facilities before the interventions or educational evaluations required in Section III.E.6 above are complete, the Facilities shall forward to the superintendent of the youth's receiving school district all information regarding screening and evaluations completed to date, noting what evaluations are yet to be performed. (See Consent Order III.E.9)

Although Scioto staff report that, consistent with ODYS policy¹⁹, educational records are regularly forwarded to receiving schools when a student transitions out of the ODYS system, without data to support this process, the United States is unable to fully evaluate this provision.

¹⁹ The relevant policy is #504.07.

Compliance rating: Beginning Compliance

Recommendation(s) to reach substantial compliance:

The State should monitor the process for forwarding and special education planning to determine how best it can be incorporated into the general reintegration system. The State should track the program's effectiveness and develop an assessment tool. Again, the United States recommends the State make available documentation that demonstrates its compliance with this provision.

E.10 *TRAINING AND QUALITY ASSURANCE*

The State shall design and implement annual training requirements for special education staff. (See Consent Order III.E.10)

The State's comprehensive training program offers teachers valuable opportunities to further develop skills and effectively incorporate new techniques into their teaching. The important topics in the annual in-service curriculum should be complimented with additional special education training. We look forward to assessing this provision during our next compliance tour in November 2010. Specifically, we are interested in attending a training class for special education staff if possible.

Compliance rating: Partial Compliance

E.11 *TRANSITION SERVICES*

The State shall comply with any IDEA requirements for providing transition assistance. The State shall provide transition assistance to students by providing counseling and concrete information regarding appropriate community resources, and how to pursue post-secondary options, re-enroll in school or complete the GED. (See Consent Order III.E.11)

Staff interviewed indicated that transition plans exist for each student and that data will demonstrate 100% compliance with this provision. Our review of IEPs, albeit in

limited numbers, found acceptable transition planning. We note, however, that the data reviewed do not distinguish whether a student is a special education student or in the general educational system, and so it is not possible to determine whether or not special education students benefit at the same rates as other students at Scioto. The lack of distinction in the data provided made the United States' assessment difficult.

Compliance rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

The State should continue to monitor transition services and examine the benefits to special education students in particular. In particular, that State should analyze its internal tracking and ensure that data are being aggregated in the most effective and useful manner.

V. PROGRAMMING

F.1 STRUCTURED PROGRAMMING

The State shall provide adequate structured rehabilitative services, including an appropriate mix of physical, recreational or leisure activities during non-school hours and days. The State shall develop and implement structured programming from the end of the school day until youth go to bed, and on weekends. For youth housed in closed-cell environments, programming shall be designed to ensure that youth are not confined in locked cells except: (a) from after programming to wake up; (b) as necessary where youth poses an immediate risk of harm to self or others; (c) following an adequate disciplinary hearing, pursuant to an appropriate disciplinary sanction. The programming shall be designed to modify behaviors, provide rehabilitation to the types of youth committed at the facility, address general health and mental health needs, and be coordinated with the youth's individual behavioral and treatment plans. The State shall use teachers, school administrators, correctional officers, caseworkers, school counselors, cottage staff, and any other qualified assistance to develop and implement structured programming. The State shall provide youth with access to programming activities that are required for parole eligibility. (See Consent Order III.F.1)

In addition to policies designed to prevent harm and allow youth to participate in their community, providing youth with a safe, informative, and structured environment is a critical step to protecting them from harm and preparing them to be productive members of society.

In order to assess this provision, we reviewed the relevant policies and procedures²⁰ and interviewed staff and youth. We found that the State has developed a significant programmatic framework to reduce idleness and provide structured opportunities for Scioto youth. Activities range from life skills, such as balancing a checkbook, to leisure, such as rules of ping pong. Community volunteers, supervised by the Volunteer Coordinator, organize and run various programs throughout the facility. The State supports the volunteer program with two training components, Volunteer Training and Staff Training in Volunteer Services.

Despite the considerable range of programs, or perhaps because of it, most activities only attract a relatively small number of youth participants. The United States is encouraged by the State's draft "Structured Programming" policy, #503.04, and its commitment to solidify and expand Scioto's programming. However, we are concerned that safety concerns and various other logistical obstacles hinder youths' ability to fully take advantage of strong programming opportunities. Second, we are also concerned as to the lack of programming activities that address criteria required for parole eligibility, as this is a specific component of provision F.1. We look forward to assessing activities designed to address parole eligibility criteria during our November 2010 tour.

²⁰ The relevant policies and procedures for this provision are: policy #107.01 "Volunteer Coordination," policy #506.01 "Recreation Programming," policy #506.02 "Community Service," policy #506.03 "Youth Idleness Reduction," and policy #507.01 "Religious Services."

Lastly, it is our understanding that the new incentive program, SBBMS, was scheduled to be implemented in May 2010. It is our understanding that the SBBMS includes a phase system, a daily point system and other methods for reinforcing positive behavior. We look forward to learning more about the success and modifications (if any) related to the SBBMS.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

We recommend the State provide additional staff to minimize the strain of transporting youth back and forth to program activities. Additional staff to assist will also bolster the program as it would ensure it is fully accessible to all youth at Scioto. We also recommend that in preparation for the November 2010 tour, the State make available for review its efforts towards meeting that programming activities required for parole eligibility. We strongly recommend the State produce monthly reports of all programs required by provision F.1 in order to facilitate assessment of this provision. This type of data can also be used to determine if the schedule of activities offered is balanced.

F.2 ORIENTATION

Admissions Intake and Orientation. The State shall develop and implement policies, procedures and practices to establish a consistent, orderly admissions intake system, conducive to gathering necessary information about youth, disseminating information to staff providing services and care for youth, and maintaining youth safety. The orientation shall also clearly set forth the rules youth must follow at the facility, explain how to access medical and mental health care and the grievance system, and provide other information pertinent to the youth's participation in the facility's programs. (See Consent Order III.F.2(a))

Notice to Youth of Facility Rules and Incentives/Consequences for Compliance. The State shall explain the structured programming to all youth during an orientation session that shall set forth the facility rules, the positive incentives for compliance and good behavior and the sanctions for rule violations. The State shall provide the facility rules in writing. (See Consent Order III.F.2(b))

Introductory Handbook, Orientation and Reporting Abuse. Each youth entering the facilities shall be given an orientation that shall include simple directions for reporting abuse and assuring youth of his/her right to be protected from retaliation for reporting allegations of abuse. (See Consent Order III.F.2(c))

In assessing this provision, we interviewed youth and staff and reviewed policies and procedures.²¹ We find that the orientation process at Scioto provides youth with an overview of institutional rules, the process for accessing mental health and medical care, the grievance system, and opportunities to participate in treatment, recreation, religious, and educational programs. Upon admission, each youth receives a Youth Orientation Handbook that, in conjunction with the formal program, provides a clear foundation for understanding the policies and procedures at Scioto.

The Handbook provides a comprehensive list of facility rules and details the prohibition against physical and sexual abuse, as required under this provision. Youth interviewed were conversant in Scioto's rules and the points system to reward positive behavior. However, the Handbook's descriptions of the consequences for violating the rules are limited to a brief discussion of the Intervention Hearing process and a mention of seclusion.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

The Youth Orientation Handbook should be revised to reflect the adoption of various new policies and procedures regarding alternative sanctions and behavior motivation, especially the newly-adopted incentive program, Strength Based Behavior Management System.

²¹ The policies reviewed were the following: policy #501.01 "Reception and Orientation"; policy #303.01 "Youth Rules, Interventions, and Incentives"; procedure #301.01.01 "Rules of Youth Conduct."

NEXT TOUR and COMPLIANCE REPORT


We intend to conduct a Special Education compliance tour of Scioto on October 7-8, 2010, with our lead expert, Dr. Kelly Dedel. On November 2-5, 2010 we will tour with Dr. Kelly Dedel, and our mental health expert, Dr. Daphne Glindmeyer. Our goal is to provide a second compliance report, based on the November 2010 compliance tour, by March 1, 2011.

Respectfully submitted this 20th day of September 2010.

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