

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, et al.,)
)
 Defendants.)
_____)

SECOND COMPLIANCE REPORT

Pursuant to provision V.H. of the Consent Order in U.S. v. Ohio, 2:08-CV-475, the United States, as Monitor, submits its second 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, C.1-10, D.1-3, E.1-11, F.1-2, and G. 1-2, which relate to Ohio Department of Youth Services (“ODYS”) policies, procedures, and practices governing the protection of youth from harm, general medical care, grievances, special education, programming and documentation for youth at Scioto Juvenile Correctional Facility (“Scioto”). Provisions B.1-B.18, which pertain to mental health, will be covered in an addendum to this compliance report.¹ The

¹ The mental health provision will be addressed through a separate addendum due in part to a delay in receiving necessary documentation from the State. The addendum regarding the mental health provision will be accompanied by an expert report from Dr. Daphne Glindmeyer.

Second Compliance Report is organized in this order and follows the structure of the Consent Order.

The United States' assessment is based upon document review (including, but not limited to, policies, procedures, training documents, youth records, incident reports, and grievances), expert reports from Drs. Kelly Dedel and Michelle Staples-Horne, youth interviews, and two on-site compliance tours in October and November 2010. We have attached to this Compliance Report the expert reports² of Drs. Dedel and Staples-Horne. The United States intends to provide a third compliance report regarding the status of the State's compliance with all provisions following its upcoming compliance tour on February 22-24, 2011. Consistent with the U.S. v Ohio Consent Order, the United States provided the State with a draft version of this Compliance Report and expert reports two weeks³ prior to filing with the Court.

EXECUTIVE SUMMARY OF COMPLIANCE RATINGS

We are pleased to report that of the 35 provisions reviewed⁴ in this Compliance Report, the State has achieved substantial compliance⁵ with 60 % (21

² Dr. Dedel prepared her second protection from harm report ("Dedel Second PFH Report") and her first special education report ("Dedel First SPED Report") which are labeled as Attachments A and B, respectively. Dr. Staples-Horne prepared her First General Medical Care Report ("Staples-Horne First Medical Report") labeled as Attachment C.

³ On January 20, 2011, the United States sent the State a Draft version of the compliance report and expert reports. On February 2, 2011, the State requested an extension until the end of the business day on February 7, 2011 to comment. The United States agreed to provide until the end of the business day on February 4, 2011. The United States received the State's comments on February 4, 2011, reviewed and considered the State's comments prior to filing this second compliance report.

⁴ The mental health section of the U.S. v Ohio Consent Order contains 18 provisions. The addendum to this compliance report for mental health will address the 18 provisions.

provisions), partial compliance with 34.28% (12 provisions), and beginning compliance with 5.71% (two provisions). Overall, the State has continued to demonstrate a strong effort to improving the safety and well being of youth held at Scioto. Specifically, the State has made the most progress in the area of grievances and has successfully maintained a rating of substantial compliance with 100% of those provisions. The State also has improved its rating in protection from harm (“PFH”) provisions. Presently, the State is in substantial compliance with 57% of the PFH provisions and in partial compliance with the remaining 43%. Previously, the State was in substantial compliance with only 42% of the PFH provisions. In the area of Special Education (“SPED”), the State has reached substantial compliance with 63% of the provisions and is in partial compliance with the remaining 37%. This is also an improvement from September 2010, when the State was rated as being in substantial compliance with no provisions and in partial compliance with 63%. Since our September 2010 compliance report, the State remains in partial compliance with all programming provisions. We note that the State’s general medical care provisions were not rated in September 2010. Based on our most recent review, the State has achieved substantial compliance with 70% of the general medical care provisions and is in partial compliance with the remaining 30%.

Although achieving substantial compliance with some provisions in the Consent Order will require time and effort, it is important to recognize and commend the State’s progress and significant efforts to date in working towards achieving substantial compliance with all the provisions in the Consent Order.

⁵ “Substantial Compliance” indicates that the State has met or achieved all of the components of a particular 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. “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. “Non compliance” means that State has made no notable progress in achieving compliance on any of the key components of the provision.

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)

In assessing this provision, we reviewed the State's self-assessment, the Superintendent's monthly reports (January through October 2010), ODYS average population by facility and month for 2010, and interviewed youth. Based on our review, we were impressed with the level of detail and effort reflected in the State's assessments regarding youth violence, use of restraint, use of seclusion and allegations of child abuse. In the future, we recommend that the State also focus on interpreting the data it has collected to determine trends and root causes.

We base this recommendation in part on the fact that there was an increase in youth violence at Scioto, yet a decrease in such violence at other ODYS facilities, and it appeared that the State was somewhat unaware that the Scioto trend was contrary to the direction of the ODYS facilities as a whole. We agree with Dr. Dedel's suggestion that the State should discern the underlying causes of the increase in youth violence and enact specific strategies designed to address conditions that may provide the opportunity for violence. (See Dedel Second PFH Report at 4). We further note and agree with Dr. Dedel's comments that, without addressing the violence issue, it is unlikely that the State will be able to continue to decrease its use of restraint and seclusion at Scioto. (See Dedel Second PFH Report at 4).

We note that we raised our concerns in this area through a letter dated November 22, 2010 to the State. On December 13, 2010, the State informed us that the State had commenced a self-audit to determine possible causes for the increase

in violence. The State noted that it had begun responding to this issue shortly after it was raised by Dr. Dedel during her exit briefing on November 5, 2010. We commend the State on its prompt response and look forward to learning what the State has found as a result of its audit.

As discussed below in the remaining PFH provisions, A.2-A.7, we believe that the State has made great progress in the area of protection from harm. Notably, while there was an increase in the rate of youth violence, the use of restraint and seclusion appeared to be appropriately tempered. We were also encouraged that while the use of seclusion has increased, it did so at a slower pace than the increase in youth violence. This suggests that the alternatives ODYS has to seclusion are regularly being employed as disciplinary measures. (See Dedel Second PFH report at 4). Additionally, the State has maintained a high rate of training in behavior management—both annual and pre-service—for its direct care workers.

Nevertheless, since provision A.1, “General Protection From Harm,” is composed of the subject areas in provisions A.2-A.7 (Use of Force, Seclusion, Restraint, Investigation of Serious Incidents, Staff training, and Employment Practices), compliance in A.1 is dependent upon the State’s achievement of substantial compliance with all of these provisions. In this regard, of the remaining six provisions under PFH, the State is in substantial compliance with four and only two remain in partial compliance: Seclusion and Investigation of Serious Incidents. Both provisions are discussed below. We commend the State on its progress thus far.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

In addition to the recommendations regarding provisions A.2-A.7, discussed below, in its next self-assessment the State should include facility-level and aggregate data focusing on the findings from the State’s self-audit regarding the

increase in youth violence and a discussion of how the State intends to respond based on its audit findings.

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 our assessment of this provision, we reviewed the State's self-assessment, Superintendent monthly reports for January through October 2010, incident reports and interviewed youth and staff. Consistent with our September 2010 Compliance Report, the State is in substantial compliance with this provision. We commend the State for maintaining its compliance rating.

Based on our review, we determined that the State's frequency of training in Use of Force ("UOF") continues to exceed that of generally accepted practices and relevant policies and procedures continue to meet the language of provision A2. We also found that the State undertook various efforts to ensure that UOF occurrences were promptly and completely documented. Our expert reviewed the 10 most recent (to our November 2010 tour) incident reports involving UOF and found that the quality of the documentation has improved. During our November 2010 on-site tour we also learned that the State recently appointed a Facility Intervention Administrator ("FIA") to conduct internal reviews of all UOF incidents. The FIA determines whether the documentation meets ODYS policy requirements, whether staff require additional coaching or training regarding documentation, and whether the incident should be referred for investigation. Further, the FIA reviews are of high quality—finding gaps in the narratives and requesting clarification or further information—which may be one cause for the improved UOF documentation. (See Dedel Second PFH Report at 7). Separately, each incident is also reviewed by the Operations Administrator and the Deputy for Direct Services. Ten percent of the UOF incidents are also reviewed by the Superintendent. This activity

unquestionably reflects a serious and thoughtful effort to ensure that all incidents of UOF on youth are limited to situations in which it is objectively reasonable and necessary. The State's accomplishments in this area are of fundamental importance to the safety of youth and staff and reflect a wholesale change from when our investigation of Scioto began.

Although the State is in substantial compliance with this provision, we agree with Dr. Dedel's suggestion that, in its next self-assessment, the State should describe the trends and interpret the meaning of UOF incidents at Scioto. We believe that such analysis could be helpful to the State in its own long-term goal of sustaining all the improvements it has accomplished thus far. (See Dedel Second PFH Report at 8-9).

Compliance Rating: Substantial Compliance

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 our assessment of this provision, we reviewed the State's self-assessment, ODYS policies and procedures, 50 consequence logs, five random Individualized Response to Acts of Violence⁶ ("IRAV") assessment forms, seclusion data, monitoring logs for three youths, facility-level investigations and interviewed staff and youth. Based on our review, we found that the State demonstrated marked improvement with regard to meeting the language in provision A.3 and has improved from a rating of beginning compliance to partial compliance. The basis for

⁶ IRAV, the State's new program which provides an array of individualized sanctions for youth violence, is discussed in more detail in the United States' September 2010 Compliance Report (Dkt. # 61 at 8-9).

the new rating is that the rates, duration, and causes for all types of seclusion (disciplinary, prehearing confinement, and regular seclusion) have been significantly reduced. The State also demonstrated that it has benefited greatly from its shift to non-confinement sanctions in response to non-violent misconduct. Further, the State has made a commitment to hold intervention hearings as quickly as possible in order to address a youth's behavior promptly. Further, we found that the research used by ODYS to develop IRAV policies and procedures is methodologically sound. Accordingly, we no longer found evidence of long periods of seclusion as we did during our April 2010 on-site compliance tour.⁷

The State's success with this provision is undercut, however, because we found that some third shift staff are inconsistently monitoring youth on seclusion. As we noted in our November 22, 2010 letter to the State, during the tour we received complaints from youth alleging that staff on the third shift were not conducting their nightly watches as required. In fact, when we interviewed youth in the female mental health cottage, it was alleged that, just the night before (Thursday, November 4, 2010), the third shift staff had watched television instead of conducting their watch. We then asked Dr. Dedel to review the surveillance videos, and she was able to confirm the allegations. We also heard similar complaints about third shift from other units. Our additional concern is that some third shift staff likely are falsifying documentation to wrongly indicate that they are conducting monitoring watches that they actually are not performing. We raised similar concerns in our September 2010 Compliance Report, indicating that this is a long standing problem at Scioto.

As Dr. Dedel discusses in her report, anytime that a youth is placed behind a closed door, the risk of self harm increases. A youth who is intent on harming himself will keep track of when staff conduct their checks and act as soon as the

⁷ See United States' September 2010 Compliance Report (Dkt. # 61 at 9).

staff member moves on. For this reason, long gaps between monitoring checks and falsification of monitoring logs is of great concern and must be addressed immediately. (See Dedel Second PFH Report at 13-14). During an exit briefing on November 5, 2010, Dr. Dedel spoke about this concern.

On December 13, 2010, the State and ODYS informed us that the State had recently revised its quality assurance procedure, and the State now randomly selects two units each week to verify that staff are conducting the required safety checks. Previously, the State selected one unit each week. It is our understanding from the State's February 4, 2011, comments to the draft compliance report that the State now shuts off the televisions in all units at 11:00 p.m. While we cannot verify this assertion and other steps that the State has informally indicated it is taking, at this point, we will do so during our next compliance tour in February 2011. We appreciate the State's prompt action in response to this problem and notification to the United States about its response.

From our walking tour of the units, we saw that the video cameras are clearly visible throughout the units; staff are, or certainly should be, aware of their presence. Nevertheless, Dr. Dedel's video review made clear that some staff have such little regard for their duties that they will watch television in front of the video cameras while on duty. We are concerned about this open dereliction of duty because such behavior by staff often signals a deeper problem—that staff believe they will not be held accountable by their supervisors. We are also concerned because we and the S.H. monitoring team have identified video evidence of similar derelictions at Scioto since 2009. To be clear, the State improved its practice since our last Compliance Report and accordingly is now rated to be in partial compliance, but this is an area that obviously warrants continued attention.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

As discussed above, in order to reach substantial compliance, the State must address the issues involving third shift staff failing to monitor youth in seclusion. We look forward to reviewing this provision during our next on-site compliance tour.

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 our assessment of this provision, we reviewed the State's self-assessment, 10 UOF incident reports, six facility-level investigations involving restraints, and interviewed youth. Based on our review, we find that the State has further strengthened its efforts to ensure that staff are well-trained in safe methods of restraint and that the training is resulting in positive results. By early November 2010, 85% of the Scioto direct care staff had received all the required Managing Youth Resistance ("MYR") training.⁸ The MYR training is now required once a quarter rather than annually. Dr. Dedel reviewed 10 UOF incident reports previously reviewed by the State's internal auditing process and found that the reviews were appropriate. (See Dedel Second PFH Report at 15). Lastly, when we interviewed youth, they corroborated that staff attempt to break up fights between youth first using verbal commands and if that fails, they intervene physically. The methods described by the youth appeared to be consistent with the MYR curriculum. We note that the ODYS policies and procedures for the use of restraint were in substantial compliance during our last review and remain the same. Accordingly, the State continues to be in substantial compliance with this provision. We commend the State on its continued success under this provision.

Compliance Rating: Substantial Compliance

⁸ The State reported that by the end of 2010 all staff were scheduled to have completed the required training.

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 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 our assessment of this provision, we reviewed the State's self-assessment, investigations by the Chief Inspector's Office ("CIO"), facility level investigations, policies and procedures, child abuse reports, and interviewed youth. Based on our review, we determined that the State remains in partial compliance with this provision. Consistent with our September 2010 Compliance Report, the State's policies, procedures, and investigations manual sufficiently address the investigatory process and timing and meet the requirements of provision A.5. Separately, we found that most investigations conducted by the CIO are of high quality and the facility-level investigations have improved since September 2010.

In our September 2010 Compliance Report we noted that there were some deficiencies in the facility level investigations. During our most recent on-site tours, we found that the quality of most investigations had improved. We did find that three of the six UOF investigations were not completed within the prescribed 14 day timeline. According to the investigation tracking log, extensions were requested in the completion of three investigations. While it appears that the extensions granted were most likely appropriate, we strongly recommend that, in the State's next self-assessment regarding this provision, the State discuss the reasons for extensions (if any) granted to investigations. The State's self-assessment did not detail the rationale or basis for the extensions.

Notwithstanding these findings, we take this opportunity to discuss our concerns regarding a particular series of allegations by female youth and how they were handled at the facility level, and the CIO investigation of that incident. During our November 2010 on-site compliance tour, we spoke with various female youth, and some mentioned two direct care workers who allegedly had either attempted to touch a female youth inappropriately or had inappropriate conversations of a sexual nature with female youth. On November 9, 2010, following the exit briefing from Dr. Dedel, the United States brought these allegations to the attention of the State and its counsel. The United States memorialized its concerns to the State through a letter dated November 22, 2010. On December 13, 2010, the State informed us that the CIO had concluded its investigation (Case Number: 1001100102) and subsequently provided the United States with a copy of the investigation. (See Attachment D).⁹ Below, we provide our concerns regarding the CIO investigation and the initial handling of the allegations by Scioto.

CIO Investigation Report

We appreciate the CIO's prompt investigation, including interviewing numerous staff and youth. However, given the serious nature of the allegations, we identified three concerns with the CIO investigation. Those concerns are: (1) investigators used a line of questioning that inappropriately focused on confidential communications between youth and the United States, (2) investigators failed to interview or follow up with all relevant individuals, and (3) investigators failed to probe and adequately analyze certain facts. Each of these shortcomings is troubling. We discuss them in more detail below.

⁹ Attachment D is submitted to the Court under seal, as the document contains personal identifying information about the youth and the direct care workers.

First, the CIO’s investigation report states that the investigator consistently and specifically questioned all youth about what they had “reported to the DOJ regarding”¹⁰ the two direct care workers. The United States is entitled to confidential communication with youth pursuant to the Consent Decree. (VI.6). When Department of Justice attorneys interview youth about their concerns, we assure them that any information they reveal is confidential, unless maintaining confidentiality would jeopardize an individual’s safety or facility security. In keeping with this promise to youth to maintain confidentiality, section attorneys interviewed all female youth in the unit separately and in a private setting. Further, the section attorneys did not disclose the names of the youth and only revealed the general nature of the allegations—touching (hug) and inappropriate conversations of a sexual nature—to the State. The line of questioning followed by the CIO investigator is improper and will most likely have a chilling effect upon youth in revealing concerns to the United States in the future, or perhaps to any individuals in positions of authority. We find this lack of judgment troubling, particularly given the sensitive nature of allegations of sexual misconduct. We advise the State to inform all investigators (CIO and facility-level) to refrain from making a communication between the United States and youth at the Scioto the focus for questions when interviewing youth.

Second, the CIO investigation notes that a facility psychologist reportedly informed a facility operations staff person that a female youth was feeling uncomfortable with a direct care worker due to his alleged conversation of a sexual nature with another youth. (See CIO Investigation at 17). Despite identifying the operations individual in the report, the CIO investigator never interviewed the operations individual. We find this odd, since that person could help explain whether administration knew about problems with that particular staff member

¹⁰ This line of questioning to youth is consistent throughout the CIO investigative report. (See CIO Investigation at 3,4,5,7, and 8).

and to what extent. This failure is also troubling since the CIO investigation determined that one female direct care staff worker stated that she switched shifts with a male staff member—the same worker who allegedly made sexually inappropriate comments to a youth—to “make management happy.” (See CIO Investigation at 19). The fact that the CIO investigator uncovered this commentary is evidence that the CIO investigator did more than a superficial investigation. However, the CIO investigator failed to probe further about what the comment meant or seek corroborating statements from other workers about what was known about the male direct care worker.

Third, the CIO investigation’s recounting of the youths’ allegations differ somewhat from the information that the youth provided to the United States in a manner indicating that either the youth reported the context of the events differently or the CIO investigators characterized it more favorably from the male direct staff worker’s perspective. We do not opine on the latter possibility’s likelihood, but this inconsistency compels us to emphasize that CIO investigators must ensure they have captured facts accurately.

We are encouraged by the quarterly audits performed by the CIO and believe that they are instrumental in improving the quality of investigations from the CIO’s office. Based on our comments above regarding investigation #1001100102, we strongly suggest the CIO consider reminding its investigators to always interview youth in non intimidating manner, ensure that all noted individuals are interviewed and all leads are probed, and ensure that all narratives are consistent with the witnesses’ statements.

Facility level investigations

While the State's policies and procedures have met the requirements of provision A5, it appears that its practices are not yet compliant with this provision. In our review of the CIO's investigation into incident # 1001100102, we found that the facility missed various opportunities to address the allegations in May 2010, when the youth alleged the incidents occurred. In particular, we found, based on the CIO's investigation, that there may have been some carelessness or confusion at the facility level as to what should have been done. We are troubled by the following set of facts noted in the CIO investigation:

- The female direct care staff worker who first spoke with the youth informed the unit manager and the psychologist, and asked the girls to write a statement, yet reportedly, the allegations were never forwarded to the superintendent. (CIO Investigation at 18);
- The same female care worker who attempted to draw attention to the matter noted that she later switched shifts with the male staff worker to "make management happy." Such a statement implies that management may have known there were problems with the male staff member and failed to act. (CIO Investigation at 19);
- The psychologist states that she may have received a statement from the youth, but now cannot locate it, has no comment in her case notes, does not remember whom she spoke with in operations, and did not follow up (CIO Investigation at 16-17);
- When the unit manager was asked about whether a youth having photos of staff was proper, he answered that "if the photo of the staff was taken in the facility and given to the youth by the individual who took the picture than [sic] that would be ok." (CIO Investigation at 15);
- When interviewed, the same unit manager said that when two youths told him they did not want a direct care worker on their unit because he was a "pervert," the unit manager asked for statements from each youth, but received none and

apparently did not follow up. The unit manager stated that he did not know if any statement were turned into operations. (CIO investigation at 15); and

- The psychologist claims that she told the unit manager and a social worker about a youth reporting that the direct care worker engaged in a sexual conversation with another youth, yet nothing was logged into the facility's reporting system (CIO investigation page 17).

During our December 13, 2010, conversation with the State, the Chief Inspector aptly characterized the loss of the youth's statement as the facility having "dropped the ball" on this matter. The United States agrees. Ultimately, it appears that, but for the United States presenting the allegations to the State's attention, the allegations of sexual misconduct by direct care workers might never have been investigated. We believe that the Superintendent at Scioto is dedicated to the youth in her care. The Superintendent, however, is one individual and must depend on her staff to provide her the necessary information for her to make an informed decision. At least in this instance, there appears to have been a serious breakdown in communication at Scioto. We note that, pursuant to ODYS procedures, the facility level investigation was due on January 9, 2011, which is 30 days from the date of the CIO investigation, December 9, 2010. We look forward to reviewing the findings of the facility-level investigation.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

In addition to our recommendations above about CIO level investigations, we recommend that the State regularly audit facility level investigations for completeness. Further, the State should take measures to remind its staff of the importance of relaying serious allegations to facility operations, whether these allegations are conveyed by youth orally or in writing.

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 the State's self-assessment and the relevant policy. Based on our review of these documents, we found that the State continues to be in substantial compliance with this provision. Consistent with our September 2010 Compliance Report, the State's training and development program in this area exceeds generally accepted practice. Additionally, based on a review of training documents, we found that 100% of the new Scioto staff have completed the required training and passed all competency based assessments. Further, veteran staff all received, and most exceeded, the annual 40 hours of in-service training. In our September 2010 Compliance Report we noted that we would assess the training that staff had received with regard to the Strength Based Behavior Modification System ("SBBMS") during our October and November 2010 compliance tours. We are pleased to report that we found that 93% of the Scioto staff received the SBBMS training as of November 2010. We commend the State on its commitment to training.

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 our assessment of this provision, we reviewed the State's self-assessment, the relevant policies and procedures, 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. In the last 21 months, prior to our November 2010 on-site tour, Scioto hired 18 new employees. All employees passed their background check and did not have any criminal records for any offenses that would bar their employment according to ODYS regulations. Consistent with our September 2010 Compliance Report, the State has maintained its substantial compliance rating with this provision. We commend the State on the proper screening practices of prospective employees.

Compliance Rating: Substantial Compliance

II. GENERAL MEDICAL CARE

Juveniles in the custody of state correctional facilities have a due process right to adequate medical care. In order to assess the General Medical Care provisions, we reviewed the State's self-assessment, relevant policies and procedures, staffing schedules, health care staff resumes and curriculum vitas, staff training curricula, the health records of 18 youth, and interviewed youth during our October and November 2010 tours. We have attached the findings of our subject matter expert, Dr. Michelle Staples-Horne, to this Compliance Report. (See Staples-Horne First Medical Report at Attachment C).

C.1 GENERALLY

The Facilities shall ensure that the individuals they serve receive routine, preventive, and emergency medical and dental care consistent with current, generally accepted professional standards. The Facilities shall ensure that individuals with health problems are identified, assessed, diagnosed, and treated consistent with current, generally accepted professional standards of care.

We are pleased to report that the State provides quality medical care to the youth at Scioto. In particular, the State provides youth with a thorough intake

screening process, unhindered access to medical services and appropriate management of chronic illnesses. However, the State will need to improve certain aspects of its medical care services in order to reach substantial compliance with all of the General Medical Care provisions of the Consent Order. Specifically, the State must significantly improve the quality of dental record-keeping and ensure that youth receive restorative dental services in a timely manner. In addition, the State must expand health care staff's access to youths' complete health record. Our recommendations for reaching substantial compliance with the Health Records and Dental Care provisions are discussed more fully on pages 22 and 30 of this Compliance Report, respectively.

The ODYS medical policies and procedures meet the American Correctional Association ("ACA") and the National Commission on Correctional Health Care ("NCCHC") standards for providing health care to youth housed in juvenile facilities. According to the staffing schedules, Scioto has two contract primary care physicians, four contract obstetrics/gynecology physicians, two contract psychiatrists, one certified midwife, twelve Registered Nurses ("RNs"), including the Health Planning Administrator, two Licensed Nurse Practitioners ("LPNs"), one phlebotomist, one dentist, one dental assistant and one dental hygienist. The contract physicians are Pediatrics and Family Medicine Board Certified to provide primary care and OB/GYN Board Certified to provide services to female youth. The medical staff possesses the qualifications necessary to provide the appropriate level of medical care. The average length of stay for males is 226 days and for females is 46 days. Based on the average length of stay, the average daily population, the nursing staffing schedule provided, and evidence of care documented in the youth medical records, the medical staffing at Scioto is appropriate and adequate.

Youth health records demonstrate that the State is generally providing youth with adequate medical care that is consistent with current professional standards, including routine, preventative and emergency care. Youth health records reflect routine care through a thorough and consistent intake screening process, which includes initial medical, dental, and mental health assessments. At least two youth

health records contained documentation of emergency transport and care at Berger and Grady Memorial Hospitals. Youth health education was also heavily documented in the health records. Examples included materials provided to youth on their chronic medical conditions, vaccine information, information regarding medication side effects, and dental hygiene instructions.

In general, youth with medical problems are identified, assessed, diagnosed, and treated consistent with current, generally accepted professional standards of care. For example, the State is ensuring that youth have access to health services through an unimpeded sick call process. The State's sick call process is discussed more fully in section C.5 ("Access to Health Services"). Youth with injuries – whether self-inflicted or otherwise – are being assessed by nurses utilizing a Youth Injury and Assessment Form. This form is also used to document the medical conditions of youth involved in physical response and use of restraints by facility staff. Photographs of youth injuries are included in the health record. Nurses also see and assess youth in seclusion.

Chronic diseases are monitored and addressed appropriately according to community accepted practices. Youth receive appropriate diagnostic services, such as laboratory and radiology, in a timely manner. Preventative services are reflected by immunization administration updates, including influenza vaccination and dental prophylaxis. The State provides comprehensive health services specific to females, including complete gynecological examinations, Pap smears, Gardasil immunizations against human papillomavirus ("HPV"), pregnancy testing and care and family planning. The State has made commendable progress in the area of medical services, and we look forward to seeing continued advances in these areas.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

Because C.1 requires the State to provide dental care consistent with current, generally accepted professional standards, the State cannot reach substantial

compliance with provision C.1 until it is in substantial compliance with provision C.7 (“Dental Care”). In addition, we suggest that the State provide regular training to all health care staff to ensure that they are aware of the current accepted professional standards of care. The training the State currently provides to health care staff includes CPR/first aid, universal precautions, emergency response, strength based behavior, youth conduct, release authority, self injury, intervention verbal strategies, structured programming, and psychiatrist nurse training. The NCCHC standard Y-C-03 recommends that health care staff attend in-service programs or conferences focusing on topics related to correctional health care. Although the curriculum provided by the State is appropriate and adequate to address the general care of juveniles confined at Scioto, few programs are specifically geared towards training health care staff. Moreover, the State did not submit any documentation of health care provider continuing education for review. We encourage the State to provide presentations and trainings on the special health needs of adolescents as periodic in-service training. The State should include documentation of these trainings in the employee records at the facility.

Finally, ODYS health related policies and procedures should be reviewed at least annually and updated as needed. Medical, mental health and dental staff should be involved in the process, as well as representatives from administration and security. While ODYS Policy #403.08, “Section VI Monitoring,” requires that ongoing reviews be conducted by the designated Interdisciplinary Team on a quarterly basis as a part of the Department’s Continuous Quality Improvement (“CQI”) process, the only evidence we received indicating that the CQI is occurring is a roster of medical staff who received Quality Improvement training on May 21, 2010. The goal of CQI is to achieve changes in practice that can improve patient outcome. The NCCHC 2004 Standards for Health Services in Juvenile Detention and Confinement Facilities provide guidance in the development of a CQI program. Although a quality assurance component was not included in the Consent Order’s requirements, we note that it is an essential part of any medical program that aims for continuous quality improvement. Including a CQI program through a

structured format will assist the State maintain its medical program in substantial compliance with this provision.

C.2 HEALTH RECORDS

The State shall develop and implement policies, procedures, and practices to ensure that, consistent with state and Federal law, at a minimum, the juvenile courts in the State, all juvenile detention facilities, and all placement settings from which youth are committed shall timely forward to Scioto, or to the facility of placement (if the records arrive after the youth has been placed), all pertinent youth records regarding medical and mental health care. The Facilities shall develop and implement policies, procedures, and practices to ensure that health care staff, including mental health care staff, have access to documents that are relevant to the care and treatment of the youth.

In order to assess this provision, we reviewed the relevant policies and procedures,¹¹ the State's self-assessment, and the health records of 18 youth. In general, the State's policies, procedures and practices related to the transfer of records to and from other facilities and institutions demonstrate a commitment to continuity of care for Scioto's youth. The policies and procedures adequately address the confidentiality of health records, delineate the required components of each health record, and explain the records transfer process.

The State's practice is consistent with its policies and procedures. Specifically, youth health records are arranged according to the policy, and the large majority of the records contain documentation consistent with the records transfer process. In addition, the records contain information from outside consultations and discharge summaries for health care services provided after release from the facility. Health information regarding current medications and community provider appointments are appropriately faxed to the relevant persons at discharge. A few

¹¹The relevant policies for this provision are Policy #403.05, "Health Records and Confidentiality," and SOP #403.05.01, "Medical Records and Documentation." The policies and procedures were updated on March 31, 2010.

health records were missing health information from the transferring juvenile detention center, court, or other placement. However, these youth may be direct admissions to the facility. In all cases, medical staff conducted health assessments on the day of admission.

Although we are pleased with the State's records transfer process, we are concerned that the State has not yet developed and implemented policies, procedures, and practices to ensure that all health care staff at the facility have access to documents relevant to the care and treatment of the youth. Specifically, youth health records contain medical and psychiatric records, but do not include any psychological records. The State's self-assessment appears to confirm this finding. According to the self-assessment for this provision, nurses, physicians and psychiatrists have access to the youth's full medical record, but psychology staff only have access to transcribed psychiatric reports via an online database. Likewise, medical and psychiatric staff cannot access psychology records in the health records.

When the United States assessed the State's medical programs in 2007, we determined that the State's health records were inadequate because they did not contain a problem list identifying all active health problems.¹² The State now includes a medical problem list in each health record, ensuring that health care staff can easily and quickly identify a youth's medical concerns. However, these lists only include medical diagnoses. The State should include all mental health diagnoses on the problems list. In addition, although allergies were consistently noted within the health record, the State should also note allergies prominently on the front cover of youth health records. Such a practice is consistent with generally accepted standards.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

¹² See United States' May 9, 2007 Findings Letter at 8.

We recommend that the State begin including both medical and mental health diagnoses on problem lists and continue moving towards a system that will combine all health records, including psychology records. The development of an electronic health record would improve the capability of sharing critical health information by giving health record access to medical, dental and mental health staff simultaneously. In consideration of moving toward an electronic format, the State should also consider linking health records transferred from detention centers and other outside providers. To the extent privacy considerations and compliance with the Federal Health Information Portability and Accountability Act (HIPAA) limit the sharing of health records, the State can restrict the access of certain health care staff through programming and password protection. The United States can make Dr. Staples-Horne available via conference call to provide technical assistance.

C.3 *CONFIDENTIAL HEALTH CARE*

The Facilities shall provide health care and assessment in a setting that maintains health care confidentiality, by placing non-medical staff out of line of sight and hearing of the health care assessment or treatment, except in circumstances where documented safety considerations posed by a particular youth require enhanced, non-medical supervision.

In order to assess this provision, we reviewed the relevant policy,¹³ the State's self-assessment, the health records of 18 youth, and interviewed youth. Youth consistently reported that all visits with medical staff were conducted confidentially. Specifically, youth reported that correctional staff is not within earshot during health care treatment and assessment. If youth are receiving an examination that requires them to undress, the door to the exam room is closed and non-medical staff are out of the line of sight. The State's self-assessment confirms that healthcare encounters are conducted in an exam room that contains a curtain and a door for privacy. One youth did mention that she was able to read other

¹³The relevant policy for this provision is Policy #403.04 "Medical Facilities, Equipment and Supplies."

youths' health charts and their reasons for requesting sick calls. However, it appears that this was an isolated incident.

Compliance Rating: Substantial Compliance

While the State's practice conforms to the requirements of this provision, the current policy only requires the State to maintain an examination room that allows for the private examination of youth at the medical clinic. It does not provide any specific guidance regarding the conduct of non-medical staff. NCCHC Standard Y-A-09 Privacy of Care Compliance indicator #4 requires that non-medical staff should only be present if the patient poses a probable risk to the safety of the health care provider or others. The standard further recommends that any non-medical staff who observe or hear health encounters should be instructed on maintaining confidentiality. We urge the State to amend Policy #403.04 to reflect the State's actual practice and to provide additional guidance to medical and non-medical staff. The State may choose to adopt the language in the provision requiring that non-medical staff be out of the line of sight and hearing of youth health care assessment and treatment, except in circumstances where documented safety considerations posed by a particular youth require enhanced, non-medical supervision. Finally, given that one youth was able to view confidential health information, the State's health care staff should endeavor to keep all health related documents secure to prevent future breaches of confidentiality.

C.4 *INITIAL HEALTH ASSESSMENT*

The Facilities shall ensure that initial health assessments are complete and include: use of growth and weight charts; laboratory test results placed in the youth's health records before the youth is transferred out of reception; results of all laboratory tests, to be provided for each test within 20 days of its performance; testing of all youth for sexually transmitted diseases; and a problem list and a plan of care for each problem identified at reception.

In order to assess this provision, we reviewed the relevant policies and procedures,¹⁴ the State's self-assessment, and the health records of 18 youth. Initial health assessments were completed in 100% of youth health records reviewed. These assessments included the nurse intake screening/assessment, a physical exam, screening for tuberculosis, and gathering information related to mental health and substance abuse concerns. Registered Nurses completed the intake assessments on the day of intake and the Primary Care Physician typically completed physical examinations within one week of admission. Growth and weight charts were included in 16 of the 18 health records reviewed. Laboratory tests are completed on all youth at intake and, with the exception of one record, test results were returned within 20 days of performance. When applicable, medical staff conducted gynecological exams. The OB/GYN usually conducted these exams within one week of admission.

While most youth were tested for sexually transmitted diseases (STDs) at intake, such testing was missing in three of the 18 health records reviewed. In one health record, the youth was tested for STDs at the detention center, but no result was documented in the health record. Another youth had been transferred from another facility without any documentation of testing and results. The third youth stated she had not been sexually active while released. However, despite the missing testing information, this is not an indication that the State has failed to meet the requirements of this provision. Rather, the State should institute quality improvement procedures to ensure that STD results are properly documented in health records. All of the youth who tested positive received appropriate treatment.

Vision and hearing screenings were consistently completed in all records. Youth failing the vision test were referred to the Optometrist for evaluation and

¹⁴The relevant policies and procedures for this provision are #403.10 "Reception Center Nursing Screening/Assessment," #403.11 "Health Care Physical Examination-Intake," #403.12 "Transfer Health Screening," #403.14 "Female Health Care," policy #403.06, SOP #403.12.01 "Transfer Nurse Screening/Assessment" and consent form #403.06A. These policies were updated on March 31, 2010.

received glasses. All health records included a problem list that included medical diagnoses. A plan of care for each problem identified at intake was followed up by health care staff except in one instance, where a youth failed a hearing test. The youth was identified as failing the hearing test from the school transfer records and was retested by ODYS staff, but failed again. There was no documented referral or audiologist evaluation in the youth's health record. Quality improvement procedures would help prevent such lapses.

Compliance Rating: Substantial Compliance

Although the State's practice conforms to the requirements of this provision, the State should consider amending certain policies and instituting a quality improvement program to ensure that all youth have documented STD tests and all youth receive necessary referrals after a medical problem is identified. The State's current policy controlling medical services related to STDs and pregnancy states that youth are only authorized to release health information if they are over 18 years of age – there is no provision authorizing minors to release STD and pregnancy related information to parents or others. However, minors are legally authorized to consent to medical services related to STDs and to release such information. The relevant ODYS policies and forms should be revised to reflect this practice. Further, the State should amend Policy #403.11 "Health Care Physical Examination-Intake" to reflect the facility's practice of conducting hearing and vision screenings.

C.5 ACCESS TO HEALTH SERVICES

The Facilities shall ensure that youth can request to be seen by medical staff confidentially and independent from JCOs and custodial staff.

In order to assess this provision, we reviewed the relevant policies and procedures,¹⁵ the health records of 18 youth, and interviewed youth. Scioto's policy and procedures address non-emergency requests for medical services and provide for daily access to sick call and RN triage, and at least one physician visit each week. Sick call visits were also required each shift for youth in seclusion. The policy and procedures also require that youth be provided with information about the sick call process and sick call box locations during orientation. Confidentiality requirements are also addressed in the policy. On August 4, 2010, the State revised the Youth Welcome Letter, which outlines the process for youth to access sick call. While the previous version of the welcome letter stated that sick call only operates Monday through Friday, the current letter is consistent with the State's policy and practice.

Youth consistently reported that they were satisfied with the sick call system. Most youth reported that if they submitted a sick call slip for a non-emergency, they would see medical staff the following day. Our review of the health records confirmed that, when youth submitted health related complaints through the sick call process, their concerns were addressed appropriately and in a timely manner. Sick calls were usually addressed the same day, including weekends. While youth are aware that they can confidentially complete a sick call form without the intervention of JCOs or custodial staff, in practice, youth frequently seek assistance from staff instead of completing a sick call form. Interdisciplinary progress notes reflect that youth are being seen on numerous occasions on a walk-in basis after being referred by security or school staff. Health care staff provided follow up care and referrals when needed.

Compliance Rating: Substantial Compliance

¹⁵The relevant policies and procedures for this provision are Policy #403.08 "Access to Health Care," SOP #403.08.01 "Institutional Health Care," Scioto Local Operating Procedures #403.08.01.01 "Access to Health Care," and nursing protocol #403.07.

While Scioto is in substantial compliance with this provision, the State should consider making several changes in order to improve youths' access to health care services. For instance, Scioto submitted Standing Order #403.07, which is used by nursing staff to address sick call, for review. While the contents were appropriate, we would recommend that Scioto should change the title from "Standing Order" to "Nursing Protocols." This change would be consistent with the National Commission on Correctional Health Care's Standard Y-E-11. Scioto should also ensure that sick call health assessments are being completed by RNs and not LPNs since health assessments are not within the scope of LPNs' practice or license. This should be specified in Scioto's policies. If Scioto requires the person conducting the assessment to provide their printed name, title and signature, this will allow for easier identification of which provider completed the assessment. Finally, ODYS reviewed and updated its sick call policies and procedures in March of 2010. Prior to 2010, ODYS last updated its policies in 2006 and 2007. ODYS should review its policies and procedures at least annually, and update them as needed.

C.6 *MEDICATION MANAGEMENT*

The Facilities shall not discontinue a chronically ill youth's usual medication for non-medical reasons, including that the medication is not on the Facilities' formulary.

In order to assess this provision, we reviewed the ODYS Formulary, the State's self-assessment, the relevant policies,¹⁶ and the health records of 18 youth. Based on our review, it appears that Scioto continues the medication of chronically ill youth in its custody. When chronically ill youth arrive at Scioto, their medications are reviewed and continued in a timely manner by the Physician. Scioto's formulary includes adequate coverage of drugs commonly required for the

¹⁶The relevant policies for this provision are Policy #403.09 "Administration of Medical Treatment-Medications," #403.18 "Pharmaceutical Management and Standard Operating Procedure," and #403.18.01 "Prescribing Procedures and Documentation." These policies were reviewed in draft form.

youth population at Scioto. The prescriber's orders for medications and medication administration records were complete and present in all the youth health records reviewed. According to the youth health records, medications are being administered and documented by nurses as ordered. Scioto has even documented hot weather precautions for youth who are taking medications that predispose them to heat sensitivity. When applicable, consent forms for psychotropic medications are present in the youth health records. Abnormal Involuntary Movement Scale ("AIMS") were also documented for youth on psychotropic medications.

According to the State's self-assessment, the State does not alter any youth's prescriptions unless medically warranted. Specifically, if a particular medication is not available on the formulary, Scioto obtains the medication from a local pharmacy. We applaud this practice. While the State has met all of the components of this provision, we recommend that the State modify its current policy to reflect Scioto's practice for securing medications not listed on the formulary.

Compliance Rating: Substantial Compliance

C.7 DENTAL CARE

The Facilities shall ensure that:

- a. Dental restorative needs are listed on a dental treatment plan for the youth, tracked by the dental program, and treated on a timely basis consistent with generally accepted professional standards of care;*
- b. Prosthetic dental services are provided based on need, as determined by the treating dentist, with appropriate consideration for the replacement or repair of missing front teeth, according to generally accepted professional standards of care;*
- c. Youth experiencing dental pain are not denied adequate pain medication;*
- d. Health records contain adequate documentation of all outside dental consults, including the clinical examination, treatment plan, procedures performed, orders for management after the procedures, and any follow-up appointment or plan; and*
- e. Dental staffing is adequate to meet the restorative dental needs of the Facilities' populations.*

In order to assess this provision, we reviewed the relevant policies and procedures,¹⁷ the State’s self-assessment, and the dental records of 16 youth. In all cases where dental records were present, youth had received a dental examination in a timely manner, usually within several days of admission. Scioto’s dental staff routinely completed dental prophylaxis, usually at the time of the dental examination. Scioto conducts simple dental extractions on-site and appropriately refers third molar extractions to an off-site oral surgeon with follow up care and treatment at the facility. Youth experiencing dental pain are not denied adequate pain medication. These youth are promptly seen by the dentists and are provided with adequate pain management. The State’s dental policies and procedures are detailed and comprehensive. Moreover, the nursing standing orders address the management of dental pain and the medications administered. In addition, while not required by the consent order, we recognize that the State is providing dental education to youth, though sometimes several weeks after the dental examination.

Although the State addresses youth dental pain and provides adequate dental staffing, it has not reached substantial compliance with this provision for several reasons. First, the State’s dental record-keeping is inadequate. Two of the 18 youth health records provided by the State did not include documentation of any dental examinations and treatment. In the 16 records where documentation was present, it was difficult to assess the quality of dental care due to the consistently poor legibility of the handwriting. None of the 16 youth whose files were reviewed appeared to require prosthetic dental services. However, the illegibility of the files was a barrier to fully assessing the provision of prosthetic dental service.

¹⁷ The relevant policies and procedures for this provision are Policy #403.13 “Dental Services,” SOP #403.13.01 “Dental Radiology,” SOP #403.13.02 “Dental Sterilization and Infection Control,” SOP # 403.13.03 “Dental Examinations,” SOP #403.13.04 “Nursing Protocol for Screening Assessment and Stabilization of Dental Condition,” and SOP #403.13.05 “Removal of Dental Precious Metals.”

Nevertheless, it appears that the State has adequate policies and procedures to address the possibility.

Second, while restorative needs are listed on the dental treatment plan with follow up dates, we are concerned that the follow up dates for operative procedures – specifically, fillings – may be set too far out in the future to ensure completion prior to youths’ release. In fact, we could not find any documentation in the records that fillings actually had been completed. There was no legible evidence present in the dental records reviewed demonstrating that restorations, such as fillings or prosthetic dental services, are being provided. Moreover, Scioto’s self-assessment does not specifically provide any data addressing the provision of dental restorative services or the time periods within which these services are provided to youth.

Finally, we can determine that dental staffing is adequate to meet the restorative dental needs of the Facilities’ populations based on the records we have received thus far.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

The State did not provide detailed and legible information on the way in which it has met its obligation to provide treatment for dental restorative needs. In its next self-assessment, the State should consider providing statistical reports of the dental care provided to youth, including the full range of treatment services and the number of restorative procedures. These data should include an analysis of the time frame between youths’ admission and the facility’s provision of these treatment services. In addition, the State should provide detailed staffing schedules documenting the number of hours worked by dental staff.

Finally, the State should consider continuing to move towards electronic health records in order to alleviate the need to decipher illegible or incomplete dental records. We recommend that the State adopt an electronic system that

permits the State to run queries and cull data regarding the dental services provided and utilizes standardized forms that can be completed electronically by dental staff.

C.8 *MANAGEMENT OF CHRONIC ILLNESSES*

The Facilities shall ensure that:

- a. Chronic disease policies, protocols, and practices are appropriate for chronically ill adolescents;*
- b. Youth with chronic asthma are continued on their established medicines on admission unless the youth's condition warrants a change in treatment; and*
- c. Youth who frequently use rescue inhalers are appropriately monitored and treated by physicians to minimize preventable asthma hospitalization resulting from acute respiratory crisis that follows an inadequately treated exacerbation of chronic asthma.*

In order to assess this provision, we reviewed the relevant policies and procedures,¹⁸ the State's self-assessment, and the health records of 15 youth. The youth whose records we reviewed have the following chronic illnesses: hypertension, asthma, cardiac and renal conditions, hepatitis C, seizure disorder, hypothyroidism, chronic migraine headache, and a blood clotting disorder. Most of the youth also had comorbid chronic mental health disorders.

In our May 9, 2007 findings letter, we determined that the care provided to chronically ill youth substantially departed from generally accepted professional standards.¹⁹ The State's management of chronic illnesses has significantly improved since our previous assessment of medical care at Scioto. The State's current chronic disease policies, protocols, and practices are appropriate for

¹⁸The relevant policies and procedures for this provision are Policy #403.15, "Health Care Treatment Plans for Youth with Special Health Needs," and SOP #403.15.01, "Chronic Care."

¹⁹ Specifically, we determined that Scioto nurses failed to "clinically assess youth when administering rescue inhalers, and youth who use such inhalers frequently are not referred to the physician for more intense treatment." See United States' May 9, 2007 Findings Letter at 9.

chronically ill adolescents. In all of the medical records we reviewed, we found that Scioto's health staff identified youth with chronic medical conditions at intake, then continued and documented disease management. The physician conducts a baseline assessment of all youth with chronic medical conditions. This assessment includes physical findings, the use of a symptoms checklist, the development of a treatment plan, youth education, and verification that youth understand the assessment. Scioto did not discontinue the administration of medications in any of the health records reviewed. Scioto continues inhalers for youth with asthma, and the facility physician appropriately treats and monitors these youth. One youth we interviewed reported that one evening she had difficulty breathing and began banging on her door to get the attention of the direct care staff. She asked the staff to get her inhaler from the clinic. The direct care staff refused, instructed her to sit on her bed and relax, and never brought her the inhaler. While this incident is troubling, it appears that this was an isolated incident that reflects a potential problem with the responsiveness of direct care staff, not the medical staff.

Medical staff consistently obtains both subjective and objective information specific to each youth's condition. The nurse obtains subjective information through interviews of youth with chronic illnesses. The nurse also provides youth education and verifies and documents youth understanding. Medical staff obtains objective information pertinent to the chronic condition through physical examinations and labs. Medical staff documents and executes appropriate treatment plans and referrals, including outside medical consultations. Each chronic care management plan was signed by an RN and Medical Doctor ("MD").

Chronic care flow sheets reflect monitoring of medical indicators such as blood pressure, heart rate, weight and height, side effects of medications and youth compliance. Special diets are ordered, if required for special needs. Chronic care treatment plans are specific to the chronic illness being treated.

While the State's policy requires youth with chronic illnesses to be seen by the physician every three months, in practice almost all youth with chronic illnesses are seen monthly. There is a single exception: one youth with mild intermittent

asthma was seen every two to three months. All treatment and care reviewed are clinically appropriate. Health care plans and medical instructions are appropriately shared with non-medical staff. For example, non-medical staff are appropriately advised of a youth's the need for a bottom bunk or diet and activity restrictions for a youth with seizure disorder.

Compliance Rating: Substantial Compliance

C.9 ACCESS TO SPECIALTY CARE

Absent clinically justified rationale, the Facilities shall not withhold access to specialist services recommended by a treating physician and shall ensure that: prior approval of specialty medical consultations is made by a physician trained and qualified in pediatrics and adolescent medicine; and assessment criteria for the necessity of specialty consultations are based on pediatric and adolescent medicine.

In order to assess this provision, we reviewed the relevant policies and procedures,²⁰ and the health records of 18 youth. The facility Physician is trained and certified in pediatrics and adolescent medicine. The Physician indentified several youth who were in need of specialty care based on the appropriate criteria. In each case, the youth was referred to an outside specialist, transported to appointments, and the youth returned to the facility with documented treatment plans. Scioto's health care staff provided follow up care as recommended by the specialist. Some examples of medical specialty consultations documented in the health records reviewed included cardiologists for Holter monitoring, colposcopy for abnormal Pap smears, orthopedic consults for fractures, and renal consult and ultrasound for kidney stones.

²⁰The relevant policies for this provision are Policy #403.15 "Health Care Treatment Plans for Youth with Special Health Needs" and #403.17 "Medical Consultation and Hospitalization."

We reviewed the records of three youth who were pregnant when admitted to Scioto. Pregnant females received appropriate prenatal care as documented by nursing care records, OB progress notes and the completion of the American College of Obstetrics and Gynecology (“ACOG”) recommendations for ante partum care documented in flow sheets. Appropriate time frames were met for completion of labs and fetal ultrasound studies. Consultations, emergency and inpatient care were provided as necessary and health care plans and diets were documented.

Compliance Rating: Substantial Compliance

C.10 IMMUNIZATIONS

The State shall make reasonable efforts to obtain immunization records for all youth who are detained at the facilities for more than one (1) month. The State shall ensure that medical staff update immunizations for such youth in accordance with nationally recognized guidelines and state school admission requirements. The physicians who determine that the vaccination of a youth is medically inappropriate shall properly record such determination in the youth’s medical record.

In order to assess this provision, we reviewed the relevant policy and procedure,²¹ the State’s self-assessment, and the health records of 18 youth. The State’s immunization program has significantly improved since we last assessed it in 2007. At that time, fifteen percent of Scioto’s youth had incomplete immunizations and youth were not fully immunized for their age.²² Medical staff has updated all youth immunizations in accordance with the Center for Disease Control and Prevention’s and the Advisory Committee on Immunization Practices’ recommendations. The appropriate immunizations for this population – including Hepatitis A, Hepatitis B, Meningitis, HPV, Varicella and Influenza vaccines – are all appropriately administered and documented upon intake.

²¹ The relevant policies for this provision are Policy #403.21 “Communicable Disease Management” and SOP #403.21.06 “Immunization Program.”

²² See United States’ May 9, 2007 Findings Letter at 9.

Immunization records from the schools that youth previously attended and, in some cases, records from private providers were present in most youth health records for facility provider review. Scioto consistently withheld certain vaccinations inappropriate for pregnant youth until after the pregnancy. The State's self-assessment confirms that females with a known pregnancy are not administered certain vaccinations, such as the Tdap. Scioto's medical staff provided youth with chronic conditions with additional recommended immunizations. Finally, Vaccine Information Sheets ("VIS") were present in the youth health records and reviewed with youth prior to administration of vaccines.

Compliance Rating: Substantial Compliance

In practice, the State provides immunizations for youth in accordance with nationally recognized guidelines and state school admission requirements. However, the State should consider updating the relevant policy and procedure. The State's policy and standard operating procedure were last revised January 3, 2006. Accordingly, they do not reflect the current practice of providing all recommended vaccinations.

III. 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)

In our assessment of this provision, we reviewed the State's self-assessment, ODYS policy and procedure, grievance logs for May to September 2010, and 183 grievance summaries, and we interviewed youth. Consistent with our September 2010 Compliance Report, we find that the State is in substantial compliance with

this provision. In her report, Dr. Dedel notes that the State's Quarterly Cumulative Report from May to July 2010 shows that 99% of the grievances at Scioto were handled in a timely manner. (See Dedel Second PFH Report at 23). Further, consistent with the Consent Order, there are no preconditions to filing a grievance, youth receive notification of the grievance resolutions, grievances are picked up each weekday, and all grievances are reviewed by the Chief Inspector's Office. Despite the State's success in maintaining a rating of substantial compliance, we encourage the State to investigate why a percentage of youth feel there is a bias when the grievance involves allegations of mistreatment by staff. On November 22, 2010, through a letter, the United States memorialized its concerns and offered suggestions about how to begin to address the distrust demonstrated by some youth. On December 13, 2010, the State informed us that it intends to conduct an audit—similar to a customer survey—during the second quarter of 2011 focusing on grievances and youths' perceptions about grievances. We look forward to learning the results of the audit.

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 reviewed the State's self-assessment, the relevant policy, and the revised Youth Handbook, and we interviewed youth. The relevant ODYS 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. Consistent with our finding in September 2010, youth interviewed in October and November 2010 reported having received a copy of the Handbook and could describe the mechanics of the youth grievance process. Based

on our review, the State has maintained its rating of substantial compliance with this provision. We commend the State on its success.

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 reviewed the State's self-assessment, interviewed youth, and visited the living areas of youth. Consistent with our various on-site compliance tours in 2010, we found grievance forms and locked boxes located throughout Scioto. We also found that the grievance forms are readily accessible to 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 maintained its substantial compliance rating with this provision.

Compliance Rating: Substantial Compliance

VI. SPECIAL EDUCATION

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 there under, and this Stipulation. (See Consent Order III.E.1)

In our assessment of this provision, we reviewed the State's self-assessment, toured the school building, and interviewed youth and staff. The State's self-assessment provided a sufficient discussion regarding the State's provision of a full school day to students in the general population, the intake process, scheduling procedure, teacher certifications, curriculum development, and parental/guardian

involvement in a youth's educational plan. We commend the State on its improved self-assessment efforts.

During our tour, we observed that the State has invested resources—smartboards and software—in order to ensure youth have an appropriate curriculum for their grade level. It is evident that State takes seriously its responsibility to provide all qualified youth confined at Scioto an adequate special education. Accordingly, we have determined that, for the most part, the State has a sufficient foundation for an effective special education program at Scioto. (See Dedel First SPED Report at 4-6). Nevertheless, based on our review during the October 2010 on-site tour and concerns raised in the S.H. v Stickrath matter, we share Dr. Dedel's concerns about: (1) whether the State is providing youth in disciplinary isolation regular, dependable access to class assignments and instruction, and (2) the extent to which the ABC (in school suspension program) is implemented effectively. In preparation for the next on-site compliance tour, the State should collect and interpret the various indicators listed by Dr. Dedel. (See Dedel First SPED Report at 4).

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

We note that provision E.1 requires compliance with the IDEA, the related regulations and the provisions E.2-E.11 of the U.S. v Ohio Consent Order (oversight, special education upon intake, parent and guardian involvement, staffing, screening for special education, individual educational plans, vocational education, forwarding screening and assessment information, training and quality assurance and transition services). Substantial compliance with E.1, "Provision of Special Education," is therefore partially dependent upon the State reaching substantial compliance with provisions E.2 through E.11. Fortunately, not including E.1, the State is already in substantial compliance with seven of the eleven provisions and in partial compliance with the three remaining provisions:

E.7 (Individual Educational Plans), E.8 (Vocational education) and E.11 (Transitional Services). Below, we provide the State with specific recommendations with regard to provisions E.7, E.8, and E.11. We encourage the State to consider these recommendations and those made by Dr. Dedel throughout her SPED Report.

E.2 *OVERSIGHT*

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

In our assessment of this provision, we reviewed the State's self-assessment and interviewed staff. Based on our review, we find that the documentation provided by the State regarding its SPED policies and procedures support finding that ODYS provides sufficient oversight over the SPED program at Scioto. Specifically, the State has demonstrated that it has an oversight strategy that operates at both the external and internal level. As described by Dr. Dedel, both levels of oversight are impressive and underscore the State's dedication to achieving compliance with this provision. (See Dedel First SPED Report at 8-9). The State has thus reached substantial compliance with this provision. In our September 2010 compliance report, the State was rated as being in beginning compliance with this provision. We commend the State on its success.

Compliance Rating: Substantial Compliance

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 our assessment of this provision, we reviewed the State's self-assessment, youth special education files, and the State's October 1, 2010 response to the United States' September 2010 Compliance Report, and interviewed youth and staff. Based on our review, we found that all youth were enrolled and attending school within three school days, provided they were admitted when school was in session. For all

other youth, they began attending school on the first day school was in session. Dr. Dedel further confirmed this finding through her interviews with youth. Through its self-assessment, the State provided a detailed description of its efforts and process to ensure that all students who qualify for SPED receive such services upon admission. Additionally, Dr. Dedel ascertained that the student's class schedules reflected the services prescribed by the Individual Educational Plans ("IEPs") available at the time of the youths' admission to Scioto. (See Dedel First SPED Report at 10). In our September 2010 Compliance Report, the State was rated as being in partial compliance with this provision. We commend the State for successfully achieving substantial compliance with this provision.

We strongly suggest that as part of its next self-assessment, the State include data recommended by Dr. Dedel. (See Dedel First SPED Report at 10).

Compliance Rating: Substantial Compliance

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 our assessment of this provision, we reviewed the State's self-assessment, the State's October 1, 2010 response to the United States' September 2010 Compliance Report, and special education files, and interviewed youth and staff. Based on our review, we found that the State involves parents or guardians in the educational planning of Scioto youth. Specifically, we found documentation of attempts to contact parents or guardians via mail and telephone, with ample documentation about the response or lack of response by parents or guardians. The files we reviewed were orderly and also presented strong efforts to inform parents or guardians of a student's progress. Notwithstanding these observations, we agree with Dr. Dedel that the quality of information in the progress reports may need improvement (See Dedel First SPED Report at 12-13). This is discussed under

provision 7 on pages 47-48 of this Compliance Report. In our September 2010 Compliance Report, the State was rated as being in partial compliance with this provision. We commend the State for achieving substantial compliance with this provision.

We strongly suggest that, as part of its next self-assessment, the State include the data recommended by Dr. Dedel. (See Dedel First SPED Report at 12).

Compliance Rating: Substantial Compliance

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)

In our assessment of this provision, we reviewed the State's self-assessment, and the State's October 1, 2010 response to the United States' September 2010 Compliance Report, and we interviewed staff. Based on our review, we found that the State employs an adequate formula to ensure that it meets the 1:12 teacher to student ratio required by the Ohio Department of Education. Further, it appears that Scioto has successfully attracted and maintained a body of well-qualified educators. Collectively, the State is able to ensure that all students have full access to the education program at Scioto. The State is to be commended for its continued efforts to improve staffing under this provision. For example, Scioto recently converted the school psychologist position to a full-time position. We note that, at the time of our November on-site tour, there were two vacant positions, the speech language pathologist and transition skills teacher positions. We detail our concerns about the lack of a transition skills teacher under provision 11 on page 48 of this Compliance Report. We look forward to being updated about these vacancies during

our next on-site tour. We commend the State on achieving substantial compliance with this provision.

Compliance Rating: Substantial compliance

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.

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)

In our assessment of this provision, we reviewed eight students' general education files, the State's self-assessment, and the State's October 1, 2010 response to the United States' September 2010 Compliance Report, and we interviewed staff. Based on our review, we found the State's intake process to be appropriate and detailed. Specifically, the intake process requires youth to be interviewed and youth records to be immediately requested from the youth's prior schools. For those youth not currently eligible for special education upon entrance to Scioto, the State also has a detailed method to determine whether a referral is appropriate. We commend the State for successfully attaining substantial compliance with this provision. Previously, the State was rated as being in beginning compliance with this provision.

We strongly suggest that, as part of its next self-assessment, the State include the data recommended by Dr. Dedel. (See Dedel First SPED Report at 16).

Compliance Rating: Substantial Compliance

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 necessary, develop, review or revise IEPs for qualified special education students.

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)

In our assessment of this provision, we interviewed staff and reviewed the State's self-assessment, seven special education files,²³ and the State's October 1, 2010 response to the United States' September 2010 Compliance Report. In our September 2010 Compliance Report we explained that the ODYS IEP policies detailed methods of monitoring and provided an adequate framework for tracking progress and achieving goals. During our October 2010 on-site tour, we found that the ODYS procedures were sufficiently detailed and followed in most areas. Overall, we found that most IEPs were of adequate quality. However, as further discussed by Dr. Dedel, the quality of the annual IEP goals and the progress reports were both lacking and are of concern. (See Dedel First SPED Report at 20-21). For these reasons, the State remains in partial compliance with this provision. Nevertheless, we are encouraged that the State is investing in further professional training and development for special education staff in the areas of measurable goal writing and monitoring student progress. We look forward to assessing this provision during our next compliance tour.

Compliance Rating: Partial Compliance

²³ The seven files reviewed represented 18% of the files for special education youth at Scioto.

Recommendation(s) to reach substantial compliance:

We suggest the State continue its current revisions of IEP goals to ensure that they are clear, appropriate, and assist in monitoring the youth's progress. Further, we agree with Dr. Dedel's suggestion that the State should increase teachers' skills in monitoring and reporting progress in order to determine whether and to what extent the IEP resulted in improved outcomes. (See Dedel First SPED Report at 21).

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)

In our assessment of this provision, we reviewed the State's self-assessment and the State's October 1, 2010 response to the United States' September 2010 Compliance Report, and we interviewed youth and staff. Currently, the State provides one vocational class, Administrative Office Technology, as its vocational services to youth. Apparently, obstacles to expanding the course offerings include financial constraints, but are further complicated by the short lengths of stays for Scioto youth. The ODYS Superintendent is aware of the lack of vocational options at Scioto and is researching alternatives, such as short-term vocational courses that involve some level of certification. Based on this review, the State is in partial compliance with this provision.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

We agree with Dr. Dedel's comment that "the dearth of meaningful career-oriented options for students at Scioto is problematic." (See Dedel First SPED

Report at 22). We recommend that the State reach out to local resources to enrich its program while it takes steps to bolster its vocational course offerings. For example, one youth who had resided at another ODYS facility mentioned his disappointment that Scioto did not have barbering or horticulture classes, currently available at other ODYS facilities. As the State reinvigorates its vocational services, it may wish to have vocational educators from other facilities visit, if only for introductory classes. The State may wish to inquire if nearby community colleges have on-line courses that the Scioto youth could audit. Additionally, since Scioto has a well-established volunteer program, the State may wish to inquire into whether any volunteers could provide presentations about their own jobs, again if only to introduce youth to possible career options. We look forward to re-assessing this provision during our next compliance tour.

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)

In our assessment of this provision, we reviewed general education files and the State's self-assessment, and we interviewed staff. Based on our review we verified that, consistent with ODYS policy, educational records are regularly forwarded to receiving schools when a youth is transitioned out of the ODYS system. We commend the State on achieving substantial compliance with this provision.

Compliance Rating: Substantial Compliance

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)

In our assessment of this provision, we reviewed the State’s self-assessment and the Scioto Professional Development Calendar for 2008 to 2010, and we interviewed staff. The State’s comprehensive training program offers teachers valuable opportunities to further develop skills and effectively incorporate new techniques into their teaching. We commend the State for providing relevant training to its education staff and for working with an educational consultant to provide additional skill-building opportunities.

We encourage the State to consider compiling data that tracks and assess its training program for educators. Please see Dr. Dedel’s report for a list of suggested data that can assist the State in this endeavor. (See Dedel First SPED Report at 24). Consistent with our concerns regarding goals in youth IEPs (provision E.7 above) we suggest the State research any relevant training opportunities for SPED educators.

Compliance Rating: Substantial 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)

In our assessment of this provision, we reviewed the State’s self-assessment and the State’s October 1, 2010 response to the DOJ September 2010 Compliance Report, and we interviewed staff. Based on our review, it appears that the State has a solid foundation in place to provide transition services to Scioto youth. Scioto has a “Transition Skills” course which is designed to encourage youth to join the workforce and ensure they have access to necessary documentation in order to apply for employment. Scioto also has a position, “Transition Coordinator,” which tasks an individual with assisting youth to interact with outside resources to smooth the youth’s re-entry back into the community. Although both efforts are commendable,

the State is rated as being in Partial Compliance because the position of Transition Skills instructor is currently vacant. Accordingly, the vacancy should be filled as soon as possible and the State should endeavor to create a “back up delivery system” to ensure that students’ access to this course is not compromised when the instructor is temporarily unavailable.(See Dedel First SPED Report at 25).

Compliance Rating: Partial Compliance

Recommendation(s) to reach Substantial Compliance:

The State should fill the vacant position as soon as possible with an individual having the required skills to meet the needs of the Scioto youth. Additionally, we encourage the State to inform youth, or remind youth, that 10 weeks prior to their release date they will begin to receive transition services. Several youth interviewed did not appear to know about transition services. Additionally, the State should continue to monitor transition services and examine the benefits to special education students. (See Dedel First SPED Report at 25).

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 our assessment of this provision, we reviewed the State's self-assessment narrative and relevant policies and procedures, and we interviewed staff and youth. Consistent with our finding in September 2010, we found that the State has developed a significant programmatic framework to reduce idleness and provide structured opportunities for youth. We commend the State for its continued success in this area. It appears that, more recently, direct care workers at Scioto are more open to community volunteers, which is a welcome change. This change has enabled Scioto to overcome the problem we found during our last tour, namely that safety concerns and logistical obstacles hindered youths' ability to take full advantage of the programming opportunities. It is our understanding that currently there are fewer delays in transporting youth to their activities. We commend the State on changing staff's perception of programming activities for youth.

Despite the State's commitment to other forms of programming, the State again failed to demonstrate how its programming activities address criteria required for parole eligibility, as this is a specific component of provision F.1. During our on-site visit in November 2010, Dr. Dedel expressly requested any data, documentation, or verification that the State was meeting this requirement. The State failed to provide any related documentation despite an extended deadline to do so of December 10, 2010.²⁴ Until the State can demonstrate that it is currently meeting this aspect of the provision, it will not achieve substantial compliance with

²⁴ Due to the State's difficulties in producing documents requested for the November on-site tour, on December 6, 2011, the United States informed the State that it would not consider any documentation for this Compliance Report that was received after 9:00 a.m. on December 10, 2010. On January 10, 2011, the State provided the United States with data and documentation that it represented satisfied our request for programming required for parole eligibility. The United States will consider the parole programming documentation in its next Compliance Report following its February 2011 tour.

provision F.1 As always, we look forward to assessing activities designed to address parole eligibility criteria during our next tour in February 2011 tour.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

The State should make available for our review its efforts towards providing programming activities required for parole eligibility. We strongly recommend that the State produce monthly reports of all programs required by provision F.1 in order to facilitate assessment of this provision. These 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 our assessment of this provision, we interviewed youth and staff and reviewed the revised youth handbook (dated August 2010) and policies and procedures. Consistent with our September 2010 Compliance Report, we find that

that orientation process at Scioto provides youth with an adequate overview of institutional rules, the process for accessing mental health, medical care, grievance system and opportunities to participate in treatment, recreation and educational programs. We note, however, that the handbook and orientation do not adequately explain youths' rights regarding practicing their religion. We address this issue below.

The Programming provisions of the Consent Order require the State to develop an orientation that “clearly set[s] forth the rules youth must follow at the Facility . . . and provide[s] other information pertinent to the youth’s participation in the Facility’s programs,” (V.F.2.a), “provide the Facility rules in writing,” (V.F.2.b),” and provide an introductory handbook. (V.F.2.c). The “Youth Orientation Handbook” claims to “contain information [youth] will need to know during [their] stay at ODYS.” (page 6 of Youth Orientation Handbook). While the Handbook informs youth that they have the right not to be discriminated against because of religion, the section covering “Religious Services” may not fully comply with the Religious Land Use and Institutionalized Persons Act,²⁵ 42 U.S.C. § 2000cc (“RLUIPA”). RLUIPA protects the religious exercise of persons confined to institutions, including youth confined in juvenile correctional facilities. RLUIPA prohibits the State from substantially burdening the religious exercise of youth in juvenile correctional facilities, even if the burden results from a rule of general applicability. For example, while the State’s Youth Handbook states that youth who wear “[p]ersonal clothing not authorized by the state” will be subject to discipline (page 21), RLUIPA may require that a Jewish youth be permitted to wear a yarmulke or a Muslim youth be permitted to wear a hijab in observance of his or her religious practices. Regulations amounting to a substantial burden will only be permitted if the State demonstrates that the regulation furthers a “compelling

²⁵ See <http://www.justice.gov/crt/about/spl/rluipa.php> (last visited January 12, 2011).

government interest” and is the least restrictive means available to further that interest.

In our September 2010 Compliance Report, we noted that the handbook provides a comprehensive list of facility rules, but lacked detailed descriptions of the consequences for violating those facility rules. We, therefore, recommended revising the handbook to adopt the new policies and procedures regarding alternative sanctions and behavior modification under the new SBBMS. The State has since modified the handbook accordingly. We commend the State on its prompt action to remedy the deficiency in its handbook.

Compliance Rating: Partial Compliance

Recommendation(s) to reach substantial compliance:

To ensure that the State is accommodating youth’s religious needs, the State should make certain that the information conveyed to youth is consistent with the State’s religious accommodations policy and practice. For instance, the State’s Standard Operating Procedure 507.02.06 requires a youth to fill out and return a “Request for Accommodation of Religious Belief or Practice” form if he or she wishes to have an accommodation for a religious rite, practice, or observance. However, this form is not mentioned in the section of the youth handbook covering religious services.

Moreover, the State should ensure that all relevant personnel are familiar with RLUIPA’s requirements. Under the current procedure, youth are instructed to present all religious needs to the Chaplain for approval, including religious materials, holy texts, and pastoral visits. Given the critical role the Chaplain plays in determining the religious accommodations that Scioto will make for youth in its custody, the State must ensure that the Chaplain is familiar with the requirements of RLUIPA. Direct care staff should also be familiar with RLUIPA’s mandates and

the State's religious accommodations policy. We look forward to assessing a revised handbook during our next tour.

VI. DOCUMENTATION

G.1 PROGRESS NOTES

The Facilities shall promulgate and implement a policy requiring that all health professionals be required to create and use progress notes to document, on a regular basis, interactions and each assessment of youth with mental/behavioral health or substance abuse needs. In particular, progress notes shall:

- a. In the assessment, address the efficacy of interventions, currently presenting problems, and the available options to address those problems; and*
- b. Provide thorough documentation of all crisis interventions or, if not thoroughly documented in the progress notes, provide a reference to alert staff to another document in the youth's file containing the details of the crisis intervention. (See Consent Order III.G.1).*

In order to assess this provision, we reviewed the State's policies, procedures, and practices regarding progress notes. We recognize that the provisions under G, "Documentation," do not fall squarely under any of the other sections, but rather touch on mental health, medical care, and education. For this reason, we have asked each of our experts to comment on these provisions. Going forward, we recommend the State provide a discussion in its self-assessment of how it meets the criteria of provisions G.1 and G.2.

The State has provided at draft policy, entitled "Behavioral Health Documentation Guidelines," which is relevant to our assessment of mental health progress notes. However, it is unclear whether this policy has been implemented yet. A review of youth records revealed that mental/behavioral health progress notes are generally of fair quality. Specifically, while progress notes are plentiful, the notes do not always address the youth's specific treatment goals as outlined in treatment planning documents. Documentation regarding mental/behavioral

health crisis interventions was generally of better quality than progress notes, but limited in that it was difficult to determine when emergency consultations were requested and to determine the elapsed time until actual clinical contact was made with the youth in crisis.

The relevant medical policies and SOPs appropriately address content organization and format, confidentiality requirements, and health care professionals' access to records. Physicians and nurses appropriately document progress notes in chronological order in youth health records. At intake, nursing staff properly document substance use history on all youth. The Medical Release and Transfer Summaries Policy require health staff to complete a Medical Transfer Summary and a Medical Release Summary for youth who are discharged or transferred out of the facility. Both forms contain lines to document required or scheduled medical and dental referrals. The Medical Release form also designates whether psychiatry follow up is required immediately or within another time frame, and whether a parent should be advised. Medical staff adequately document health information on the above-mentioned documents according to policy. However, medical records related to crisis intervention did not include documentation by psychologists or information regarding substance abuse treatment. We look forward to reviewing this provision during our next compliance tour.

Compliance Rating: Beginning compliance

Recommendation(s) to reach substantial compliance:

The quality of mental/behavioral health progress notes can be accomplished by the implementation of quality assurance measures and a peer review process, as well as clinical supervision. The State cannot reach substantial compliance on this provision while some of the relevant policies and procedures are still in flux. As stated earlier, it is unclear whether the "Behavioral Health Documentation Guidelines" have been implemented. In addition, the State indicated that it

planned to begin use of an Integrated Treatment Plan beginning January 1, 2011. The development of the Integrated Treatment Plan may facilitate the State's level of compliance with this provision. Specifically, the quality of progress notes may improve if each youth has one overarching treatment plan and treatment providers form a cohesive treatment team unit. At this juncture, a rating of substantial compliance is premature.

G.2 ACCESSIBILITY OF RELEVANT INFORMATION

The Facilities shall ensure that youth records are organized in a manner providing treatment teams prompt access to relevant, complete, and accurate documentation regarding the youth's status. (See Consent Order III.G.2)

The State's current medical policies generally outline medical and psychology record content and format in a manner that provides treatment teams with prompt access to documentation regarding the youth's status. However, according to current policy, staff must review and provide documentation related to the behavioral/mental health treatment of youth in at least two separate records, since medical records do not include any psychology-related information. Given the current state of flux of the mental health program, we will have to further assess this provision during our next tour.

Compliance Rating: Beginning Compliance

Recommendation(s) to reach substantial compliance:

As we discussed in C.2 ("Health Records"), the State should adopt a documentation system that combines all health records, including psychology records. Please review Dr. Staples-Horne's Report for a further discussion on this topic. (See Staples Horne First Medical Report at 11).

NEXT TOUR and COMPLIANCE REPORT

The United States intends to conduct a compliance tour of Scioto on February 22-24, 2011. Our goal is to provide a third complete compliance report based on the February 2011 compliance tour to the Court on or before May 9, 2011.

Respectfully submitted this 8th day of February, 2011.

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