

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF ALAMEDA

MARGARET FARRELL,)
) CASE NO. RG03079344
 Plaintiff,)
)
 vs.)
)
 MATTHEW CATE,)
)
 Defendant.)
 _____)

TENTH REPORT OF SPECIAL MASTER

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I. INTRODUCTION

This report reviews and attaches the fiscal year 2008-2009 reports of the education and disability access experts, summarizing the status of compliance with the remedial plans in those areas. It also attaches a revised version of medical experts' comprehensive report for fiscal year 2007-2008; this replaces the original version filed with the Ninth Report of the Special Master. The mental health experts have submitted a comprehensive report that is under review by the parties and the special master, and it will be filed with the special master's next report.

II. EDUCATION

The education experts, Drs. Robert Gordon and Thomas O'Rourke, conducted their fourth round of compliance audits at all DJJ facilities between October 2008 and May 2009. Their fourth "Summary Education Program Report" is appended to this report as Appendix A.¹ The summary report provides an overview of DJJ's progress and challenges under each section of the Education Services Remedial Plan. The attachment to the report displays each facility's compliance status for each compliance criterion. The education experts have reviewed and approved this section of the special master's report.²

A. Progress toward Compliance

The experts note various areas of improvement since their prior audit round. Teachers are well-qualified in the appropriate fields of study at five of six facilities, compared with three of seven facilities last year.³ Fewer classes are cancelled due to lack

¹ The experts provided the special master, and the special master provided the parties, with the individual facility audits as they were completed.

² *See* e-mail of Tom O'Rourke to the special master, July 29, 2009.

³ *Compare* Appendix A (O'Rourke/Gordon 2008-2009 Report), Attachment 1, p. 1 [hereinafter O'Rourke/Gordon 2008-2009 Report, Attachment 1] *with* Eighth Report of the Special Master, Appendix A (O'Rourke/Gordon 2007-2008 Report), Attachment B, p. 1 [hereinafter O'Rourke/Gordon 2007-2008 Report, Attachment B]; *see also* O'Rourke/Gordon 2008-2009 Report, p. 5. Note that the DeWitt Nelson

of substitute teachers.⁴ Five of six schools have implemented structured classroom behavior management systems, whereas only two schools had such systems last year.⁵ Four of six sites have entered into cooperative agreements between custody, education, and treatment staff to ensure students' school access;⁶ during the previous audit round, only two sites had such agreements.⁷ The Chaderjian and Preston facilities now have adequate instructional space, which they lacked last year.⁸ All schools substantially comply with requirements related to educational technology and "Global Classroom" distance learning courses.⁹ All schools now track school consultation team meetings,¹⁰ and five of six schools are documenting progress on the intervention plans created at these meetings.¹¹ All but one facility consistently conduct quarterly teacher observations, a significant improvement upon past years' performance.¹²

Improvements in the area of special education include an increase in timely held IEP eligibility meetings.¹³ Five of six schools now have memoranda of understanding

facility closed between the experts' third and fourth audit rounds. The aberrant facility is Stark, which is discussed in greater detail, below.

⁴ *Compare* O'Rourke/Gordon 2008-2009 Report, Attachment 1, p. 1 *with* O'Rourke/Gordon 2007-2008 Report, Attachment B, p. 1.

⁵ *Compare* O'Rourke/Gordon 2008-2009 Report, Attachment 1, p. 2 *with* O'Rourke/Gordon 2007-2008 Report, Attachment B, p. 2.

⁶ O'Rourke/Gordon 2008-2009 Report, Attachment 1, p. 2; *see also* O'Rourke/Gordon 2008-2009 Report, p. 6.

⁷ O'Rourke/Gordon 2007-2008 Report, Attachment B, p. 2.

⁸ *Compare* O'Rourke/Gordon 2008-2009 Report, Attachment 1, p. 2 *with* O'Rourke/Gordon 2007-2008 Report, Attachment B, p. 2.

⁹ *See* O'Rourke/Gordon 2008-2009 Report, p. 7. The Global Classroom courses are new at four of the six facilities this year. *Compare* O'Rourke/Gordon 2008-2009 Report, Attachment 1, p. 3 *with* O'Rourke/Gordon 2007-2008 Report, Attachment B, p. 3.

¹⁰ O'Rourke/Gordon 2008-2009 Report, Attachment 1, p. 2. School consultation teams are similar to parent-teacher conferences; the teams review problems with the student's progress and develop intervention plans. Education Services Remedial Plan, p. 2. The teams include the student, an administrator, the referring teacher, other education staff, and treatment staff. *Id.*

¹¹ O'Rourke/Gordon 2008-2009 Report, Attachment 1, p. 2.

¹² *See id.*, p. 3; Eighth Report of the Special Master (February 2009), p. 3.

¹³ All information in this paragraph is based on a comparison of O'Rourke/Gordon 2008-2009 Report, Attachment 1, p. 4 with O'Rourke/Gordon 2007-2008 Report, Attachment B, p. 4. *See also* O'Rourke/Gordon 2008-2009 Report, p. 7.

with DJJ's intake services branch regarding acceptance of special education students. Last year, five of the six schools were non-compliant with this requirement. Three schools now have written procedures regarding the acquisition of pre-existing IEPs prior to acceptance of physical custody of students. Four schools are providing students with services according to the requirements of pre-existing IEPs, and the remaining two schools are partially compliant with this requirement. Last year, only one of the six schools was substantially compliant, and two were non-compliant. Two schools improved their practice of documenting changes in IEPs, and all schools now determine special education eligibility prior to IEP meetings. In addition, all sites now hold quarterly education stakeholders' meetings. Across the state, DJJ teachers are identifying special education students in their classrooms.

DJJ's improved education program appears to have yielded tangible results. The percentage of youth who earn high school diplomas appears to have increased, as has the percentage of youth enrolled in distance learning college courses.¹⁴

B. Areas of Concern

DJJ still fails to provide many youth with 240 minutes of instruction (five class periods) per day.¹⁵ Some youth are simply not scheduled for five periods, and others are

¹⁴ The special master reviewed a document entitled "California Education Authority Education Services AY Progress Report: 2004-2009," undated. This document depicts the number of diplomas, GEDs, vocational education certificates, and college enrollment by fiscal year. The document lists the source of this information as "June Principal's Monthly Report, 2004-2009." The special master has not yet verified the accuracy of the data. The special master calculated percentages based on the end of fiscal year population reported on DJJ's website, http://www.cdcr.ca.gov/Juvenile_Justice/Research_and_Statistics/index.html. The percentages thus do not reflect the percentage of school-eligible youth, but the proportion of DJJ's total population, who earned diplomas and GEDs. If DJJ's data is accurate, six percent of DJJ's population earned high school diplomas in 2005-2006; seven percent earned diplomas in 2006-2007, eleven percent in 2007-2008, and twelve percent in 2008-2009. Four percent earned GEDs in 2005-2006, seven percent in 2006-2007, ten percent in 2007-2008, and five percent in 2008-2009. Ten percent earned vocational certificates in 2005-2006, sixteen percent in 2006-2007, 25 percent in 2007-2008, and 44 percent in 2008-2009. Six percent were enrolled in a college course in 2005-2006, twelve percent in 2006-2007, 25 percent in 2007-2008, and seventeen percent in 2008-2009.

held back or pulled from school by staff. As of January 2009, only 48 percent of eligible students at Stark were scheduled for five periods per day.¹⁶ Non-educational staff at O.H. Close frequently pull students out of classes.¹⁷ As of October 2008, Chaderjian staff were holding youth back from the main school for non-educational purposes.¹⁸ Youth in Chaderjian's restricted housing unit were also not receiving 240 instructional minutes per day.¹⁹ At Preston, the experts observed a non-graduate walking to school after classes had begun; he indicated that his living unit staff had "forgotten to call him out for school."²⁰ And staff on Preston's new restricted housing unit had been holding three youth back from school for at least one week, to prevent them from re-affiliating with gang members.²¹

Even where staff do not directly prevent youth from receiving 240 instructional minutes per day, DJJ personnel and practices indirectly contribute to attendance problems.²² Reasons for youth absences are varied and include security concerns, lack of

¹⁵ Statements of Tom O'Rourke during Case Management Conference, July 9, 2009. State law and the education remedial plan require DJJ to provide eligible youth with 240 minutes of instruction per day, for 220 days per year, in subjects leading to high school graduation. The experts have identified this as a priority area for DJJ. *See* Ninth Report of the Special Master (June 2009), Appendix A (Expert Priorities), p. 1.

¹⁶ Tom O'Rourke and Robert Gordon, Site Compliance Report: H.G. Stark, January 2009, p. 1.

¹⁷ Tom O'Rourke and Robert Gordon, Site Compliance Report: O.H. Close, October 2008, p. 6. DJJ staff report that non-educational personnel at O.H. Close continue to pull students from class. Statements of O.H. Close teacher during DJJ Court Compliance Task Force Meeting, May 21, 2009 (referencing a spike in "treatment absences" according to SWAT attendance data); statements of Joan Loucraft during Case Management Conference, July 9, 2009 (describing ongoing scheduling conflicts with school hours at O.H. Close).

¹⁸ Tom O'Rourke and Robert Gordon, Site Compliance Report: Chaderjian, October 2008, p. 8.

¹⁹ *Id.*, p. 11. DJJ reports that these youth are currently scheduled for five periods per day, but the problem identified by the experts was adherence to the five-period schedule: "[s]tudents on the units continue to be registered for 5 class periods daily, but they do not consistently receive mandated educational services." *See* Tom O'Rourke and Robert Gordon, Site Compliance Report: Chaderjian, October 2008, p. 11; statements of Susan Harrower during Case Management Conference, July 9, 2009.

²⁰ Tom O'Rourke and Robert Gordon, Site Compliance Report: Preston, February 2009, p. 10.

²¹ *Id.*

²² O'Rourke/Gordon 2008-2009 Report, p. 6. DJJ's attendance data are not clearly reliable. The experts have particularly noted flawed attendance reporting practices at O.H. Close and H.G. Stark. *See* Tom O'Rourke and Robert Gordon, Site Compliance Report: O.H. Close, October 2008; Tom O'Rourke and

substitute teachers, and youth refusals.²³ Refusals may be due to fear of violence in the school area.²⁴ Other refusals may result simply from youths' knowledge that living unit staff do not consistently enforce sanctions for refusing to attend school.²⁵ The experts note that Preston, Ventura, and SYCRCC have improved in this area over the years, due largely to improved management of youth misbehavior,²⁶ though difficulties remain. At Preston, two students were observed entering a living unit during school hours, having left their classes because "they wanted to."²⁷ At Ventura the experts observed five female students leaving school mid-afternoon and returning to their living units to schedule doctor appointments; interviews with living unit staff indicated that this was a common occurrence.²⁸

Many youth continue to be deprived of a full range of educational alternatives.²⁹ For instance, enrollment in vocational classes "continues to be very low."³⁰ Staff remove graduates and GED-holders who are enrolled in vocational education from class for non-educational purposes.³¹ Student access to GED programs has also been limited, though DJJ reports that it recently enhanced GED preparation access in response to the experts'

Robert Gordon, Site Compliance Report: H.G. Stark, January 2009. The experts and DJJ leadership have urged all sites to use the WIN database, rather than hand-counts or other databases, to record attendance data. E-mail of Tom O'Rourke to special master, July 29, 2009.

²³ Statements of Tom O'Rourke during Case Management Conference, July 9, 2009.

²⁴ See Barry Krisberg, Informal Report: H.G. Stark, April 2009, p. 1; memorandum of Aubra Fletcher to Donna Brorby, April 28, 2009, p. 7.

²⁵ See statements of Robert Gordon during Case Management Conference, July 9, 2009.

²⁶ Statements of Tom O'Rourke during Case Management Conference, July 9, 2009 (citing the gradual implementation of behavior management classrooms and the reduced practice of complete school closure in response to relatively contained fighting).

²⁷ *Id.*

²⁸ Tom O'Rourke and Robert Gordon, Site Compliance Report: Ventura, May 2009, p. 7; e-mail of Tom O'Rourke to Aubra Fletcher, August 28, 2009.

²⁹ O'Rourke/Gordon 2008-2009 Report, p. 6.

³⁰ *Id.* DJJ staff have stated that unavoidable scheduling problems contribute to low enrollment in vocational classes, yet the experts have found that DJJ could feasibly alter its vocational education schedules. Statements of Drs. Gordon and O'Rourke during Arrell experts' meeting, August 21, 2009.

³¹ DJJ's policy is to provide vocational education to graduates and youth with GEDs as space permits; the experts report that sufficient space and faculty exist, yet DJJ is not providing this level of education to all eligible youth. *Id.*

recommendations.³² In the area of special education, DJJ has decreased its efforts to monitor IEP development and implementation, apparently because a key staff member moved from education to the court compliance team, and DJJ did not replace her in the position she vacated.³³ Also, schools do not provide all segments and services listed in youths' IEPs, and DJJ has not implemented a system to document IEP progress reviews.³⁴

In restricted settings, education for both regular and special education students remains inadequate.³⁵ The majority of youth in restricted settings do not receive 240 minutes of instruction per day, nor do they have sufficient opportunities to progress toward high school graduation.³⁶ This is due, in part, to inadequate use of staff and lack of appropriate instructional space.³⁷ It is due also to DJJ's generic approach to discipline, which results in restricted setting placements that may be unnecessary.³⁸

The remedial plan requires each school to operate an alternative behavior learning environment (ABLE) classroom for youth who misbehave in school, instead of sending them back to their living units.³⁹ All six schools have opened ABLE classrooms, compared with three last year.⁴⁰ However, staff at some sites do not operate the

³² O'Rourke/Gordon 2008-2009 Report, p. 9; statements of Michael Brady during Case Management Conference, July 9, 2009.

³³ Statements of education experts to the special master during teleconference, July 1, 2009; O'Rourke/Gordon 2008-2009 Report, p. 8.

³⁴ O'Rourke/Gordon 2008-2009 Report, p. 8.

³⁵ *Id.*, p. 6.

³⁶ Statements of Robert Gordon during Case Management Conference, July 9, 2009.

³⁷ O'Rourke/Gordon 2008-2009 Report, p. 6.

³⁸ Statements of Robert Gordon during Case Management Conference, July 9, 2009; *see also* statements of education experts during Stark exit interview, January 14, 2009. For example, a youth in possession of contraband and a youth who assaults staff are identically restricted from school and programs. Statements of Robert Gordon during Case Management Conference, July 9, 2009.

³⁹ *See* Education Services Remedial Plan, p. 30.

⁴⁰ *Compare* O'Rourke/Gordon 2008-2009 Report, Attachment 1, p. 2 *and* O'Rourke/Gordon, Lyle Egan High School Corrective Action Plan Summary, May 18, 2009, pp. 2-3 *with* O'Rourke/Gordon 2007-2008 Report, Attachment B, p. 2.

classrooms in accordance with established guidelines.⁴¹ DJJ is not systematically tracking the operation of each school's ABLÉ classroom.⁴²

The experts continue to stress the importance of youths' transition to the community. Although the experts have praised individual transition coordinators, they stress that DJJ must standardize its transition services across the state.⁴³ DJJ does not obtain community feedback regarding the success of its educational programs.⁴⁴ The experts have called for a system by which DJJ will monitor whether released students are enrolled in school, employed, or returned to state custody, in order to evaluate program effectiveness.⁴⁵ In June 2009, DJJ began the process of standardizing its transition services and has consulted with Drs. Gordon and O'Rourke.⁴⁶ In August 2009, DJJ informed the special master that it will work with Parole Services to collect information about parolees' employment and education activities.⁴⁷

The special master previously reported that DJJ's education policies were fully adequate as of the end of the 2007-2008 school year.⁴⁸ This year, however, the policies fell out of date.⁴⁹ As of the end of the experts' audit round, DJJ still had not updated its special education manual to reflect 2004 federal legislation.⁵⁰ This demonstrates that DJJ

⁴¹ O'Rourke/Gordon 2008-2009 Report, p. 6; e-mail of Tom O'Rourke to special master, July 29, 2009. The operation of the ABLÉ classroom at Stark is discussed in more detail in section II.C.1.f, below.

⁴² O'Rourke/Gordon 2008-2009 Report, p. 6.

⁴³ *Id.*, p. 5.

⁴⁴ *See id.*

⁴⁵ *See id.*

⁴⁶ Statements of Leda Medearis during DJJ Court Compliance Task Force meeting, June 11, 2009. The acting superintendent of education stated that she was coordinating the process and had scheduled a mid-June meeting with some facilities' transition coordinators to establish statewide standards. *Id.*

⁴⁷ Memorandum of Van Kamberian to special master, August 19, 2009 (providing DJJ comments on a draft of this report).

⁴⁸ *See* Eighth Report of the Special Master (February 2009), p. 2.

⁴⁹ O'Rourke/Gordon 2008-2009 Report, pp. 7-8, 10.

⁵⁰ *See* O'Rourke/Gordon 2008-2009 Report, pp. 7-8, 10. DJJ has since provided the experts with an updated version for their review. *See* DJJ Special Education Manual, 2009 (PoP # 479, August 17, 2009). Dr. Gordon has approved the manual and asked DJJ to request its approval by the California Department of

needs to establish and follow a schedule for future policy reviews in order to maintain up-to-date policies.⁵¹ The experts also call for increased attention to policy implementation and enforcement.⁵²

The experts report again this year that stable leadership at the central office level is needed for improvement in all identified problem areas.⁵³ As of the end of the experts' audit round, DJJ still lacked a permanent superintendent of education.⁵⁴ A very qualified acting superintendent was in place, but the experts consider it critical for DJJ to have a permanent superintendent to "provide consistent leadership, direction and supervision of the education program."⁵⁵ After years of unsuccessful recruiting to fill the position, DJJ identified a candidate.⁵⁶ Because the position is a gubernatorial appointment, DJJ provided the candidate's name to the governor and received no response until August 2009.⁵⁷ The newly appointed superintendent of education reportedly began work on September 1, 2009.⁵⁸

Other central office positions in education services also remain vacant. In response to the reduced number of DJJ facilities and shifting job responsibilities, the experts have called for a review and revision of the Educational Services organizational chart.⁵⁹ The experts have also noted that should additional hiring be necessary, DJJ's use

Education, to ensure its compliance with state requirements. ¶ee e-mail of Tom O'Rourke to Aubra Fletcher, August 28, 2009.

⁵¹ O'Rourke/Gordon 2008-2009 Report, pp. 7-8, 10. As of the time of the experts' report, DJJ's policies were not accessible electronically to staff. ¶ee O'Rourke/Gordon 2008-2009 Report, pp. 7-8, 10. DJJ has since corrected this problem. E-mail of Tom O'Rourke to special master, July 29, 2009.

⁵² ¶ee O'Rourke/Gordon 2008-2009 Report, pp. 7-8, 10.

⁵³ ¶ee O'Rourke/Gordon 2008-2009 Report, pp. 5, 11. The experts have identified this as a priority area for DJJ. ¶ee Ninth Report of the Special Master (June 2009), Appendix A (Expert Priorities), p. 1.

⁵⁴ O'Rourke/Gordon 2008-2009 Report, pp. 5, 11.

⁵⁵ ¶d¶, p. 11.

⁵⁶ Statements of Doug McKeever to special master during telephone conference, July 27, 2009.

⁵⁷ ¶d¶; statements of Bob Gordon to Aubra Fletcher during teleconference, September 1, 2009.

⁵⁸ Statements of Bob Gordon to Aubra Fletcher during teleconference, September 1, 2009.

⁵⁹ ¶ee e-mail of Tom O'Rourke to Aubra Fletcher, August 28, 2009.

of limited-term positions will “greatly inhibit[]” its ability to recruit and retain qualified staff.⁶⁰

C. Program Service Day

The purpose of the program service day is to minimize scheduling conflicts among education and other programs and services, while increasing time spent in structured activities.⁶¹ DJJ finalized a program service day policy in early 2009 and implemented it on March 31, 2009,⁶² following a fall 2008 pilot at the Preston facility.⁶³ This is an important step toward increasing youth access to education, treatment programs, and other services. However, many remedial requirements related to the program service day remain to be met.

First, facility schedules do not conform to all aspects of the program service day “statewide standards.” The safety and welfare plan required DJJ to develop statewide standards for facilities prior to the development of their program service day schedules.⁶⁴ DJJ finalized the standards over one month after implementing the program service day policy,⁶⁵ which meant that facilities created their schedules without the benefit of the

⁶⁰ O’Rourke/Gordon 2008-2009 Report, p. 5. The experts are in communication with DJJ’s director of programs regarding both recruitment and the need for a staffing analysis that may yield changes in organizational structure. [redacted] e-mail of Doug McKeever to special master, et al., July 22, 2009.

⁶¹ [redacted] Education Services Remedial Plan, p. 29; Mental Health Remedial Plan, p. 30; Safety and Welfare Remedial Plan, pp. 44-45, 51.

⁶² [redacted] statements of facility managers during DJJ Court Compliance Task Force meeting, April 2, 2009. The program service day policy is found at Appendix B.

⁶³ [redacted] memorandum of Sandra Youngen and Doug McKeever to superintendents, et al., March 25, 2009 (PoP # 368, March 26, 2009).

⁶⁴ Safety and Welfare Remedial Plan, pp. 45, 57; Safety and Welfare Standards and Criteria, items 6.2a-c, 6.6.

⁶⁵ [redacted] Appendix C, DJJ, Program Service Day Standards, May 11, 2009, p. 2 (PoP # 402, May 15, 2009). Draft statewide standards were provided to OSM in January 2008. [redacted] memorandum of Tami McKee-Sani to DJJ Executive Team, January 10, 2008 (PoP #118, January 24, 2008). DJJ did not provide these standards to the education experts. E-mail of Tom O’Rourke to special master, July 29, 2009.

standards.⁶⁶ At least two facilities do not adhere, for instance, to the standard prohibiting the regular removal of youth from the same class and the standard prohibiting facilities from scheduling students for non-educational activities during an instructional period.⁶⁷ Another standard requires that “Hour of Sleep (HS) pill call shall not occur until program activity is completed and shall not begin before 2000 hours and preferably at 2100 hours.”⁶⁸ Multiple living units at Stark schedule the final pill call of the day for as early as 1600 hours.⁶⁹ When the special master raised a concern about this, DJJ provided a one-page, unsigned document indicating a policy to provide HS medications at 2100 hours.⁷⁰ At the request of experts Madeleine LaMarre and Terry Lee, OSM will monitor hour-of-sleep medication administration during the next audit round.⁷¹

More broadly, the new facility schedules do not uniformly achieve the purpose of the program service day: to “allow[] time for all treatment programs, educational programs, medical services, training and routine maintenance needs to be met during the work day/week without loss of mandatory program time”⁷² and to ensure that DJJ

⁶⁶ *See* Seventh Report of the Special Master (April 2008), p. 23. DJJ has informed OSM that the statewide standards “were purposely excluded [from the policy] because we knew they would have to be revised and approved.” Ninth Report of the Special Master (June 2009), Appendix D (Schwartz and Fletcher Report), p. 7. DJJ indicates that facilities “were expected to modify their living unit PSD schedules if necessary once the PSD Standards were approved and sent out.” Memorandum of Van Kamberian to Donna Brorby, September 1, 2009, p. 1 (providing comments on a draft of this report).

⁶⁷ *See* DJJ, Program Service Day Standards, May 11, 2009, p. 2 (PoP # 402, May 15, 2009). Observed schedules at Stark and SYCRCC assign youth to non-educational activities during the school day, which results in the regular removal of youth from the same class. Greater detail is provided below.

⁶⁸ *See id.* The standard continues, “HS meds must be administered after program activity has stopped in order to avoid having youth who received sedating medications engaging in program activities.”

⁶⁹ See, e.g., schedules for the following living units at Stark, provided to the special master on April 29-30, 2009: “A” (1600 hours), “B” (1600 hours), “G” (1600 hours), “H” (1600 hours); “I” and “J” (1800 hours), “K” and “L” (1900 hours), “M” and “N” (1600 hours), and “O” and “R” (1900 hours).

⁷⁰ *See* document entitled “New Dosing Periods,” undated; e-mail of Dr. Laura Poncin to special master, August 12, 2009 (stating that the schedule became effective in March 2008).

⁷¹ *See* e-mail of Terry Lee to Aubra Fletcher, August 13, 2009; e-mail of Made LaMarre to Aubra Fletcher, August 15, 2009. In response to a draft of this report, DJJ’s central office instructed management at Stark to ensure that every living unit’s pill call is scheduled for 2100 hours. *See* memorandum of Van Kamberian to Donna Brorby, September 1, 2009, p. 1 (providing comments on a draft of this report).

⁷² *See* Education Services Remedial Plan, p. 29.

engages youth in “structured activity based on evidence based principles for 40 to 70 percent of their waking hours.”⁷³ Toward these ends, DJJ is to “ensure that coverage by every discipline – including psychologists, case managers, teachers, and other service providers – includes some evening and weekend time.”⁷⁴ Across the state, the work schedules of most mental health, medical, and case management staff leave them with few work hours outside of the school day.⁷⁵

With staff coverage largely confined to weekday school hours, DJJ cannot both provide mandatory program time and comply with the requirement that scheduled education and treatment time not be used for other purposes.⁷⁶ For example, the Sexual Behavior Treatment Program (SBTP) Remedial Plan requires that SBTP youth receive three hours of clinician-led group therapy each week,⁷⁷ and according to national standards, these hours must either be consecutive or broken into two 90-minute sessions.⁷⁸ DJJ cannot achieve compliance with this requirement if it separates the three-hour period into three one-hour sessions.⁷⁹ Stark attempts to fit educational and treatment services into the schedule by allotting a one-hour “treatment period” during the school day.⁸⁰ One of Stark’s three SBTP units nevertheless schedules each youth for a weekly three-hour group session that overlaps with educational classes.⁸¹ Another of Stark’s

⁷³ Mental Health Remedial Plan, p. 30; *see also* Safety and Welfare Remedial Plan, pp. 44-45, 51.

⁷⁴ Safety and Welfare Remedial Plan, p. 45.

⁷⁵ *See* [redacted] statements of Jay Aguas during DJJ Court Compliance Task Force meeting, April 30, 2009.

⁷⁶ *See* Education Services Remedial Plan, p. 29.

⁷⁷ Sexual Behavior Treatment Program Remedial Plan, p. 12.

⁷⁸ Statements of Dr. Barbara Schwartz during central office SBTP site visit, June 8, 2009. Dr. Schwartz has recommended that these sessions in fact be broken into 90-minute increments.

⁷⁹ *Id.*

⁸⁰ *See, e.g.,* multiple Stark and Ventura program service day schedules provided to the special master on April 29-30, 2009. All facilities allot a one-hour treatment period during the school day.

⁸¹ *See* program service day schedules for Stark’s “G” living unit, provided to the special master on April 29-30, 2009.

SBTP units simply fails to provide all required core therapy hours.⁸² Stark's third SBTP unit holds biweekly 90-minute sessions that overlap with youths' lunch hour.⁸³ The SBTP unit at SYCRCC also schedules therapy during meal times.⁸⁴

Similar scheduling problems plague the rest of Stark's living units.⁸⁵ Some youth correctional counselors (YCCs) are scheduled to provide small group sessions during school hours.⁸⁶ Also scheduled during the school day are large group meetings,⁸⁷ sick call,⁸⁸ individual treatment and therapy sessions,⁸⁹ YCC- and case worker-led small groups,⁹⁰ dayroom and outdoor recreational time,⁹¹ pill call,⁹² and an activity listed as "Individualized T[reatment] Interventions."⁹³

⁸² See program service day schedules for Stark's "B" living unit, provided to the special master on April 29-30, 2009.

⁸³ See program service day schedules for Stark's "H" living unit, provided to the special master on April 29-30, 2009. DJJ's acting SBTP coordinator is reportedly addressing the scheduling problems at Stark's SBTP units, which were recently consolidated onto two living units. Statements of Heather Bowlds during meeting with Barbara Schwartz and Aubra Fletcher, August 20, 2009; memorandum of Van Kamberian to Donna Brorby, September 1, 2009, p. 2 (providing comments on a draft of this report).

⁸⁴ See program service day schedule for SYCRCC's SBTP unit, provided to Dr. Schwartz and Aubra Fletcher on May 7, 2009.

⁸⁵ Stark is highlighted as an example here because DJJ has provided more documentation from Stark than from other facilities. The detailed focus on Stark in this report does not necessarily reflect greater problems there than at other facilities with respect to program service day schedules.

⁸⁶ See program service day schedules for Stark living units "A," "C," "D," "E," "F," "I," "J," "K," "L," "M," "N," "O," "R," "W," and "X," provided in April 2009.

⁸⁷ See program service day schedules for Stark living units "C" and "D," provided in April 2009.

⁸⁸ See program service day schedules for Stark living units "C," "D," "E," "F," "I," "J," "K," "L," "O," and "R," provided in April 2009.

⁸⁹ See program service day schedules for Stark living units "C," "D," "E," "F," "I," "J," "O," and "R," provided in April 2009.

⁹⁰ See program service day schedules for Stark living units "C," "M," and "N," provided in April 2009.

⁹¹ See program service day schedules for Stark living units "C," "D," "K," "L," "I," "J," "M," "N," "O," and "R," provided in April 2009. The April 2009 "O" schedule indicates that youth are simultaneously scheduled to attend class in the dayroom and scheduled for dayroom free time. OSM monitor Aubra Fletcher observed this arrangement in practice during the experts' January 2009 audit. Two students watched television while their teacher and two other staff sat in the corner of the dayroom. The teacher informed Ms. Fletcher that it was difficult to convene class because "we're on their turf" when class periods fall within the scheduled free time; he added that the students have the right to refuse to participate in school at any time. The situation was brought to the attention of central office staff and was included in the experts' informal report. Regardless, the April 2009 "O" unit schedule reinforced the problem.

⁹² See program service day schedules for Stark living units "W" and "X," provided in April 2009.

⁹³ See *id.*

DJJ has acknowledged that in order for the program service day to be successful, “staff in various disciplines[,] including medical and mental health[,] . . . need to be more available to youth during non-school hours,” including evenings and weekends.⁹⁴ Central office personnel have stated that DJJ cannot require staff to work different hours without renegotiating various bargaining agreements.⁹⁵ DJJ negotiated extended working hours for case managers in May 2009; these staff now work until 8:00 p.m. one day each week and one weekend day per week.⁹⁶ DJJ is still considering to what extent it will renegotiate work hours for other job classifications.⁹⁷ The current staffing plan that DJJ will announce to its bargaining units includes later hours for some mental health staff on sexual behavior treatment program units and intensive treatment program (ITP) units.⁹⁸ The plan does not include weekend hours for these staff. It remains unclear why DJJ cannot alter the schedules of mental health clinicians without renegotiating their union contract: one facility has already required its psychologists to lead therapy groups after school from 4:00 p.m. to 5:30 p.m.⁹⁹

Even where educational time does not conflict with other activities, staff adherence to schedules falters. The education experts have discussed with DJJ program monitors the need to require all staff and all facilities to follow the program service day

⁹⁴ [redacted] memorandum of Van Kamberian to Donna Brorby, September 1, 2009, pp. 1-2 (providing comments on a draft of this report).

⁹⁵ [redacted] statements of Jay Aguas during DJJ Court Compliance Task Force meeting, April 30, 2009.

⁹⁶ Statements of Erin Peel during central office SBTP site visit, June 8, 2009. This includes all staff classified as “case managers” and those “case work specialists” who function as case managers. Statements of Jay Aguas during DJJ Court Compliance Task Force meeting, April 30, 2009. The change also appears to include parole agents. Memorandum of Van Kamberian to Donna Brorby, September 1, 2009, p. 1 (providing comments on a draft of this report).

⁹⁷ [redacted]

⁹⁸ [redacted] DJJ, Draft Business Rules for Housing Unit Staffing, June 9, 2009; memorandum of Van Kamberian to Donna Brorby, September 1, 2009, p. 1 (providing comments on a draft of this report).

⁹⁹ [redacted] program service day schedule for SYCRCC’s SBTP unit, provided to Dr. Schwartz and Aubra Fletcher on May 7, 2009.

schedule.¹⁰⁰ The medical experts have noted that youth frequently utilize sick call services during the school day for minor complaints that would not result in a similar appointment in the community.¹⁰¹ The medical experts recommend that DJJ minimize this problem by scheduling appointments for non-acute conditions (e.g., acne, dry skin) after school hours.¹⁰² DJJ leadership has noted and is addressing such problems at O.H. Close in particular.¹⁰³

D. Heman G. Stark

Among the DJJ facilities, Stark has consistently been the least successful in implementing the education remedial plan's requirements. DJJ's central office adopted a targeted approach to the problem this year, in response to courtroom discussions of education services at Stark. Though DJJ recently announced Stark's planned closure, the situation of educational services there bears continued attention for a variety of reasons. Stark still houses youth in need of educational services, and no date is set for its closure. Also, the marginal improvement in education at Stark reflects central office's limited capacity to effect major change in its facilities. After seven months of focused attention on education at Stark, absence rates still soared, most youth in restricted settings lacked access to the required 240 minutes of daily instruction, the behavior management

¹⁰⁰ E-mail of Tom O'Rourke to Donna Brorby, July 29, 2009.

¹⁰¹ E-mail of Madeleine LaMarre to Aubra Fletcher, August 3, 2009.

¹⁰² *See id.*

¹⁰³ Statements of Joan Loucraft during Case Management Conference, July 9, 2009. A teacher at O.H. Close reported to central office that medical and mental health absences from school have spiked since the implementation of program service day schedules. Statements of O.H. Close teacher during DJJ Court Compliance Task Force meeting, May 21, 2009. According to him, the facility was averaging 300 "treatment absences" per month over a three-month period. He noted that the facility's population is only 180 youth. Part of the problem may be in attendance data collection, but the teacher also recounted an example in which a clinician individually called ten youth out of class, a few minutes apart, suggesting that a treatment group was unofficially held during class time.

classroom was still poorly operated, and not all teachers were using lesson plans or adequate syllabi.

1. Response to the Experts' January 2009 Stark Report

In February 2009, plaintiff's counsel provided the Court with the education experts' informal report on H.G. Stark.¹⁰⁴ The report was discussed during the February 20, 2009 Case Management Conference, and thereafter the parties agreed that, *inter alia*, DJJ would prepare a corrective action plan (CAP) in consultation with various court experts, plaintiff's counsel, and the special master.¹⁰⁵ The parties also agreed that 45 days later, CDCR's Office of Audits and Compliance (OAC) would review the Stark facility's progress in implementing the CAP.¹⁰⁶ OAC would then formally audit Stark's compliance with the CAP at the 90-day point.¹⁰⁷ DJJ agreed to provide the Court, the experts, and the special master with the OAC audit report by July 20, 2009.¹⁰⁸ DJJ provided the report on August 3, 2009.¹⁰⁹

The special master, her staff, plaintiff's counsel, and the education experts visited Stark after the CAP was approved by the experts and finalized in early April.¹¹⁰ The

¹⁰⁴ *See* e-mail of Sara Norman to Department 21, Alameda County Superior Court, et al., February 17, 2009.

¹⁰⁵ Letter of Deputy Attorney General Todd Irby to Department 21, Alameda County Superior Court, February 27, 2009, p. 1. A copy of the corrective action plan is attached to this report as Appendix D.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*, pp. 1-2.

¹⁰⁹ *See* CDCR Office of Audits and Compliance, Compliance Review: Heman G. Stark Youth Correctional Facility, June/July 2009 (PoP #474, August 3, 2009) [hereinafter "OAC Compliance Report: Stark CAP"]. As of this writing, DJJ has not filed the report with the Court. The special master does not attach it here due to its length but summarizes its contents below.

¹¹⁰ *See* Appendix D, Education Audit of Lyle Egan High School Corrective Action Plan. DJJ provided the final CAP to the special master and experts on April 6, 2009, and the plan took effect on April 8, 2009. *See* e-mail of Doug Ugarkovich to Bob Gordon, et al., April 6, 2009. Monitor Aubra Fletcher visited Stark on April 21, 2009 and thereafter provided a memorandum based on her fact-gathering to the relevant experts and parties. *See* memorandum of Aubra Fletcher to Donna Brorby, April 28, 2009; e-mail of Aubra Fletcher to William Kwong, et al., April 28, 2009. The special master gathered further information at Stark on April 30, 2009 and provided a memorandum to the education experts. *See* memorandum of Donna Brorby to education experts, May 11, 2009; e-mail of Donna Brorby to education experts, May 12, 2009.

experts' May 18, 2009 visit coincided with the beginning of the OAC's 45-day audit. OAC monitors returned to Stark on June 29 through July 2, 2009.¹¹¹ Below is a summary of the experts' findings and the OAC's 90-day report, organized according to the eight key areas identified in the CAP.

All students sit out a diploma or will attend school unless the absence is verified for a medical condition or the student poses an immediate threat to safety.

The experts and OAC found Stark's school attendance procedures unsatisfactory.¹¹² Four hundred school and custody staff remained to be trained on the attendance procedures as of July 2009, and the facility had not yet developed a lesson plan for the training.¹¹³ In the meantime, communication between custody staff and teachers regarding absences was lacking.¹¹⁴

Other identified problems included inconsistent attendance counts and failure to provide substitute teachers.¹¹⁵ As late as July, facility staff were still allowing students who refused to attend school to watch television in living unit dayrooms.¹¹⁶ The experts have long denounced this practice to central office and facility management, who have failed to take necessary action.¹¹⁷

¹¹¹ OAC Compliance Report: Stark CAP, p. 1.

¹¹² See Tom O'Rourke and Robert Gordon, Lyle Egan High School Corrective Action Plan Summary, May 18, 2009, p. 1 [hereinafter O'Rourke/Gordon, Stark CAP Report]; OAC Compliance Report: Stark CAP, p. 1.

¹¹³ OAC Compliance Report: Stark CAP, pp. 1, 8.

¹¹⁴ O'Rourke/Gordon, Stark CAP Report, p. 1; OAC Compliance Report: Stark CAP, p. 1.

¹¹⁵ O'Rourke/Gordon, Stark CAP Report, pp. 1-2; OAC Compliance Report: Stark CAP, p. 2.

¹¹⁶ OAC Compliance Report: Stark CAP, p. 2.

¹¹⁷ It is clear that living unit staff are not solely responsible. OSM staff took note of a particular comment by Stark management during a March 12, 2009 task force meeting. When asked whether televisions were now turned off during the day, Stark's current superintendent replied that the facility was "moving towards that." More than three months later, staff were still leaving the televisions on. OAC attributed this to a lack of adequate staff training regarding school refusers. See OAC Compliance Report: Stark CAP, p. 10. OAC's report seems to recommend that policy require school refusers to be kept in their rooms during school hours. See *id.* OSM urges DJJ to consult with the education, mental health, and safety and welfare experts before mandating that school refusers remain isolated in their cells for hours at a time.

“Absentee rates of seven percent or more will result in quarterly corrective action plans until the absentee rate drops below seven percent.”

Stark’s school principal reported that half of all school-eligible students were absent on April 1, 2009 and almost one-third of school-eligible students were absent on April 30, 2009.¹¹⁸ However, the principal’s hand-calculated numbers and electronically available data differed significantly, and in May the experts urged Stark to address this problem immediately.¹¹⁹

OAC’s July audit team did not report on attendance data or address its accuracy. The absence rate appears still to have exceeded seven percent, based on OAC’s non-compliance finding; the report noted that facility administration is not preparing corrective action plans when the absence rate of seven percent or more.¹²⁰

“Appropriate criteria for the exclusion of students from school shall be devised. Schools shall maintain a daily do-ument listing all excluded students and the reason for and duration of their exclusion.”

The experts and OAC found Stark’s attendance procedures for off-campus schools unsatisfactory.¹²¹ Many staff were not following the procedures, because of lack of training and because not all staff had even seen the procedures.¹²² The system for monitoring staff compliance with the procedures was also unsatisfactory.¹²³

¹¹⁸ O’Rourke/Gordon, Stark CAP Report, p. 1. The experts recommended that all facilities use WIN to track education attendance, and DJJ’s central office has so instructed facility management. E-mail of Tom O’Rourke to special master, July 29, 2009; statements of Doug McKeever during DJJ Court Compliance Task Force meeting, May 21, 2009.

¹¹⁹ *Id.*

¹²⁰ *See* OAC Compliance Report: Stark CAP, p. 1. OAC attributed this to the superintendent and principal’s inability to coordinate their schedules to meet about a corrective action plan. *See id.*, p. 6.

¹²¹ *See* O’Rourke/Gordon, Stark CAP Report, p. 2; OAC Compliance Report: Stark CAP, p. 2.

¹²² *See* OAC Compliance Report: Stark CAP, pp. 2, 12. Four hundred staff remained to be trained on the attendance procedures, among them staff who are responsible for delivering off-campus school attendance data to the school attendance coordinator. *Id.*, pp. 13-20.

¹²³ O’Rourke/Gordon, Stark CAP Report, p. 2; OAC Compliance Report: Stark CAP, p. 2.

disproportionate coordination of schedules in order that students do not miss class for non-educational activities

As of May 2009, at least two restricted program youth were late to class each day because of their work schedules.¹²⁴ On the day of the experts' visit, two classes, offered on two different restricted living units, were canceled due to teacher absences.¹²⁵ Although a substitute teacher was available, the school did not assign him to either of the cancelled classes.¹²⁶ The school also could not verify that the class's special education students would receive required compensatory instruction hours.¹²⁷ In July, OAC monitors assigned a "partial compliance" rating and observed students being held back from school to attend treatment groups.¹²⁸ Scheduling conflicts are discussed in greater detail in this report's "Program Service Day" section, above.

instructional teachers must develop incentives for increased school attendance

In May, the experts noted progress in this area.¹²⁹ The experts encouraged administrators and staff to increase efforts to encourage students to attend school.¹³⁰ OAC did not report on this issue.¹³¹

operate an alternative behavior management classroom

The experts and OAC found that Stark was not operating the ABLE classroom according to established procedures.¹³² Referring teachers were not assigning students

¹²⁴ See O'Rourke/Gordon, Stark CAP Report, p. 2.

¹²⁵ *id.*

¹²⁶ *id.*; e-mail of Tom O'Rourke to Aubra Fletcher, August 28, 2009.

¹²⁷ O'Rourke/Gordon, Stark CAP Report, p. 2.

¹²⁸ OAC Compliance Report: Stark CAP, pp. 2, 21.

¹²⁹ See O'Rourke/Gordon, Stark CAP Report, p. 2.

¹³⁰ *id.*

¹³¹ See generally OAC Compliance Report: Stark CAP.

¹³² See *id.* p. 2; O'Rourke/Gordon, Stark CAP Report, p. 2.

appropriate academic work, and the ABLE teacher accepted referred students without assigned work.¹³³

“School administrators and living unit supervisors must use a standardized format for reporting educational progress and data on students in restricted placements and must utilize a standardized checklist to ensure students in restricted programs receive mandated educational services.”

The experts and OAC found that significant numbers of students attending school on the restricted living units were not receiving 240 minutes of daily instruction.¹³⁴ For example, in July only six of the 40 youths enrolled in school on high-risk living units “S” and “T” were enrolled for 240 minutes.¹³⁵ Some of these enrolled youth were not actually attending their assigned classes.¹³⁶

Many of the students deprived of vocational education opportunities are housed on restricted units.¹³⁷ Stark offered no vocational or GED classes to the 93 students enrolled in restricted living unit classrooms.¹³⁸ Staff assigned to four restricted living units were not completing semi-annual high school graduation plans for each student.¹³⁹

As of July, Stark had no policy indicating how and when students housed in the Correctional Treatment Center are to receive educational services.¹⁴⁰

“Lack of course syllabi, units of instruction and lesson plans by teachers.”

The OAC found that teachers did not have adequate syllabi, units of instruction, or lesson plans.¹⁴¹ The experts observed that some teachers did not understand what

¹³³ O’Rourke/Gordon, Stark CAP Report, pp. 2-3.

¹³⁴ *See id.*, p. 3; OAC Compliance Report: Stark CAP, p. 3.

¹³⁵ OAC Compliance Report: Stark CAP, p. 3

¹³⁶ *Id.*

¹³⁷ Statements of Tom O’Rourke during Case Management Conference, July 9, 2009. Of the 215 school-eligible students at Stark, only 52 students were enrolled in one of the fifteen vocational courses currently offered at the facility, which the education experts find “unacceptable.” *See* O’Rourke/Gordon, Stark CAP Report, p. 3.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Memorandum of Richard Krupp to Elverta Mock, July 31, 2009 (PoP #475, August 3, 2009).

constitutes a lesson plan.¹⁴² And though one interviewed administrator had conducted the required “walk through observations” of these teachers, he had not documented whether lesson plans were developed or in place in the classrooms.¹⁴³

2. Effects of the Transfer of Adult Prisoners to Stark

In the wake of the August 8-9, 2009 riot at the California Institution for Men (CIM) in Chino, CDCR transferred more than 600 adult prisoners to Stark.¹⁴⁴ All DJJ youth remained inside their living units until the CIM transfers were complete and all adult prisoners were locked down.¹⁴⁵ Youth could not attend classes at Stark’s main school for a week.¹⁴⁶ School was disrupted for a longer period of time on most of Stark’s restricted unit satellite schools.¹⁴⁷ Many of Stark’s high-risk youth in restricted settings currently receive about 15 minutes of instruction per day.¹⁴⁸

By assigning the CIM prisoners to living units in “building three,” DJJ eliminated access to newly constructed classrooms meant for Stark’s high-risk, restricted program

¹⁴¹ See OAC Compliance Report: Stark CAP, p. 3

¹⁴² See O’Rourke/Gordon, Stark CAP Report, p. 3 (“One teacher referred to work sheets placed on the students’ desks as his ‘lesson plan.’ A second teacher presented page numbers written in her grade book as her lesson plans.”).

¹⁴³ See p. 4.

¹⁴⁴ See “Hundreds Hurt in California Prison Riot,” New York Times, August 9, 2009, available at http://www.nytimes.com/2009/08/10/us/10prison.html?_r=1&scp=3&sq=california%20institution%20for%20men&st=cse; statements of Bernard Warner during teleconference, August 11, 2009. Mr. Warner indicated that CDCR planned to transfer a total of more than 700 adult inmates to Stark by the following day. See

¹⁴⁵ Statements of Bernard Warner during teleconference, August 11, 2009. Youth in need of medical services were escorted to the appropriate building. See

¹⁴⁶ As of August 11, 2009, teachers were reportedly providing youth homework assignments on their living units. See At that time, DJJ leadership did not know how many minutes of instruction per day youth were receiving. See The main school reopened on August 17, 2009. Statements of Doug McKeever during teleconference, August 18, 2009; statements of Michael Brady during Arrell experts’ meeting, August 21, 2009.

¹⁴⁷ The Intensive Treatment Program’s on-unit school reportedly resumed operation on August 11, 2009, but youth in high-risk restricted settings continued to lack access to full educational programming. See e document entitled “California Institution for Men Crisis,” undated (provided August 18, 2009).

¹⁴⁸ Statements of Michael Brady during Arrell experts’ meeting, August 21, 2009.

youth.¹⁴⁹ Stark has been unable in the past to provide a full school schedule to restricted units without classrooms.¹⁵⁰ It appears that no youth in high-risk, restricted settings received 240 minutes of instruction per day in the first week following the CIM riot.¹⁵¹

School access has improved for some but not all of these youth. DJJ represents that the high-risk youth now housed on “N” have adequate instructional space.¹⁵² Some of the students now housed on “O” and “R” began attending classes in a segregated area of the main school on August 20, 2009.¹⁵³ As of that date, five other “O” and “R” students were attending school in their living unit kitchen, reportedly for security reasons. Three others were receiving a “minimum of 15 minutes” of instruction each day on the living unit. The superintendent, principal, and assistant principal could not confirm whether any educational services were being provided to a remaining three “O” and “R” youth.

¹⁴⁹ Details of the initial transfers are included as Appendix E, document entitled “Heman G. Stark Youth Correctional Facility.” In summary, CIM prisoners are housed in units “S” through “Z.” DJJ had constructed new classrooms on living units “S,” “T,” “U,” and “V” to improve access to school services for many of the restricted setting youth. Statements of Susan Harrower during Case Management Conference, July 9, 2009. In the initial moves, DJJ consolidated the special management program (SMP), formerly “K” and “L,” on “K.” Restricted high-risk youth from “S” and “T” were then moved to “L.” Restricted high-risk youth from “Y” and “Z” were moved to “N,” which had been vacant and is adjacent to the substance abuse program on “M.” On about August 19, 2009, DJJ moved 66 youth from “O and R” to “B,” which had been vacant (exceeding the *Carrell* limit by 28 youth). *See* Safety and Welfare Remedial Plan, p. 45; e-mail of Michael Brady to Aubra Fletcher, August 31, 2009. DJJ then moved the high risk youth from “L” to “O” and “R” and re-divided the youth on “K” between “K” and “L.” *Id.*

¹⁵⁰ *See* *Generall* *de* *Tom O’Rourke and Robert Gordon, Site Compliance Report: H.G. Stark, January 2009.*

¹⁵¹ During an August 11, 2009 teleconference, DJJ leadership could not confirm whether youth in restricted settings were receiving educational services as usual. *See* statements of Bernard Warner and Doug McKeever during teleconference, August 11, 2009. As of August 18, 2009, youth in at least some restricted settings (DJJ leadership were uncertain) were “still” unable to attend school because of space limitations. *See* statements of Doug McKeever and Sandra Youngen during teleconference, August 18, 2009.

¹⁵² *See* statements of Michael Brady during teleconference, August 18, 2009; e-mail of Michael Brady to Sara Norman, et al., August 18, 2009.

¹⁵³ Statements of Michael Brady during *Carrell* experts’ meeting, August 21, 2009. The information contained in the remainder of this paragraph is based on this source.

The twenty non-graduates on “K” and “L” were each receiving a “minimum of 15 minutes” of instruction per day as of August 20, 2009.¹⁵⁴ DJJ reports that it plans to provide 240 minutes of daily instruction to these students by establishing four classroom “areas” in two day rooms. The special master doubts that this plan will be implemented or that it can be successful. First, facility staff do not allow large groups of special management program youth in the dayrooms at the same time.¹⁵⁵ Second, the dayrooms are not large enough for so many classes.¹⁵⁶

The space limitations in restricted units, while temporary, are indefinite. Chief Deputy Secretary Warner initially informed OSM and plaintiff’s counsel that CDCR intended to transfer the inmates out of Stark on August 31, 2009 at 2:00 p.m.¹⁵⁷ Mr. Warner stated on August 18 that CDCR’s plan remained unchanged, according to information provided to him.¹⁵⁸ On August 27, 2009, Mr. Warner announced that the entire Stark facility would be converted to an adult prison, though no time frame had been set.¹⁵⁹ He promised to work closely with the *Carrell* experts during the transition.¹⁶⁰ In the meantime, OSM and the education experts will continue to monitor the status of education services at Stark.

IV. ACCESS FOR YOUTH WITH DISABILITIES

From September 2008 through April 2009, the *Carrell* expert in physical and programmatic access for youth with disabilities, Logan Hopper, conducted his fourth

¹⁵⁴ Statements of Michael Brady during *Carrell* experts’ meeting, August 21, 2009. The information contained in the remainder of this paragraph is based on this source, unless otherwise noted.

¹⁵⁵ Statements of facility staff and youth, and observations of OSM monitors, during Stark site visits, January 2009 and April 2009.

¹⁵⁶ *Carrell* statements of “W” and “X” teacher to the special master during Stark site visit, April 30, 2009.

¹⁵⁷ *Carrell* statements of Bernard Warner during teleconference, August 11, 2009 (citing statements of CDCR Secretary Matthew Cate).

¹⁵⁸ *Carrell* statements of Bernard Warner during teleconference, August 18, 2009.

¹⁵⁹ *Carrell* statements of Bernard Warner during teleconference, August 27, 2009.

¹⁶⁰ *Carrell id.*

round of audits. His report on those audits is attached as Appendix F. As in the past, the report begins with a comprehensive overview of findings. At DJJ's request, the expert included a new column, headed "recommendations," in the grid section of the report. Text in this column directs DJJ on how to move toward compliance with specific requirements of the Wards With Disabilities Plan ("the WDP plan" or "remedial plan").

Since the expert's last report, four of DJJ's original disabilities coordinators ("WDP coordinators") have left their positions.¹⁶¹ As a result, Stark and SYCRCC both lacked an active WDP coordinator for several months during the past year, Ventura had a succession of three different coordinators, and O.H. Close relied on the central office WDP manager to fulfill the WDP coordinator's duties.¹⁶² As of May 2009, DJJ had hired or assigned WDP coordinators at all facilities.¹⁶³ DJJ has scheduled training sessions for the coordinators in August 2009 with the disabilities expert and an outside disability advocate.¹⁶⁴ The loss of trained, experienced coordinators impeded progress in this remedial plan during the last year.¹⁶⁵ DJJ needs to train and support the new coordinators and to develop procedures to avoid the lengthy vacancies the program faced last year.¹⁶⁶

In spite of the coordinator vacancies, every facility increased its percentage of substantial compliance ("SC") ratings since the previous audit.¹⁶⁷ Central office also increased its percentage of SC ratings. This is notable, given that the percentage of

¹⁶¹ Appendix F (Hopper report), pp. 2, 8.

¹⁶² *Id.*

¹⁶³ *Id.*, p. 8.

¹⁶⁴ Statements of Sandi Becker during Case Management Conference, July 30, 2009.

¹⁶⁵ Statements of Logan Hopper to Zack Schwartz, June 10, 2009. In his report, Mr. Hopper states that "the extent to which the [youth with disabilities] program has progressed at each facility is almost directly proportional to the length of tenure of the WDP facility coordinator." Appendix F (Hopper report), p. 2. As an example, staff vacancies and turnover made it difficult to monitor the disciplinary and grievance processes for disability issues. *Id.*, p. 38 (item 71).

¹⁶⁶ *Id.*, pp. 8 (item 5), 24 (item 36), 25 (item 39).

¹⁶⁷ Information in this paragraph is based on DJJ Quarterly Report (July 31, 2009). Stark's increase in substantial compliance (two percent) was marginal, and the smallest of any facility. *Id.* This was also true in the previous audit. Eighth Report of the Special Master (January 2009), p. 9, n.34.

central office items in substantial compliance had decreased during the prior two audits. The number of central office items in substantial compliance is now comparable to the first audit.¹⁶⁸ The number of central office items in partial compliance has increased since the first audit.¹⁶⁹

DJJ has shown improvement in several areas designated by the disabilities expert as priorities for the past fiscal year.¹⁷⁰ For example, DJJ improved its system for documenting the mental and physical impairments of youth with disabilities and the accommodations provided to them.¹⁷¹ The WIN database continues to be upgraded to record disability-specific information, a process that has required collaboration between IT and WDP staff.¹⁷² DJJ is required to study whether a residential program for youth with developmental disabilities is needed; the study is still at a very early stage, but DJJ has convened an interdisciplinary group¹⁷³ and has met twice with the disability expert on the topic.¹⁷⁴ DJJ continues to train staff on disability awareness, and recently contracted with an outside disability advocate to review and improve the training, as required by the remedial plan.¹⁷⁵ Intake staff's identification of impairments has "improved dramatically," although their work is undercut by poor documentation from committing

¹⁶⁸ Twenty items are in substantial compliance, as compared to 21 during the first audit. *See* DJJ Quarterly Report (July 31, 2009).

¹⁶⁹ Ten items are in partial compliance, as compared to six during the first audit. *Id.*

¹⁷⁰ *See* Ninth Report of the Special Master (June 2009), Appendix A (Experts' Priorities for Fiscal Year 2008-2009). Out of 11 high-priority items, ratings for six improved, either from PC to SC or NC to PC. *See* DJJ Key Indicators Report (July 8, 2009). The ratings on two high-priority items ratings declined, and three showed no change. *See i**id.*

¹⁷¹ Appendix F (Hopper report), p. 15 (item 14).

¹⁷² *Id.*, p. 54 (item 110).

¹⁷³ Statements of Sandi Becker at case management conference, July 30, 2009. This was not true as of September 2008. *See* Eighth Report of the Special Master (January 2009), p. 12.

¹⁷⁴ *Id.*, p. 17 (item 21). The disability expert notes that an initial meeting was "non-productive, and had little follow-up," but states that a later meeting was "productive, and signaled the beginning of what should be a responsible study on the topic." *Id.*

¹⁷⁵ *Id.*, pp. 4-5, 19 (item 25); letter of Todd Irby to Logan Hopper, June 30, 2009; *Ob**pare* Appendix F (Hopper report), pp. 4-5, 19 (item 25) *it* *Eighth Report of the Special Master (January 2009), p. 9.*

courts.¹⁷⁶ In addition – although enough progress had been made on this area by last year that it was not among the disability expert’s priorities – DJJ has nearly finished the required architectural modifications to ensure physical access for youth with disabilities, and has in fact exceeded the remedial plan’s requirements for removing architectural barriers.¹⁷⁷

In other priority areas, progress was limited by a lack of direction from central office, including other program areas that must work with the disabilities program. Facility medical, psychiatric, and education staff use inconsistent methods to identify youth with disabilities, as there are few policies or procedures in this area; guidance to staff over the last year consisted of one memo on identifying asthmatic youth.¹⁷⁸ Central office has not developed policies to prevent placement in restrictive programs based on mental or physical disability, or manifestations of it.¹⁷⁹ Although procedures for self-referrals to the disabilities program have improved, instructions are needed to ensure that forms are used consistently at all sites.¹⁸⁰ Similarly, although there are few indications that youth with disabilities are excluded from special programs (e.g. food service vocational programs) without cause, not all programs have developed procedures to prevent this.¹⁸¹

¹⁷⁶ Appendix F (Hopper report), pp. 21-22 (items 29, 31). Mr. Hopper recommends that DJJ “take more proactive measures to compel the courts to provide sufficient documentation.” *Id.* p. 21 (item 29).

¹⁷⁷ *Id.* pp. 3, 56-57.

¹⁷⁸ *Id.* p. 26 (item 41); statements of Logan Hopper to Zack Schwartz, June 10, 2009. The special master’s previous report on disabilities also observed that “facility medical, psychiatric and education staff are not sufficiently guided by policies and procedures or other central office direction, though they are involved in identifying disabled youth.” *See* Eighth Report of the Special Master (January 2009), p. 11.

¹⁷⁹ Appendix F (Hopper report), p. 16 (item 17).

¹⁸⁰ *Id.* p. 28 (item 46).

¹⁸¹ *Id.* p. 50 (item 98).

Progress has also been limited by a lack of coordination between disabilities and other program areas.¹⁸² Facility staff other than high-level supervisors and WDP staff demonstrate “sporadic” understanding of and commitment to the goals of the disabilities remedial plan.¹⁸³ Security procedures offer a good example of this disconnect. Since Mr. Hopper’s last report, DJJ has revised its use of force policy to require accommodations for youth with disabilities.¹⁸⁴ However, these procedures have not been fully implemented at any facility.¹⁸⁵ There is little documentation demonstrating that line staff provide accommodations and seek to de-escalate conflicts.¹⁸⁶ Plaintiff has recently asked the disability expert, along with the mental health and safety and welfare experts, to investigate continuing reports of improper use of force on mentally ill and developmentally disabled youth.¹⁸⁷

IV. MEDICAL CARE

After the special master filed her ninth report, the medical experts revised their report that was attached as Appendix C to the ninth report. The medical experts’ revised second report is attached as Appendix G. This version of the experts’ report supersedes the prior version. The changes were not substantial and do not affect the findings and conclusions of the special master at pages 2-8 of the ninth report.

¹⁸² *Id.*, pp. 2-3.

¹⁸³ *Id.*, p. 3. For example, the disability expert notes that medical and psychiatric staff are not always aware of which youth are in the disabilities program. Statements of Logan Hopper to Zack Schwartz during teleconference, June 10, 2009.

¹⁸⁴ *Id.*, *supra* Eighth Report of the Special Master (January 2009), p. 10 *id.* revised use of force policy (PoP #388, April 20, 2009), pp. 26-28.

¹⁸⁵ Appendix F (Hopper report), pp. 6, 31 (item 53).

¹⁸⁶ *Id.*

¹⁸⁷ *See* letter of Sara Norman to the special master, Logan Hopper, Barry Krisberg, Eric Trupin, and Terry Lee, July 24, 2009.

V. CONCLUSION

The special master respectfully submits this report.

Dated: September 3, 2009

Donna Brorby, Special Master