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SUPERIOR COURT OF CALIFORNIA  
CITY AND COUNTY OF ALAMEDA

MARGARET FARRELL,	)	Case No.: RGO3079344
	)	
Plaintiff,	)	EIGHTH REPORT OF SPECIAL MASTER
	)	
vs.	)	
	)	
MATTHEW CATE,	)	
	)	
Defendant.	)	

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Pursuant to paragraph 28 of the November 2004 Consent Decree, the special master submits for filing the attached report. The special master's report and its appendices were circulated to the parties' in draft form. This final version reflects consideration of the parties' comments.

Dated: February 13, 2008

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Donny Brorby  
Special Master

SUPERIOR COURT OF CALIFORNIA  
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MARGARET FARRELL, )  
 ) CASE NO. RG03079344  
 Plaintiff, )  
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 MATTHEW CATE, )  
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 Defendant. )  
 \_\_\_\_\_ )

EIGHTH REPORT OF SPECIAL MASTER

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### APPENDICES

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Appendix C:	Schwartz, Ph.D., <i>California Department of Corrections: Division of Juvenile Justice Sex Behavior Treatment Program Audit 3</i> , (August, 2008)

## I. INTRODUCTION

This is a belated report presenting expert reports in the areas of education, youth with disabilities, and the sexual behavior treatment program. The expert reports were provided to the parties in mid-2008 and are appended. The reports are based on monitoring done during fiscal year 2007-08. To the extent that they document systemic issues, they are consistent with the evidence that was presented during the hearing on the order to show cause last year because they are based on monitoring during the time period that was subject of the hearing. The expert reports are not informative of what has happened since the hearing, though this special master's report provides some updated facts. The full update of these expert reports will be in the same experts' next reports, which the special master expects will be completed this spring or summer. The experts have completed a number of informal facility site visit reports since the period mid- and even late-2008, the results of which will be reflected in the "key indicators" or "dashboard" report that DJJ will file before the next case management conference.

Pursuant to the procedures that the parties, experts, and special master developed to guide the monitoring and reporting, the special master provided a draft of this report and the appended experts' reports for the parties' comments. The special master, monitor, and experts submit these final reports after consideration of the parties' comments.

## II. EDUCATION

The Consent Decree education experts, Drs. Thomas O'Rourke and Robert Gordon, conducted their third round of compliance audits at all DJJ facilities during the period October 2007 through March 2008. Their third "Summary Education Program

Report” with two attachments is appended to this report as Appendix A.<sup>1</sup> The summary report provides an overview of DJJ’s progress and challenges under each section of the Education Services Remedial Plan (“education plan”). Attachment A to the report details the education experts’ findings with respect to each education plan compliance criterion. Attachment B displays the compliance status for each facility for each compliance criterion. The education experts reviewed and approved this section of the special master’s report.<sup>2</sup>

DJJ’s education policies are fully adequate and up-to-date as of the end of the 2007-2008 school year.<sup>3</sup> The special master previously has reported on DJJ’s difficulties with policy development and promulgation in other areas.<sup>4</sup> It is particularly notable, therefore, that DJJ’s education policies are in good shape.

DJJ quarterly reports now track expert findings relative to the *Farrell* standards and criteria. As DJJ reports, the experts’ three annual reports show a trend of increasing compliance with education plan standards and criteria.<sup>5</sup>

The special master reviewed the experts’ most recent facility-by-facility and item-by-item compliance report against their equivalent report for last year.<sup>6</sup> Of those findings that changed since the previous report, the majority reflected improvements in compliance. The special master also reviewed the education experts’ commendations and

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

<sup>2</sup> E-mail of Gordon to the special master, September 16, 2008.

<sup>3</sup> See, Appendix A (O’Rourke/Gordon report), pp. 9-10.

<sup>4</sup> See, Seventh Report of the Special Master (April 2008), pp. 19-25.

<sup>5</sup> See, DJJ Quarterly Report (July 31, 2008), pp. 16-18. The special master’s office has reviewed defendant’s charts and calculations and has found them to be substantially correct.

<sup>6</sup> The education experts’ report for last year, 2006-2007, is Appendix D to the Fourth Report of the Special Master. Both the 2006-2007 report and the most recent report, included here as Appendix A, each have three sections. The first section is a summary report. Each report’s Attachment A provides a more complete description of each of the standards and criteria. Each report’s Attachment B is a facility-by-facility and item by item compliance report

recommendations for this year against the prior year's commendations and recommendations.<sup>7</sup> Again, the changes reflect improvements in compliance.

The experts noted many areas of improvement in their report.<sup>8</sup> DJJ now employs a sufficient number and type of substitute teachers at five of seven facilities, compared with two of eight facilities last year. DJJ has established a teacher recruitment program and filled some vacant school psychologist positions. Three schools made progress towards semi-annual reviews of high school graduation plans for individual students, with only one school regressing. Central office staff provided training and technical assistance to sites that need to provide educational services to restricted housing units. At three facilities, site-based administrators consistently conducted quarterly teacher observations to document evidence of instructional planning, use of course syllabi, and delivery of the state approved curriculum, with only four facilities in noncompliance; no facility was substantially compliant with this requirement a year ago, when three sites were partially compliant and five sites were noncompliant. School sites have significantly improved their records of enrolling newly arriving students within four days and requesting their school records. DJJ has run a pilot program ("ABLE") for managing some youth who misbehave in school in a structured classroom, instead of suspending them from school. Some facilities have begun to provide distance learning opportunities. Central office personnel have made exceptional efforts to provide special education training statewide and to maintain training records. Regional program specialists have

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<sup>7</sup> This year's commendations and recommendations are Section III of their attached 2007-2008 summary report, Appendix A. Last year, the education experts' Section III only included their recommendations. The experts provided commendations to the special master in a memorandum that was not filed.

<sup>8</sup> The summary of improvements in this paragraph is based on Appendix A (O'Rourke/Gordon 2007-2008 report), pp. 5-9 (Section III) and Attachments A and B, criteria items 1.4, 2.3, 2.5, 2.8, 2.11, 3.3, 3.4, 3.34, 3.40, 4.15 -4.17, 4.21, 5.13, 5.14, 5.19, 5.24, 5.25, 6.5 and 6.6. and compare to the expert's 2006-2007 report, Appendix D to the Fourth Report of the Special Master. See also DJJ Quarterly Report (July 31, 2008), pp. 81-85; DJJ Quarterly Report (October 31, 2008), pp. 173-76.

conducted site reviews and are monitoring compliance with the consent decree's special education requirements. Central office and site-based administrators have developed collaborative agreements between clinic administrators and intake and courts services units regarding the IEPs of incoming students. There has been significant progress in transition planning for special education students, with five of seven sites in substantial compliance with the requirement that IEPs include related services and transition planning (four sites moved from partial to substantial compliance). There has been progress in ensuring that eligible students are granted waivers from the California high school exit exam and in providing remedial services to students who fail any part of the exam.

The education experts are optimistic that DJJ will succeed in implementing the education plan based on the considerable progress to date and the exemplary successes, particularly at Jack B. Clarke High School at SYCRCC, Johanna Boss High School at O.H. Close, and James A. Wieden High School at Preston.<sup>9</sup> Staff at these schools and facilities are congratulated on their efforts and achievements. The experts are not satisfied, however, with DJJ's progress to date in ensuring school attendance. Eligible youth must be in school to benefit from the improving educational services and make progress towards diplomas, GED certificates, and vocational certificates.<sup>10</sup>

State law and the educational remedial plan require DJJ schools to provide eligible youth with 240 minutes of instruction per day, for 220 days per year, in subjects leading to high school graduation. For the past two years, the experts have found two schools/facilities in partial compliance with these attendance requirements and the other

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<sup>9</sup> Statements of O'Rourke and Gordon to the special master during the time that she prepared this report.

<sup>10</sup> See, Appendix A (O'Rourke/Gordon report), p. 6.

schools entirely noncompliant.<sup>11</sup> Also, the school sites generally failed to provide the compensatory services that are required for special education students to make up for missed and cancelled classes.<sup>12</sup> As the experts and special master exhorted a year ago, DJJ must implement strategies outlined in the remedial plan at both the central office and site levels to improve school attendance (e.g., the education plan requires policy and procedure to eliminate class cancellations, plans to remediate deficient attendance, attendance incentives, and school consultation teams for students with academic and behavioral problems).<sup>13</sup> All facilities must write agreements detailing how custody, treatment, and education management and staff will work together to ensure that youth receive education services, including a full school day.<sup>14</sup> The agreements should begin to address student absenteeism resulting from logistical issues and from conflicts between counseling and treatment appointments and class schedules. The education experts and the special master pointed to the critical need for these agreements two years ago.<sup>15</sup>

Last year, the experts and master reported that two facilities audited in April 2007 had written cooperative agreements, following a written directive by DJJ's chief deputy

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<sup>11</sup> See, Appendix A (O'Rourke/Gordon report), Attachments A and B, criterion 3.15. No school/facility is substantially compliant with this requirement, and two are partially compliant, the same as last year.

<sup>12</sup> See, *id.*, Attachment B, p. 4, item 5.22. One school is substantially compliant; one is noncompliant; and five are partially compliant. Three noncompliant facilities progressed to partial compliance since last year's expert report.

<sup>13</sup> See, *id.*, Attachments A and B. Regarding items 3.6 - 3.8, the report reflects slight improvement in the use of SCTs, with nine substantial compliance ratings out of a possible 21. Three noncompliance ratings from last year's report converted to partial compliance ratings this year. However, only Weiden/Preston has a fully compliant SCT function. Regarding item 3.18, four of seven schools are rated substantially compliant with the requirement for plans to remediate deficient attendance; last year, only three facilities were rated as substantially compliant. As for item 3.19, two of seven facilities are substantially compliant with the quarterly corrective action plan requirement, compared to none last year. Two facilities are substantially compliant with the requirement for a policy and procedure to eliminate class cancellations (item 3.20); this is the same rating as given last year. Regarding item 3.23, there has been no net change in terms of students being held back from class. Three of seven sites are substantially compliant. Four of seven facilities are substantially compliant with the requirement for attendance incentives (item 3.29), whereas only three facilities were substantially compliant last year.

<sup>14</sup> Such agreements are required by the education plan. Education Services Remedial Plan, Section III.D.

<sup>15</sup> See, Second Report of the Special Master (June 2006), p. 19.

secretary.<sup>16</sup> It is inexplicable that, the following school year, none of the other facilities had put written agreements.<sup>17</sup>

Student enrollment in vocational classes continues to be very low.<sup>18</sup> Full utilization of these facilities and staff should be a priority for central office and site-based administrators to ensure that students are provided with employment skills to prepare them to re-enter the community.<sup>19</sup>

Instructional programs for both regular and special education students in restricted settings continue to be inadequate.<sup>20</sup> Segregated students are not offered access to full school day programming at any of the schools.<sup>21</sup> Central office and site-based administrators should pursue the use of technology, including distance learning, to increase educational service hours without compromising security for segregated students.<sup>22</sup> Additional staff and instructional space must be identified and provided in order to provide equal educational access to these students.<sup>23</sup>

Though progress is being made in the teacher recruitment and hiring process, only two school sites were able to finalize hires within a reasonable period of time.<sup>24</sup> This prolongs vacancies and reduces DJJ's chance of hiring the most competitive candidates.<sup>25</sup>

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<sup>16</sup> See, Fourth Report of the Special Master (July 2007), p. 25 and Appendix D, Attachments A and B, item 3.16.

<sup>17</sup> See, Appendix A (O'Rourke/Gordon report), Attachments A and B, item 3.16.

<sup>18</sup> *Id.*, p. 6.

<sup>19</sup> Compare *id.* with Fourth Report of the Special Master (July 2007), Appendix D (O'Rourke/Gordon 2006-2007 report). There has been no change in DJJ's level of compliance with this requirement.

<sup>20</sup> Appendix A (O'Rourke/Gordon report), Appendix A, p. 6.

<sup>21</sup> *Id.*, Attachments A and B, item 3.39.

<sup>22</sup> *Id.*, p. 7.

<sup>23</sup> Compare *id.*, p. 6 and Attachments A and B, items 3.36-3.39 with Fourth Report of the Special Master (July 2007), Appendix D (O'Rourke/Gordon 2006-2007 report). As noted above, DJJ began to implement distance learning at some sites last school year.

<sup>24</sup> Compare Appendix A (O'Rourke/Gordon report), p. 6 and Attachments A and B, criteria item 2.4 with Fourth Report of the Special Master (July 2007), Appendix D (O'Rourke/Gordon 2006-2007 report).

<sup>25</sup> See, Fourth Report of the Special Master (July 2007), p. 23.

As the education experts and special master reported a year ago, DJJ needs to improve the continuity of special education services as students enter DJJ and move between facilities.<sup>26</sup> DJJ needs to address many deficiencies in the processes for development and implementation of IEPs.<sup>27</sup> The ongoing issues of errors in the WIN management information system and difficulties establishing an interface between the WIN system and the special education data must be resolved.<sup>28</sup>

Beginning with the 2005-2006 monitoring cycle, the education experts and the special master highlighted the problem posed by DJJ's lack of a permanent superintendent of education.<sup>29</sup> DJJ's progress, particularly in the crucial area of school attendance, has been limited by the power vacuum in education administration. DJJ administrators rightly have refrained from hiring any candidate; a vacant position covered

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<sup>26</sup> Most sites have not implemented the system for requiring receipt of complete educational records for all students entering the DJJ system or transferring from one facility to another. Adherence to policies and procedures for records transfer needs to be monitored by central office and site administrators. There has been no progress in the development of written policy, procedures, or practices that would require DJJ and clinic administrators to work collaboratively with Intake and Court Service units to comply with regulations regarding the provision of IEPs prior to taking physical custody of the student. *See*, Fourth Report of the Special Master (July 2007), pp. 27-28 and Appendix D (O'Rourke/Gordon 2006-2007 report), Attachments A and B, Section V; O'Rourke and Gordon e-mail and memorandum to special master, June 5, 2007.

<sup>27</sup> School sites must immediately implement IEPs of incoming students. Any IEP change must be made by the IEP committee with adequate documentation or rationale. IEPs written by DJJ staff must address how the student's disability affects involvement in the general curriculum. All sites must improve the provision of general education classes in the frequency and duration indicated in IEPs. When the IEP requires access to the general curriculum, such access and a full school day must be provided. Supplemental aids and program modifications that support the student's involvement in the general curriculum must also be provided. IEP meetings must be held within the prescribed time frame, and documentation must be maintained indicating that regular education teachers absent from the IEP meetings were informed of IEP provisions for their students. Teachers must document progress reviews of IEP benchmarks and, when necessary, make IEP changes based on progress or lack thereof. Special education eligibility documents must be kept current according to guidelines. Central office and site-based administrators must address all of the issues of students' access and attendance in order to achieve compliance with both the Consent Decree and IDEA requirements. Central office and site-based administrators must not only monitor the completion of reports but also take responsibility for accuracy and timeline expectations to ensure quality control. *See*, Fourth Report of the Special Master (July 2007), p. 28 and Appendix D (O'Rourke/Gordon 2006-2007 report), Attachments A and B, Section V; O'Rourke and Gordon e-mail and memorandum to the special master, June 5, 2007.

<sup>28</sup> *See*, Fourth Report of the Special Master (July 2007), p. 28 and Appendix D (O'Rourke/Gordon 2006-2007 report), Attachments A and B, Section V.

<sup>29</sup> *See*, Second Report of the Special Master (June 2006), p. 20.

by an acting superintendent is better than an incapable permanent superintendent. Further, the education experts are impressed the capabilities of the current acting superintendent. Still, it is incumbent on DJJ administrators to determine why DJJ has not attracted competitive candidates and to devise a strategy to employ a strong, permanent superintendent.

### III. ACCESS FOR YOUTH WITH DISABILITIES

From September 2007 through June 2008, the *Farrell* expert in physical and programmatic access for youth with disabilities, Logan Hopper, conducted his third round of compliance audits at all DJJ facilities. His “Wards with Disabilities Program Remedial Plan Auditor’s Report,” completed three years after DJJ filed the Wards with Disabilities Remedial Plan (“disabilities remedial plan” or “WDP plan”) and two years after his first audit, is attached as Appendix B. The report’s five-page summary of findings, conclusions, and recommendations is cogent and comprehensive.<sup>30</sup> The bulk of the report details central office and facility-by-facility findings.

DJJ has maintained the level of compliance with the disabilities remedial plan that was documented last year, largely due to the skillful efforts of the dedicated wards with disabilities program (WDP) coordinators and the support of superintendents and high-ranking supervisors.<sup>31</sup> Though there has been some turnover among central office coordinator staff, the coordinators remain a consistent force for implementation of the Wards with Disabilities Program.<sup>32</sup> Four facility-level WDP coordinators now have two

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<sup>30</sup> Appendix B (Hopper report), pp. 2-6.

<sup>31</sup> *Compare id. with* Fifth Report of the Special Master (October 2007), Appendix E (Hopper 2007-2008 report).

<sup>32</sup> Appendix B (Hopper report), p. 2.

or three years of experience, with concomitant gains in knowledge and effectiveness.<sup>33</sup> Every facility increased its percentage of substantial compliance ratings and decreased its percentage of non-compliance ratings between the second and third audit.<sup>34</sup> DJJ continues to progress ahead of schedule in modifying its buildings to improve accessibility.<sup>35</sup>

DJJ also has begun to address some noncompliance areas highlighted in Mr. Hopper's last report and in the *Fifth Report of the Special Master*.<sup>36</sup> Staff training in disability awareness and sensitivity has begun. All institutions now have qualified trainers and approximately 40% of staff has attended the training.<sup>37</sup> The training content is reasonably appropriate, though the disability expert still sees a need for DJJ to consult outside experts and consider their recommendations to improve the training, as required by the WDP remedial plan.<sup>38</sup> The version of the WIN system now in place has a new feature designed to permit recording and tracking of some information on disabilities.<sup>39</sup>

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<sup>33</sup> Appendix B (Hopper report), p. 2. After the completion of his last report, the disability expert learned that the facility WDP coordinator position was vacant at two of six facilities. Correspondence of Hopper to Angus, August 26, 2008. The remedial plan requires each facility to have a WDP coordinator. Disabilities Program Remedial plan, p. 4. The special master has no information whether any of the four most experienced coordinators noted above were among the two who were no longer in WDP coordinator positions as of August 2008.

<sup>34</sup> Data provided by Ugarkovich to the special master, August 19, 2008. Heman G. Stark's increase in substantial compliance was marginal (0.5%), but its level of non-compliance decreased by about 9%.

<sup>35</sup> Appendix B (Hopper report), pp. 4, 49-51.

<sup>36</sup> *Cf.*, Fifth Report of the Special Master (October 2007), pp. 32-33 (summarizing highlighted areas of noncompliance).

<sup>37</sup> Appendix B (Hopper report), pp. 4, 16. The disability expert once considered the lack of such training as one of DJJ's most significant noncompliance areas. *Cf.*, Second Report of the Special Master (June 2006), p. 17; Fifth Report of the Special Master (October 2007), pp. 32-33.

<sup>38</sup> Statements of Hopper during meeting with counsel and DJJ staff, February 29, 2008. The disability plan requires that DJJ obtain assistance from an outside disability advocacy organization or consultant in the preparation of the training materials. DJJ has not yet sought or received that plan-required assistance. Appendix B (Hopper report), p. 14.

<sup>39</sup> *See*, Seventh Report of the Special Master, pp. 35-36 (new disabilities tracking features installed for implementation of WIN Exchange, Spring 2008); e-mail of Eden to the special master dated March 10, 2008 (new WIN Exchange runs at most facilities, scheduled for installation at others within two weeks). Mr. Eden demonstrated the system for Mr. Hopper in August 2008, and Mr. Hopper informed him of

The omnibus WDP temporary departmental order, TDO #06-71, was distributed to institutions for implementation, starting with the training of all staff on the policy requirements.<sup>40</sup>

Despite the promulgation and training on the WDP TDO, “many DJJ staff are still not aware of how WDP Remedial Plan requirements relate to their department’s activities.”<sup>41</sup> Many facility line staff are not aware of requirements to accommodate disabled youth during uses of force, counts, searches, and transportation.<sup>42</sup> DJJ has not revised its specific policies governing discipline, use of force and other security procedures to require the accommodations provided in the WDP remedial plan and omnibus TDO.<sup>43</sup> As a result, facility staff do not and are not yet expected to comply with the omnibus TDO provisions concerning security procedures.<sup>44</sup> After the disabilities expert completed his report, DJJ provided the safety and welfare, mental health, and disability experts with draft policies on discipline and crisis intervention (including use of

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improvements that would be necessary. Mr. Hopper will continue to monitor the WIN disability feature. Statements of Hopper to special master during October 14, 2008 teleconference.

<sup>40</sup> DJJ Quarterly Report (January 31, 2008), p. 20 (policy and training materials promulgated); statements of Chief Deputy Secretary and WDP Coordinator, teleconference with OSM and experts September 16, 2008. Though the TDO provides new rules for discipline and use of force to accommodate youth with disabilities, those new rules are not yet binding on staff because general policies concerning discipline and use of force have not yet been modified to reflect the new rules.

<sup>41</sup> Appendix B (Hopper report), p. 3.

<sup>42</sup> *Id.*, p. 27. Again, the new requirements of the WDP plan which are also set forth in the omnibus WDP temporary departmental order have not yet been inserted into regular policies covering discipline and use of force. The requirements of the WDP plan and the omnibus disabilities TDO are not yet operationalized in DJJ.

<sup>43</sup> Statements of DJJ top management staff during teleconference with experts and OSM, September 16, 2008

<sup>44</sup> *Id.*

force) that have provisions for the accommodation of disabilities.<sup>45</sup> The experts have made extensive recommendations.<sup>46</sup>

Mr. Hopper observes 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.<sup>47</sup> Accommodations sometimes are delayed or not provided due to failure of other departments and staff to collaborate with WDP staff.<sup>48</sup> DJJ sometimes is slow to identify disabilities issues as they are presented and thus slow to consult the disabilities expert and/or DJJ WDP staff on issues of particular importance to youth with disabilities.<sup>49</sup> After the disabilities expert completed his report, DJJ provided him with draft policies on vision testing and eyeglasses, and psychotropic medications.<sup>50</sup> DJJ also provided the disabilities expert with a two-page summary “action plan” for youth with mobility or other physical impairments to integrate with the general population as soon as medical issues are resolved, including determining

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<sup>45</sup> The WDP plan (at pp. 40-45) requires that all staff be aware of accommodations afforded to youth with disabilities in developing and implementing these and similar facility procedures. DJJ conveyed draft policies by e-mails to Mr. Hopper and other experts dated August 12, 2008 (PoP #204, discipline) and September 5, 2008 (PoP #231, crisis prevention and management including use of force).

<sup>46</sup> Expert Hopper provided his comments to DJJ by e-mail dated September 4, 2008 (discipline) and September 18, 2008 (crisis prevention and use of force). The safety and welfare expert provided his comments by e-mail dated September 25, 2008 (discipline) and September 26, 2008 (crisis management and use of force) and during a meeting with DJJ on October 6, 2008 (crisis management and use of force). Statements of Krisberg to special master, October 6, 2008. The mental health experts provided comments on the draft policy on discipline by e-mail dated September 19, 2008. In December 2008, DJJ convened two conference calls with these experts and OSM during which expert comments on the disciplinary policy were thoroughly discussed.

<sup>47</sup> Appendix B (Hopper report), p. 3; statement of Hopper to special master during October 14, 2008 teleconference.

<sup>48</sup> See, e.g. Appendix B (Hopper report), p. 29 (commenting on variation in compliance rates with regards to provision of glasses, hearing aids, and medical devices).

<sup>49</sup> *Id.*, p. 6; e-mail of Hopper to Ugarkovich, August 11 and October 3, 2008 regarding the psychopharmacology policy; e-mail Hopper to Ugarkovich, September 15, 2008 regarding vision testing and eyeglass procurement policy.

<sup>50</sup> E-mails of DJJ (Ugarkovich) to Hopper conveying PoPs #206 (psychopharmacy, August 11, 2008), #223 (vision testing and eyeglasses, September 3, 2008), and #260 (revision of vision testing and eyeglasses, October 1, 2008). The WDP plan (p. 14-15) requires DJJ to prepare adequate policies on psychopharmacy and vision-testing and vision aids in conjunction with the medical experts and disability experts and the no longer extant health care transition team. The medical and mental health experts also received and reviewed these policies.

the most physically accessible locations available and making required barrier removal improvements on a timely basis.<sup>51</sup> The disabilities expert has provided DJJ with his comments on these policies and action plan and awaits DJJ's next drafts.<sup>52</sup>

DJJ has failed to convene an interdisciplinary group to study the need for a residential program for youth with developmental disabilities, in consultation with the disabilities expert.<sup>53</sup> The disabilities expert and special master have repeatedly pressed DJJ to address this deficiency in its compliance with the WDP plan.<sup>54</sup> Director of Programs Doug McKeever promised Mr. Hopper that he would study the issue and then convene one or more meetings with Mr. Hopper and appropriate DJJ staff.<sup>55</sup>

#### IV. SEXUAL BEHAVIOR TREATMENT

The *Farrell* sexual behavior treatment expert, Dr. Barbara Schwartz, completed her third round of compliance audits in May 2008. She concluded her first round of audits in late 2005, and her second round in July 2007. The four DJJ institutions with residential sexual behavior treatment units were audited in all three rounds, but the Preston facility's "informal," outpatient SBTP was audited for the first time this year. Dr. Schwartz's report is attached as Appendix C. She has reviewed and approved this section of the special master's report.

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<sup>51</sup> E-mail of DJJ (Ugarkovich) to Hopper conveying PoP# 178 (action plan), July 11, 2008. The WDP plan (p. 14) requires DJJ to prepare the action plan in conjunction with the medical experts and disability experts and the no-longer extant health care transition team.

<sup>52</sup> Mr. Hopper sent his comments by email to Doug Ugarkovich dated September 15 (vision) and October 3, 2008 (psychopharmacology). Mr. Hopper informed the special master that he provided comments on the action plan by e-mail dated October 8, 2008.

<sup>53</sup> The study was supposed to commence in 2005. DJJ is required to develop and implement a plan to respond to the needs identified in the study, if any. The plan is required to include procedures to ensure that no outward signs of identification or labeling will be posted for wards involved in the program. Disabilities remedial plan, p. 26.

<sup>54</sup> See, Appendix B (Hopper report), pp. 5-6; *cf.*, Fifth Report of the Special Master (October 2007), p. 32; Second Report of Special Master (June 2006), p. 18 and Appendix E (Hopper 2006-2007 report), p. 2.

<sup>55</sup> Statements of McKeever during teleconference with experts and OSM, September 16, 2008.

### A. Limited Progress in Sexual Behavior Treatment in Fiscal Year 2007-2008

Dr. Schwartz noted one significant advance during her third round of audits: all five facilities that offer sexual behavior treatment piloted the new “healthy living” curriculum on core treatment units and continue to use it.<sup>56</sup> The healthy living curriculum is conceived as the first step in sexual behavior treatment for most youth, and the only step for some.<sup>57</sup> The healthy living curriculum allows staff to assess youths’ treatment needs and, if necessary, prepares youth for the curriculum delivered on a residential SBTP unit. Dr. Schwartz approved the curriculum before the pilot administration and she recommends that DJJ finalize the curriculum, continue to use it and attend to adherence to the curriculum design.<sup>58</sup>

DJJ has maintained the positive aspects of the sexual behavior treatment program that previously have been documented.<sup>59</sup> Each facility’s multi-disciplinary team conducts client treatment reviews each quarter.<sup>60</sup> DJJ has implemented some aspects of a therapeutic community model (milieu therapy) in its residential SBTP units.<sup>61</sup> Individual facilities have implemented creative and successful initiatives, such as restorative justice

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<sup>56</sup> Appendix C (Schwartz report), pp. 2, 5, 6, 8, 16, 21, 23, 27, 49, 53, 62, 81, 98, 114, 115; DJJ Quarterly Report (July 31, 2008), p. 104; statements of McKeever during teleconference of DJJ staff, various experts, and OSM, September 16, 2008.

<sup>57</sup> See Fifth Report of the Special Master (October 2007), p. 29, n.115.

<sup>58</sup> During the monitoring period and pilot administration of the curriculum, it was not being presented uniformly. It was often taught without overhead projectors, or otherwise crucially deviated from the design of the curriculum’s author. *Id.*, pp. 2, 4, 8-9, 16, 21, 23, 27, 114. Dr. Schwartz has expressed concern that the use of the curriculum without overhead projectors may have invalidated the pilot, though she generally approves of the curriculum. Statements of Schwartz during telephone conference, October 7, 2008; see also, Appendix C (Schwartz report) p. 48. A few DJJ SBTP clinicians also have expressed concern that the curriculum was not adequately piloted and modified in response to the pilot. OSM interviews at Chaderjian facility, October 2008. DJJ and the consultant who developed the curriculum apparently are in dispute over whether DJJ or the consultant owns the copyright. Statements of Dr. Schwartz during teleconference with the Special Master, February 9, 2009.

<sup>59</sup> See Fifth Report of the Special Master (October 2007), pp. 26-27; Second Report of the Special Master (June 2006), p. 14.

<sup>60</sup> See Appendix C (Schwartz report), pp. 41, 55, 72, 88, 102.

<sup>61</sup> Specifically, most facilities are holding large group sessions, and youth are becoming involved in charitable and other projects. See *id.*, pp. 37, 52, 68, 84, 99.

programs and mock parole boards at the Southern Reception Center, and theater and art projects at the Stark facility.<sup>62</sup> Many clinical and non-clinical counseling staff have therapeutic and caring interactions with youth.<sup>63</sup>

However, beyond the institution of the healthy living curriculum, which is a relatively small segment of the overall treatment program, DJJ has not made significant progress toward the development of a standardized sexual behavior treatment program.<sup>64</sup> Pre-remedial-plan curricular materials are in use but do not constitute an adequate or uniformly implemented curriculum.<sup>65</sup> Often, groups do not meet at fixed times<sup>66</sup> and youth do not receive the required number of treatment hours each week.<sup>67</sup> Inadequate program space also continues to be a problem for youth in the SBTP in some facilities.<sup>68</sup>

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<sup>62</sup> The Southern Reception Center's "Good Lives" model emphasizes positive goal development and community service. This facility also involves youth in a Victim Outreach Project which has included guest speakers for the youth. The youth raise money for a variety of charitable organizations, participate in mock parole boards, and present their Relapse Prevention Plans to the large community group. Appendix C (Schwartz report), pp. 15-17. Staff at the Stark facility have initiated a theater project and an art program coordinated by Pitzer College. Youth at Stark have also participated in a "Victim's Awareness Week." Appendix C (Schwartz report), p. 22. Dr. Schwartz recommends that such activities be incorporated into the overall model. *Id.*, p. 21.

<sup>63</sup> *See id.*, pp. 3, 7, 23.

<sup>64</sup> *See id.*, generally and especially p. 28.

<sup>65</sup> *See id.*, p. 8; statements of Dr. Schwartz during meeting of experts and OSM, August 29, 2008.

<sup>66</sup> Appendix C (Schwartz report), pp. 9, 27, 29.

<sup>67</sup> During fiscal year 2007-2008, documentation of treatment hours was incomplete and more treatment hours were provided than documented, but staff and youth report inadequate treatment hours. *See id.*, pp. 15, 21, 27, 29, 32-33, 51, 63-64, 82, 84, 95, 99. At the Southern Reception Center, for instance, the WIN system indicated that youth were receiving the required three hours per week of core group, but in reality they were not. Staff were frequently pulled away from delivering treatment hours by training, doctors' appointments, etc. Statements of Schwartz to OSM during meeting and teleconference with OSM, August 29, 2008 and September 5, 2008, respectively. At the Stark facility, group facilitators must send a written memo to security prior to every group session, requesting that security bring the youth to the designated room. Documentation revealed that sessions were not held because the facilitator "forgot to write the memo" or because security simply did not bring the youth to the session. Statements of Dr. Schwartz during teleconference with OSM, September 5, 2008.

<sup>68</sup> Treatment space is currently inadequate at the Chaderjian, Preston, and Stark facilities. Chaderjian and Stark are expected to move into new facilities, however. At Preston, "sensitive needs groups" and core groups meet in the visitors' hall, and it is unclear who has access to this area during the sessions. Dr. Schwartz observed both groups, and reported that "uniformed staff repeatedly interrupted the group to use the vending machines," and that a loud air conditioner made hearing difficult. Appendix C (Schwartz report), pp. 5-6.

Individual facilities and staff members currently apply varied and uncoordinated approaches to treatment.<sup>69</sup> Individual youth may receive beneficial treatment in this way, but the remedial plan requires DJJ to develop and implement a standardized treatment program.<sup>70</sup> That is the only way to provide evidence-based sexual behavior treatment to all relevant youth.

#### B. DJJ Has Begun To Address Systemic Problems

Dr. Schwartz and the special master noted DJJ's failure to make significant progress toward the development of a standardized sexual behavior treatment program in their last reports more than a year ago.<sup>71</sup> At that time, we identified at least six systemic issues: (1) the sexual behavior treatment coordinator's lack of authority and diffuse supervision of sexual behavior treatment staff; (2) the failure to develop core curricula, policies and procedures, and other written guidelines;<sup>72</sup> (3) multiple locations for record-keeping instead of a unified treatment record; (4) the failure to implement evidence-based initial and ongoing screening and assessment of risk and treatment progress and needs; and (5) labor rules and management practices that result in assignments of counseling staff to the sexual behavior treatment program without regard to training,

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<sup>69</sup> See generally Appendix C (Schwartz report). For example, one staff person at the Chaderjian facility "indicated that he or she has decided to make a major change in the treatment model without consultation with the rest of the Program." *Id.*, p. 11. Dr. Schwartz also reports that at Stark there is a "basic misunderstanding" of the existing treatment model. This may be due to the larger role played by youth counselors as compared to psychologists at Stark. *Id.*, p. 27.

<sup>70</sup> Sexual Behavior Treatment Program Remedial Plan, pp. 10-17.

<sup>71</sup> Fifth Report of the Special Master (October 2007), p. 27.

<sup>72</sup> The special master has previously reported in terms of "policies and procedures" and "curricula." The reference to "other written guidelines" above is the result of recent teleconferences with the *Farrell* experts and DJJ during which the experts have agreed with DJJ that not all written guidelines need to be in the form of formal policies and procedures. DJJ may prepare a program description or manual for the sexual behavior treatment program that covers matters that are not specified in formal policies and procedures. There will be formal policies and procedures establishing clear and binding rules in some areas, such as confidentiality and informed consent. Statements during teleconference of DJJ staff, some of the experts and OSM, September 16, 2008. Among other things, written policies, procedures and guidelines are necessary to establish criteria for the tracking of treatment progress. Fifth Report of the Special Master (October 2007), p. 30.

aptitude and program preference.<sup>73</sup> DJJ has been slow and tentative in addressing these issues, and little changed during fiscal year 2007-08. DJJ management began to address these systemic problems in spring of 2008. Continued management attention will be necessary.

1. DJJ Has Clarified the Responsibility and Authority of SBTP Coordinator But Has Not Established A Sufficiently Integrated Organizational Structure At The Facility Level

During the last monitoring period, DJJ clarified that the sexual behavior treatment program is a part of mental health services and that its coordinator reports to the top manager of DJJ mental health services.<sup>74</sup> In October 2008, Director of Programs Doug McKeever issued a memorandum explaining that the sexual behavior treatment coordinator “is the clinical and administrative authority for all treatment decisions for DJJ sexual behavior treatment” working “under the direction and with the support of the *Farrell* Mental Health Program Administrator, Dr. Arguello.”<sup>75</sup> This was a positive step,

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<sup>73</sup> Fifth Report of the Special Master (October 2007), pp. 27-31. The need for systematic training to build clinicians’ and counselors’ treating skills is another systemic issue that belongs on this list. This report does not address the training issue in depth, however, because training content is largely dependent on the development of curriculum, policy, procedures, and other written guidelines.

<sup>74</sup> Staff reported in October 2007 that sexual behavior treatment was brought under mental health management. *Id.*, p. 27, n.107. Apparently that was not entirely official since neither mental health services nor sexual behavior treatment were reflected in DJJ’s October 2007 organization charts that were filed with the court. Sixth Report of the Special Master (December 2007), p. 5. Draft organizational charts dated February 29 and March 17, 2008 finally depicted mental health services and the sexual behavior treatment program, showing the coordinator reporting to the top manager for mental health services, but the first signed version of that chart that DJJ has provided to the special master was signed by Director McKeever on May 30, 2008. Before the decision was made to bring sexual behavior treatment under the aegis of mental health services, it was not clear who supervised the sexual behavior treatment coordinator. Fifth Report of the Special Master (October 2007), p. 27; e-mail of Schwartz to the special master, November 30, 2007.

<sup>75</sup> Memorandum dated October 1, 2008, to Superintendents, Chief Medical Officers, Chief Psychologists, Principals, Regional Parole Administrators, and Supervision Parole Agents regarding Authority and Role and Responsibility of the Sexual Behavior Treatment Program Coordinator. The October 1, 2008 central office health services organizational chart signed by Director McKeever is not entirely consistent with the memorandum. On the chart, Dr. Arguello is a senior supervising psychiatrist – supervising only psychiatrists -- and the SBTP coordinator reports to Dr. Morales, Chief Psychiatrist and Dr. Arguello’s supervisor. DJJ provided the October 1, 2008 chart as PoP # 264, October 9, 2008. The mental health plan requires DJJ to have a senior mental health administrator to direct and coordinate implementation of

but no staff report to the coordinator; he thus has no authority to compel staff to take any particular action. Clinical staff have ignored important instructions that the coordinator has given.<sup>76</sup> Further, the McKeever October 2008 memorandum was addressed only to staff reporting to Director of Programs McKeever, not to the numerous non-clinical line counselor staff working within the sexual behavior treatment program at facilities.<sup>77</sup>

At the facility level, no sexual behavior treatment program manager has the authority to direct both the clinical and non-clinical sexual behavior treatment staff. At Chaderjian, there is no staff person who can be identified as leading the sexual behavior treatment program (even without the authority to supervise all staff providing services).<sup>78</sup>

The sexual behavior treatment expert believes that a clear and adequate organizational structure is a prerequisite to the development and delivery of the sexual behavior treatment program. She has raised this issue repeatedly in her reports and in contacts with top DJJ management.<sup>79</sup> Without clarity as to actual reporting relationships, the SBTP coordinator cannot ensure that remedial plan requirements are communicated to all appropriate staff by the appropriate supervisors. In November 2008, DJJ provided a

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the mental health and other remedial plans. Dr. Arguello was designated program administrator when he was acting Chief Psychiatrist. *See* Seventh Report of the Special Master (April 2008), p. 10. Apparently, now he is to be both senior supervising psychiatrist and the administrator responsible for the implementation of treatment programs.

<sup>76</sup> E-mail of Schwartz to OSM, December 16, 2008; statements of Schwartz during telephone conference with OSM, December 30, 2008.

<sup>77</sup> Sexual behavior treatment is provided to youth in facilities by clinical staff and by facility staff, mainly youth correctional counselors. The degree to which the facilities' SBTPs are administered by clinical versus non-clinical staff varies. *See* Appendix C (Schwartz report), p. 27.

<sup>78</sup> Statements of Schwartz during telephone conference with OSM and DJJ directors, September 16, 2008; *see also* Appendix C (Schwartz report), p. 11.

<sup>79</sup> Appendix C (Schwartz report), pp. 11, 15; statements of Schwartz to OSM during meeting of OSM and experts, August 29, 2008; statements of Schwartz during telephone conference with OSM and DJJ directors, September 16, 2008; e-mail of Schwartz to DJJ Litigation Coordinator Doug Ugarkovich, November 6, 2008; statements of Schwartz to OSM during teleconference, December 30, 2008.

diagram of “functional” and “direct” supervisory relationships among SBTP staff.<sup>80</sup>

Although the diagram reflects an understanding of the expert’s concerns, it is not an organizational chart that shows actual reporting relationships. It is instead a conceptual schematic, which does not affect management and supervisory power and responsibility or staff accountability at the facility level. DJJ needs to establish an organizational structure within which clinical and facility staff work collaboratively, in order to foster an environment that serves treatment goals and to deliver treatment services in an organized and consistent manner.

## 2. Little Progress Toward Curricula, Policies And Other Written Guidelines

DJJ’s only SBTP curriculum is the healthy living curriculum discussed above. This is an introductory curriculum. Previously documented CDCR contracting and payment difficulties disrupted the work of DJJ’s SBTP curriculum consultant from April 2006 through at least July and perhaps September 2007.<sup>81</sup> The consultant was thereafter under contract to produce three curricula by June 30, 2008: the healthy living curriculum, a residential program curriculum, and an outpatient curriculum derived from the inpatient curriculum. The contract expired on June 30 and was not renewed.<sup>82</sup> The curriculum has not yet been completed.<sup>83</sup>

Now Dr. Schwartz is working closely with the SBTP coordinator to organize an internal effort to produce the residential program curriculum. Dr. Schwartz is cautiously optimistic that the sexual behavior treatment task force can produce an appropriate

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<sup>80</sup> E-mail of Ugarkovich to OSM, November 5, 2008; PoP #278 (Sexual Behavior Treatment Programs Structure), November 5, 2008.

<sup>81</sup> See Fifth Report of the Special Master (October 2007), pp. 29-30.

<sup>82</sup> DJJ and the contracted consultant are in dispute regarding the reasons for the termination of this contractual relationship. Statements of Schwartz to OSM during teleconference, January 16, 2009; DJJ Quarterly Report (October 31, 2008), p. 209.

<sup>83</sup> Statements of Schwartz to OSM during meeting of experts OSM, August 29, 2008; see also, e.g., DJJ Quarterly Report (October 31, 2008), p. 209.

curriculum with her assistance, based on her own expertise in curriculum development, Mental Health Program Administrator Arguello's representation that DJJ will procure necessary materials, and Director of Programs McKeever's professed support.<sup>84</sup> In approximately October 2008, the SBTP coordinator arranged for two on-line training courses that Dr. Schwartz completed and particularly recommended to be available free of charge to task force members.<sup>85</sup> Dr. Schwartz believes that these trainings will establish a sufficient basis for the curriculum development effort.<sup>86</sup> As of the end of 2008, however, none of the task force members had completed the trainings.<sup>87</sup>

A table of contents for the SBTP description and policies and procedures has been approved by Dr. Schwartz, but the content of the policies, procedures, and program description largely remains to be developed.<sup>88</sup> DJJ completed a draft program overview

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<sup>84</sup> Statements of Schwartz to special master during telephone conference, November 3, 2008. Her optimism is cautious because DJJ was been slow to follow her advice in June 2008 to seek certain materials and obtain necessary training to prepare for curriculum development. First, the SBTP coordinator randomly solicited curricula from across the nation and other English-speaking countries for possible use and received nothing of value to a program for youth in a correctional setting. Statements of Schwartz during telephone conference, October 7, 2008; *see also* DJJ Quarterly Report, (July 31, 2008), p. 104. Dr. Schwartz also strongly recommended to the chief deputy secretary and the director of programs that the SBTP coordinator attend an international sex behavior treatment conference in Atlanta Georgia at the end of October, because that would be a fast way for him to identify curricula and materials that would be useful to DJJ. Statements of Schwartz during telephone conference of DJJ directors and OSM, September 16, 2008. She was referring to the "ATSA" conference. DJJ management declined, citing time considerations and staff attendance at sexual behavior treatment conferences in the past. Statements of Warner during telephone conference with DJJ directors, OSM, and Dr. Schwartz, September 16, 2008.

<sup>85</sup> As noted above, on November 4, 2008, the SBTP coordinator instructed certain SBTP staff members to take the on-line NEARI training by November 30, 2008. E-mail of Martin to select SBTP staff, November 4, 2008.

<sup>86</sup> E-mail of Schwartz to special master, November 4, 2008. The trainings are by New England Adolescent Research Institute (NEARI).

<sup>87</sup> Statements of Schwartz during telephone conference with OSM, December 30, 2008; e-mail of Martin to Schwartz, December 16, 2008.

<sup>88</sup> Appendix C (Schwartz report), pp. 28, 41-42, 107, 109. In October 2007, this office reported that no discernible progress toward the development of SBTP policies and procedures had occurred. Fifth Report of the Special Master (October 2007), p. 28. In July, DJJ reported that a first draft of one of three sets of SBTP policies would be completed within the next quarter and provided to Dr. Schwartz for review. DJJ also states that completion of this policy is dependent on completion of program curricula. DJJ Quarterly Report (July 2008), p. 104.

in November 2008, which Dr. Schwartz found to be vague and lacking in substance.<sup>89</sup> DJJ still lacks sufficient informed consent and confidentiality policies and procedures, which means that youth continue to receive sexual behavior treatment without meaningfully consenting to it and without fully understanding the potential legal repercussions of their disclosures during treatment.<sup>90</sup> Providing sexual behavior treatment to youth without appropriately documented informed consent raises immense ethical concerns and jeopardizes the licenses of clinicians.<sup>91</sup> Dr. Schwartz has raised this issue with DJJ management and counsel since her involvement with *Farrell* began, thus far to no avail.<sup>92</sup> DJJ has included the policy on informed consent and confidentiality on its list of policies with the highest priority for development.<sup>93</sup> According to DJJ, development of confidentiality and informed consent policies is in the “[a]rchitecture [p]rocess,” or the very beginning stages of its project management process.<sup>94</sup>

### 3. Improvements in Record Keeping

In 2005, Dr. Schwartz identified the need for a unified record of sex behavior treatment.<sup>95</sup> At that time, clinical and facility staff kept records of sexual behavior treatment in four locations, some of which were not accessible to all members of the

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<sup>89</sup> E-mail of Schwartz to Martin, November 28, 2008.

<sup>90</sup> Statements of Schwartz during telephone conference with OSM, October 7, 2008.

<sup>91</sup> *Id.*; see also Appendix C (Schwartz report), pp. 6, 9.

<sup>92</sup> Statements of Schwartz during telephone conference, October 7, 2008; see also Second Report of the Special Master (June 2006), p. 14; Fifth Report of the Special Master (October 2007), Appendix C (Schwartz 2006-2007 report), pp. 2, 11.

<sup>93</sup> Defendant’s Response to the Court’s October 27, 2008 Order, Tab CC. On the other hand, DJJ has not included confidentiality and informed consent on its list of mental health policies slated for development by the end of 2010; the closest item on that list is “standards for protecting and granting access to confidential information.” Defendant’s Response to the Court’s October 27, 2008 Order, Exh. AA. Top-priority mental health policies are scheduled to be developed by June 30, 2009.

<sup>94</sup> Defendant’s Response to the Court’s October 27, 2008 Order, Exh. BB. DJJ’s most recent quarterly report indicates that a “project charter” for the development and implementation of the “treatment confidentiality policy” is being drafted. DJJ Quarterly Report (October 31, 2008), p. 172.

<sup>95</sup> Second Report of the Special Master (June 2006), p. 14; Appendix C (Schwartz report, October 2005) pp. 3, 4, 7.

treatment team. There was no coherent record of the treatment services provided to youth. There was no significant improvement by the end of fiscal year 2006-2007.<sup>96</sup> Through fiscal year 2007-2008, inconsistent, duplicative, and incomplete treatment-related recordkeeping continued to be a problem.<sup>97</sup> Staff at the O.H. Close facility developed local procedures to create program files that permit them to track services provided and treatment progress.<sup>98</sup> These records also permit the sexual behavior treatment expert to monitor whether youth receive the type and amount of treatment required by the sexual behavior treatment plan. The expert recommends that other facilities follow O. H. Close in this regard.<sup>99</sup>

Well after the sexual behavior treatment expert completed her round of monitoring and report for fiscal year 2007-2008, in November 2008, DJJ's top management clarified that facility staff who are members of treatment teams properly have access to the clinical treatment records for the youth to whom they provide treatment services.<sup>100</sup> The sexual behavior treatment expert supports this decision,<sup>101</sup> which removes what was a serious impediment to the development of a unitary treatment record for youth receiving sexual behavior treatment.<sup>102</sup>

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<sup>96</sup> Fifth Report of the Special Master (October 2007), p. 30; Appendix C (Schwartz 2006-2007 report), p. 3.

<sup>97</sup> Appendix C (Schwartz report), pp. 11, 27, 32, 33, 34, 64, 85. In group sessions attended by multiple therapists, multiple sets of notes are taken, which may differ, and are stored in different locations. Some documentation of one-on-one sessions with youth states that a 60-minute meeting took place, but the accompanying notes reflect a much shorter and very insubstantial interaction. Statements of Schwartz to OSM during telephone conference, September 5, 2008.

<sup>98</sup> Appendix C (Schwartz report) p. 2.

<sup>99</sup> *Id.*, p. 3.

<sup>100</sup> Memorandum from Chief Psychiatrist Morales to Director of Programs McKeever, with copies to Director of Facilities Youngen, Health Services Director Morris, Chief Medical Officers and Chief Psychologists, November 17, 2008.

<sup>101</sup> E-mail of Schwartz to OSM, December 3, 2008.

<sup>102</sup> The mental health experts have raised some questions and concerns about this decision that will need to be answered and resolved. E-mail of Lee to OSM, December 7, 2008.

The new version of the Ward Information Network (WIN) database allows DJJ to track the need for sexual behavior treatment services, services provided and youth progress. The new WIN was just coming on line as Dr. Schwartz completed her monitoring and reporting for fiscal year 2007-2008. She found the database very helpful in her monitoring and will continue to evaluate its effect on SBTP record-keeping in the coming year.<sup>103</sup>

#### 4. Continued Failure To Develop And Implement An Assessment Protocol

DJJ has not developed and implemented a standardized, evidence-based screening and assessment protocol. The SBTP remedial plan requires the use of appropriate screening and assessment tools to evaluate risk and treatment needs initially and on an ongoing basis.<sup>104</sup>

Dr. Schwartz and the special master have been reporting since March 2006 that DJJ was set to follow Dr. Schwartz's recommendation to adopt the J-SOAP risk assessment tool.<sup>105</sup> Staff were trained on the J-SOAP in August 2007.<sup>106</sup> The California state legislature inexplicably required DJJ to use two different risk assessment tools, which have not been validated on this population.<sup>107</sup> On Dr. Schwartz's advice, DJJ intends to use the evidence-based J-SOAP as well as the legally mandated tools, but it is not yet using the J-SOAP.<sup>108</sup>

In addition to sexual behavior risk assessment, treatment must rest on comprehensive assessment of treatment needs and progress in treatment, so that treatment

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<sup>103</sup> Statements of Schwartz during meeting of experts and OSM, August 29, 2008.

<sup>104</sup> SBTP Standards and Criteria, item 3; *see also* Appendix C (Schwartz report), pp. 21 and 107-08.

<sup>105</sup> *See* Second Report of the Special Master (June 2006), p. 15 and n. 49.

<sup>106</sup> Fifth Report of the Special Master (October 2007), p. 26.

<sup>107</sup> Statements of Schwartz during meeting of experts and OSM, August 29, 2008.

<sup>108</sup> Statements of Arguello to OSM and mental health experts during Ventura site visit, December 3, 2008.

planning accounts for co-morbid interests, cognitive distortions, deviant sexual arousal, learning, style and other relevant factors.<sup>109</sup> Progress in treatment must be tracked based on clearly delineated criteria. At this time, sexual behavior clinicians and treatment teams are not using comprehensive assessments, such as those that might be generated by mental health and educational intake processes and the risk/needs assessment tool DJJ is implementing as a basis for its new treatment model. DJJ has not developed or procured tools to assess treatment needs and progress. DJJ needs to approach this problem across disciplines, so that sexual behavior treatment program is integrated into the larger treatment program.<sup>110</sup>

#### 5. Increased Management Flexibility May Result In More Appropriate Staff Assignments To The SBTP

DJJ and the union representing counseling staff have agreed at least temporarily to allow management more flexibility in making assignments to individual living/treatment units, which may result in more appropriate staff assignments to the SBTP.<sup>111</sup> DJJ line staff bid for one of three shifts, rather than bidding for particular “posts” (housing unit assignments) based on seniority. This is an improvement. The “post-and-bid” system resulted in the assignment of staff who were not comfortable working with the SBTP population.<sup>112</sup>

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<sup>109</sup> Statements of Schwartz to special master during teleconference, January 12, 2009. Dr. Schwartz explained that this was encompassed in standards and criteria item 3.

<sup>110</sup> Statements of Schwartz to special master during teleconference, January 12, 2009.

<sup>111</sup> Appendix C (Schwartz report), p. 10; correspondence of Angus to Schwartz, September 30, 2008, p. 3.

<sup>112</sup> This process affects whether staff assigned are actually interested in working with this population. At the Chaderjian facility, for instance, at least one staff member has repeatedly asked to be reassigned; Dr. Schwartz urges DJJ to “devise some way of dealing with staff that may have been sexually assaulted and may have significant difficulty being exposed to discussions of sexual assault.” Appendix C (Schwartz report), p. 10.

V. CONCLUSION

The special master respectfully submits this report.

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Donna Brorby  
Special Master