

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF ALAMEDA

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

NINETEENTH REPORT OF SPECIAL MASTER

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I. INTRODUCTION

The Special Master submits for filing the Nineteenth Report of the Special Master. This report reviews the *Farrell* Disabilities Expert and Education Experts' comprehensive reports for their 2011 rounds of audits and summarizes and analyzes the status of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice's (DJJ) compliance with the *Farrell* remedial plans. The sixth comprehensive reports of the Education Experts (site visits, February 2011 to April 2011) and the Disabilities Expert (site visits, January 2011 to April 2011) are attached to this report as Appendix A and B respectively.¹ In addition, the Special Master will report on progress from two items identified in her last report, when and how force is used and progress at the Ventura Youth Correctional Facility (Ventura) in implementing a Behavioral Treatment Program (BTP) to effectively address youth with behavioral problems. Finally, the Special Master will discuss Defendant's decision to close the Southern Youth Correctional Reception Center and Clinic (SYCRCC) and provide an analysis of the outcome of the transfer of monitoring from experts to Defendant.

In previous reports, the Special Master prepared for the Court detailed summaries of the experts' comprehensive reports. In the "Eighteenth Report of the Special Master," the Special Master began to identify significant successes as well as remedial plan areas that the Special Master believes pose the greatest difficulties for Defendant. Consistent with her 18th report, the Special Master will again make recommendations for

¹ Appendix A, O'Rourke and Gordon, "California Division of Juvenile Justice Summary Education Program Report for School Year 2010-2011;" Attachment 1, "California Remedial Plan Site Compliance Report;" and Attachment 2, "Comparison of Office of Audits and Court Compliance Report and Education Experts' Audit Ratings;" and Appendix B, Hopper, "California Department of Corrections and Rehabilitation, Division of Juvenile Justice, Wards with Disabilities Program Remedial Plan, Auditor's Comprehensive Report for FY 2010-11." (June 27, 2011)

improvement. Recommendations may range from simply identifying or suggesting resolution to advising DJJ about addressing issues that require immediate attention. The parties have agreed that a more useful Special Master's report would limit the summaries of the expert reports and instead identify the major areas of improvement as well as areas for concern.

II. EDUCATION

Over a three-month period, from February through April 2011, the *Farrell* Education Experts, Dr. Tom O'Rourke and Dr. Robert Gordon (Education Experts), completed their sixth round of monitoring compliance with the Education Services Remedial Plan (Education Plan). The Education Experts and Defendant are commended as the Education Plan implementation is nearing completion. The successful transfer of monitoring of most Education Plan elements will be discussed in Section III of this report. This section of the report focuses largely on the few remaining issues that must be addressed in order for Defendant to achieve substantial compliance.

In Appendix A, the Education Experts provide, (1) a summary report, California Division of Juvenile Justice Summary Education Report For School Year 2010-2011 (Education Summary Report); (2) Remedial Plan Site Compliance Reports for each facility (Attachment 1); and (3) a comparison of the Office of Audits and Court Compliance (OACC) findings with the Education Experts' findings (Attachment 2). The Education Summary Report includes the experts' methodology and findings for each area of the Education Plan monitored. Numerous commendations are detailed in the Education Summary Report. Two out of six of the Education Plan elements, curriculum and education exit plans, are in substantial compliance. Of the remaining four elements,

staffing and special education continue to be areas that pose the greatest challenges for Defendant. Each of the Education Plan elements that are not in substantial compliance will be reviewed to identify the remaining issues that must be addressed in order to achieve substantial compliance.

A. Overview, Philosophy and Program Policy

Defendant needs to ensure that the semi-annual reviews of high school graduation plans are completed semi-annually.

The Education Experts have also noted that since DJJ now has only four schools and is preparing to close another, the number of Central Office positions is significantly higher than another comparably-sized school system would have. The Education Experts have worked with senior DJJ administrators to assist in the development of a Central Office staffing structure that meets the needs of the now much smaller school district. While not a specific requirement of the Education Plan, the experts have worked with DJJ senior management in this effort to ensure that resources are targeted where they are most needed--in teaching positions.

Transition planning is an Education Plan element that should be revisited in light of legislative changes that have transferred parole jurisdiction from DJJ to the counties. Re-entry from an institution to the community is most successful when planning for return to the community begins in the institution. Though DJJ no longer has the authority to ensure a structured transition to the community, transition planning should still be done and shared with the county parole authorities. In light of these changes, Defendant should work with the Education Experts to reassess whether it is reasonable to attempt to create evaluation measures for such services as employment, school and/or housing upon

youths release.

B. Staffing

The Education Experts determined that certain DJJ schools were insufficiently staffed in a timely manner with appropriately credentialed teachers, particularly in the area of special education. Defendant reports that there were 51 teacher vacancies statewide of which 34 exemptions were granted. The most acute teacher shortages were at the Ventura School.² A hiring freeze made it impossible for Defendant to hire the necessary staff to meet the Education Plan requirements. The Special Master shared the experts' concerns that youth were not receiving mandated education services and reported these concerns to the Court in the Eighteenth Report of the Special Master.³ The Special Master agreed with the experts and concluded that staffing shortages, insufficient classroom space and a lack of effective technological support posed substantial obstacles for DJJ in Education Plan implementation.⁴

The Special Master supported DJJ's request to the Governor's Office for an exemption from the current hiring freeze in order to meet students' needs as well as Education Plan requirements.⁵ DJJ now reports that the Governor's office approved its request to fill teacher vacancies at all schools.⁶

Defendant is reportedly making substantial progress in filling the positions. As of July 27th, 19 of the positions had been filled, seven positions had candidates who accepted the positions and were in the pre-employment process (which is being

² *Ibid.*

³ *See* Eighteenth Report of the Special Master, July 1, 2011, pp.14-19.

⁴ *Id.* at 19.

⁵ *See* Eighteenth Report of the Special Master, p. 54, recommendation 10 and Appendix A at p. 6.

⁶ *See* Memorandum, "OSM 19," Associate Director Nylund to Special Master, July 29, 2011. This is also the information source for the next paragraph.

expedited), four positions will be filled with lateral transfers from SYCRCC and will likely coincide with the youth transfers from the closure of SYCRCC and four positions are still in the recruitment stage.⁷

On August 4, 2011, the Honorable Judge Jon S. Tigar granted Plaintiff's Motion to Enforce Court Ordered [Education and Safety and Welfare] Remedial Plans.⁸ The Court required Defendant "within 90 days of the date of this order, [to] hire adequate staff to provide the general and special education services mandated in the Education Remedial Plan for youth in general population and restricted programs in DJJ" and "within 150 days of the date of this order, [to] secure and begin to use adequate and appropriate programming space to provide the general and special education services mandated in the Education Remedial Plan for youth in restricted programs in DJJ."⁹ Specifically, within 90 days of the Court's August 2011 order, DJJ must, "hire adequate staff to provide general and special services mandated in the Education Plan for youth in the general population and in restricted programs in DJJ."¹⁰ Within 150 days, Defendant shall, "begin to use adequate and appropriate program space to provide the general and special education services mandated in the Education Remedial Plan."

C. Student Access and Attendance

The Education Experts report that poor school attendance and access to education services remain impediments to compliance with Education Plan requirements. Problematic scheduling with the Program Service Day implementation, youth refusals

⁷ *Ibid.*

⁸ See "Order Granting Motion to Enforce Court-Ordered Remedial Plans and to Show Cause Why Defendant Should Not be Held in Contempt of Court," *Farrell v. Cate*, August 4, 2011.

⁹ Order Granting Motion to Enforce Court-Ordered Remedial Plans and to Show Cause Why Defendant Should Not Be Held in Contempt of Court, August 4, 2011, at 5.

¹⁰ *Id.* at p. 5. This is also the source for the following sentence.

with lack of appropriate disciplinary action or follow-up, and insufficient provision of educational services for youth in restricted programs, including TD (Temporary Detention) and TIP (Temporary Intervention Program), are still among the Education Experts' recommendations for improvement.¹¹ Restricted programs must have in place sufficient custody and treatment personnel to meet plan requirements.¹²

DJJ reports that from February through April 2011, it provided staff retraining on the Program Service Day with the goal of improving the provision of the mandatory 240-minute school day.¹³ The Special Master and the experts have observed and commend DJJ for: (1) Improved access via School Consultation Team referrals; (2) Cooperative agreements between service providers that educational services in all cases supersede other activities except those identified as urgent or needing immediate attention; and (3) Improved documentation in the Ward Information Network (WIN). DJJ leadership reports that each facility now has PSD implementation committees and chairpersons responsible for communicating PSD issues or conflicts to Central Office staff.¹⁴ Unfortunately, as of the experts report, mental health treatment providers continued to compete for youth time during the school/work day. Based on the OSM's most recent Ventura audit, for example, it appears that staff has improved in tracking youth activities throughout the school day.¹⁵ However, activities are not properly categorized and there is no indication that youth are receiving more services than they received prior to the improved tracking of activities.

¹¹ Appendix A at p. 8.

¹² *Id.*, at pp. 8 and 10 respectively.

¹³ Memorandum, Program Service Day, from Alicia Glynn to Dorene Nylund, July 28, 2011.

¹⁴ Statements, DJJ Administrators, OSM/Experts meeting, August 1-2, 2011.

¹⁵ See Memorandum, Chen to Special Master, July 5, 2011, observations noted during the Ventura Youth Correctional Facility site visit. This is also the source for the following sentence.

Youth continue to refuse educational services without sufficient follow-up by DJJ staff to determine the reason(s) for the refusals. The experts recommend that Defendant develop a plan to identify and remedy problems with unexcused youth absences.¹⁶ DJJ has reported to the Education Experts that it now has the WIN capacity to identify youth school attendance and track excused and unexcused absences. The Education Experts will monitor this WIN documentation process for accuracy during their seventh round.

D. Special Education

DJJ is commended for achieving substantial compliance with most special education audit items; however, additional requirements must be met if DJJ is to succeed in providing a full continuum of services to youth with special education needs.¹⁷ Among the most significant remaining requirements and areas for improvement include the timely provision and tracking of mandated services identified via Individual Education Plans (IEP), including those for youth in restricted custody. Defendant needs to provide a continuum of placement options noted on students' IEP's (including a full range of time, frequency, and duration within each option). The Education Experts identify staffing shortages as a primary reason for failure to implement this plan requirement. Defendant has hired a full-time Language, Speech and Hearing Specialist for O.H. Close Youth Correctional Facility (Close) and N.A. Chaderjian Youth Correctional Facility (Chad) which will help to remedy the situation. If DJJ's staffing update is accurate and Defendant is filling teacher vacancies, special education ratings will likely improve in the Education Experts' seventh monitoring round.

DJJ reports that Defendant continues to work on providing appropriate education

¹⁶ Appendix A at 7-8; and *See* Tenth Report of the Special Master, 2009, Appendix A at p.6; and *See* Sixteenth Report of the Special Master, 2010, Appendix B at p. 8.

¹⁷ Appendix A at p. 10.

services as part of the Behavioral Treatment Programs (BTP).¹⁸ The Education Experts report that sufficient services are usually offered on DJJ's BTP units.¹⁹ The experts are concerned, however, about the provision of services to youth on Temporary Detention (TD) and Temporary Intervention Programs (TIP), particularly youth with Special Education needs. DJJ believes that Defendant has improved the provision of educational services to youth placed on TD or TIP.²⁰ In March of 2010, DJJ issued a protocol for providing education services to youth placed on either of these program designations. Consistent with the Education Remedial Plan, the protocol can deprive youth of education services for the first 72 hours of their placement on these program designations, which raises concerns discussed in the next paragraph. Defendant reports that at the Superintendents meeting on July 20, 2011, the protocol was again reviewed to ensure that Superintendents are aware of the requirement that education services are provided after 72 hours, regardless of the type, length or combination of a program restriction. Further monitoring will reveal whether these measures are effective.

The Education Experts are particularly concerned about Defendant's 72-hour policy on the provision of services to youth on TD/TIP where services provided are to special education youth. Defendant must not exceed 10 cumulative or consecutive school days per year during which educational services are *not* provided without the Individual Education Plan (IEP) review and program modifications that address what the Individuals with Disabilities Education Act (IDEA) considers to be a change in placement. Additionally, the IEP team must determine if the behaviors exhibited are

¹⁸ See Memorandum, "OSM 19," Associate Director Nylund to Special Master, July 29, 2011, p. 2.

¹⁹ Statement, Education Expert, Dr. Tom O'Rourke, OSM/Experts meeting, August 1-2, 2011.

²⁰ See Memorandum, "OSM 19," Associate Director Nylund to Special Master, July 29, 2011, p. 1. This is also the source document for the remainder of the paragraph.

related to the individual's disability. Under the current 72-hour policy, DJJ will quickly reach the 10-day allowable maximum. If Defendant exceeds the 10 school day requirement, he will be in violation of federal law under the IDEA.²¹ The Education Experts are also concerned about the practice of extending youths' stays on TD/TIP beyond the initial 72 hours. The Special Master has agreed to conduct a review of relevant documents to ensure that DJJ is: (1) following its own policy, and (2) determine if the 72-hour policy is feasible given the IDEA and Education Remedial Plan requirements.

The Education Experts are optimistic that once Defendant addresses the remaining issues, described above and detailed in Appendix A and its attachments, he will be in a position to successfully assume the Education Plan monitoring function entirely. Among other tasks, Defendant must first fill remaining vacancies with qualified educators. He must ensure the provision of services to all qualified youth within mandatory timeframes, guidelines and regardless of changes in the student demographic following facility closures. Defendant must meet attendance requirements and ensure that the technology used to measure school absences is current and accurate. Finally, Defendant must rally staff to work cooperatively to ensure that youth get to school, or that school gets to youth, without compromising youth access to other mandated services.

III. DISABILITIES

From January to April 2011, Logan Hopper, the *Farrell* Expert in programmatic access for youth with disabilities (Disabilities Expert), completed his sixth round of monitoring for compliance with California Department of Corrections and Rehabilitation-Division of Juvenile Justice (DJJ) Wards With Disabilities Program Remedial Plan

²¹ Statements, Education Expert Dr. Tom O'Rourke, OSM/Experts' meeting, August 1-2, 2011.

(WDP or WDP Plan).²² As with the expert's previous reports, this report contains a description of the expert's auditing and reporting methodology as well as a grid that identifies and explains facility-by-facility compliance ratings for each WDP Plan item audited. For items rated less than substantial compliance, as well as some items rated in substantial compliance, the expert makes specific recommendations for DJJ to meet WDP Plan compliance goals or to improve upon current conditions.

The Special Master has reviewed each of the Disability Expert's reports for the fourth, fifth and now sixth rounds. The expert's fourth round report was completed and summarized in the Special Master's tenth report. The expert's fifth round report was completed and summarized in the sixteenth Special Master's report.²³ The Disability Expert and Defendant are commended as the Disability Plan implementation nears completion. The Special Master identifies those steps that she believes must be taken to achieve substantial compliance with the WDP Plan.

After years of steady improvement, the overall percentage of audit items rated in substantial compliance declined between the fifth and sixth round of WDP audits, from 86% to 82%.²⁴ This rating variance alone is not significant because it was largely the result of a misunderstanding during the monitoring process in which Defendant assumed some of the monitoring responsibility from the expert. The misunderstanding resulted in lower ratings for a number of items that, if excluded, would result in the overall rate of substantial compliance to be fairly consistent between the fifth round and the sixth

²² WDP Expert Hopper's sixth round audit schedule: January 12-13, 2011, NACYCF; February 9-10, 2011, Ventura; March 2-3, 2011, SYCRCC; March 23-24, 2011, OHCYCF; April 20, 2011, DJJ Central Office.

²³ The Expert's 4th round report is dated May 29, 2009 and it was summarized in the 10th Special Master Report, September 3, 2009, The Expert's 5th round report is dated June 12, 2010 and was summarized in the 16th Special Master's Report, dated November 19, 2010. Lastly, the Expert's 6th round report, dated June 12, 2010 will be analyzed in the 19th Special Master's Report that will be filed in 3rd quarter, 2011.

²⁴ See DJJ Quarterly Compliance Report as of March 15, 2011.

round.²⁵ This issue is discussed in greater details in the Transfer of Monitoring Section of this report.

The Special Master has reviewed and analyzed the Disability Expert's recent comprehensive reports and discussed the issues with the expert and Defendant. In general, the remaining issues can be broadly categorized into those that are WDP specific and those that cross over into other remedial plans. Having reached a clear agreement regarding roles in the monitoring process,²⁶ the Disability Expert and Defendant should be able to successfully address WDP-specific issues in the next round of monitoring. The Special Master believes that the crossover issues are longer-term efforts that are more appropriately addressed in Defendant's efforts to implement the Safety and Welfare Remedial Plan and the Mental Health Remedial Plan with advice and input from the Disability Expert.

A. WDP-Specific Issues

The Special Master identified the following outstanding issues that are WDP-specific and should be addressed in the next audit round.

Annual ADA Staff Training in DJJ Policy and Procedure and Awareness, Sensitivity and Harassment (Item 25)

The Disability Expert found the exact number of staff trained in ADA requirements cannot be established until DJJ implements planned Ward Information Network tracking system changes that will identify exactly when and what training has been provided to all DJJ staff. The tracking system is also expected to shed light on the

²⁵ Based on telephone conversation between Sandi Becker, Wards with Disability Program Manager, and Deputy Special Master John Chen on August 4, 2011.

²⁶ The WDP Expert is to spot check the results of the Office of Audit and Court Compliance's (OACC) 45-day review of the items transferred to Defendant. OACC may modify its preliminary ratings if it determines that the facility has taken corrective action to remedy the deficiencies noted during the 45-day review.

reasons for any failure to attend required training. Currently, the Disability Expert estimates that approximately 60 percent of all staff has been trained in ADA requirements, which is insufficient to meet training goals and achieve substantial compliance in WDP implementation.²⁷

There may be a misunderstanding or miscommunication between the expert and Defendant on this issue. According to Defendant, the required training has been incorporated into curriculum of the 40 hours of mandatory classroom training, commonly referred to as "Block Training," which is required annually for all Bargaining Unit 6 staff in accordance with the state's collective bargaining agreement with the California Correctional Peace Officers' Association.²⁸ Other classifications at the facilities receive parts of the annual training.²⁹ The "Block Training" is tracked at each facility by the In-Service Training Manager in the Training Information Management System(TIMS).³⁰ The 60 percent figure cited by the expert may have been caused by a timing difference as "Block Training" is tracked on a calendar year basis whereas the Disability Expert's site visit of Defendant's Central Office was made in May 2011 when not all staff had completed the training. The expert and Defendant should meet and clarify any misunderstanding and reach agreement on documentation requirement to resolve this issue.

Youth not precluded from assignment to a work or camp program based solely upon the nature of the disability (Item 26)

²⁷ Appendix B, pp. 5 and 16.

²⁸ Based on email of August 8, 2011 from Sandi Becker, Ward with Disability Program Manager, to Deputy Special Master John Chen.

²⁹ *Ibid.*

³⁰ *Ibid.*

The expert recommended Defendant develop a form to demonstrate compliance with this remedial plan item. This recommendation does not appear to be unreasonable. Defendant should consult with the expert to develop a form or some other viable tracking mechanism.

Program for youth with certain developmental disabilities (Item 21)

Defendant indicated that he has completed an assessment of all youth and is in the process of recording and documenting the assessment in its WIN system starting August 2011. The assessment was made in accordance with a protocol that was adopted after incorporating comments from the Disability Expert. Defendant also indicated that, to date, only six youth have been identified under the protocol who meet the criteria of having a developmental delay³¹ and Defendant has identified four concepts for providing programs and services for these youth.³² However, the Disability Expert questioned the validity of the Defendant's assessment as he believes the number may be too low.³³ The Disability Expert's belief is based on the following considerations:

- The Disability Expert indicated that there are another 10 to 12 youth who were previously diagnosed as developmentally disabled but were excluded from the current list of six youth.³⁴ He believes some or all of these previously diagnosed youth should be included on the list. Defendant staff indicated that all of these youth have been evaluated under the adopted protocol and were not deemed to be developmentally disabled. Nevertheless, due to the expert's concern, Defendant has initiated a

³¹ See Memorandum, Associate Director Dorene Nyland to Special Master, July 28, 2011.

³² Teleconference, Sandi Becker, WDP Manager and Deputy. Spec. Master, John Chen, August 4, 2011.

³³ See letter, Disability Expert Logan Hopper to Special Master, August 30, 2011.

³⁴ Ibid.

reevaluation of this group of youth. The reevaluation is to be conducted by clinical staff independent of staff from the initial evaluation.³⁵

- The Disability Expert indicated that he was informed by a Defendant staff that there were approximately another 40 youth pending follow-up evaluation based on initial low IQ scores.³⁶ The same Defendant staff informed the Office of Special Master that follow-up evaluations for an overwhelming portion of these youth have been completed, which resulted in one additional youth being identified as potentially meeting the adopted criteria and the youth is undergoing further evaluation.³⁷
- The Disability Expert indicated that the WDP Remedial Plan defines youth with developmental disability rather broadly. It includes youth with developmental disability and youth with “similar conditions.” There apparently are no clear criteria governing what constitutes “similar conditions.”

As stated in his August 30, 2011 letter to the Special Master, the Disability Expert and the Defendant have had differing opinions about the actual number of youth appropriate for the developmental disabilities program for several years. As a result of the difference in opinion, the program needs of this segment of the youth population remain unaddressed. The Special Master will promptly arrange a meeting with Defendant, Plaintiff, and the expert to resolve any difference governing identification of developmentally disabled youth. Once the difference is resolved, the Special Master

³⁵ Statement of Sandi Becker, Wards with Disability Manager, to Deputy Special Master John Chen, September 6, 2011.

³⁶ See letter, Disability Expert Logan Hopper to Special Master, August 30, 2011.

³⁷ Statement of Sandi Becker, Wards with Disability Manager, to Deputy Special Master John Chen, July 21, 2011.

urges Defendant to seek input and advice from the expert to evaluate various programming concepts and work collaboratively to implement a viable program to accommodate youth with developmental disabilities.

B. Cross-Plan Issues

Based on a review of the latest WDP Report and discussion with the Disability Expert, the Special Master has identified the following issues that can be most effectively addressed by ensuring input and advice of the Disability Expert but the leadership for the issues are provided by the expert in another remedial area.

Use of Force on Youth with Disabilities (Item 53)

The issue of use of force against youth with mental health diagnoses and other disabilities is an issue of grave concern to the experts, parties and the Special Master. It is addressed in Section V of this report.³⁸ Experts from several remedial plans were called upon to study this issue and to provide recommendations for remediation.

Various reports by the *Farrell* Experts, the Eighteenth Report of the Special Master and input from an external use-of-force expert and Defendant's staff have served as data sources for the parties to meet, confer and prepare a stipulation and proposed order to remedy the identified problems.³⁹ Oversight for implementation of the stipulated agreement falls with the Safety and Welfare Expert. To avoid duplication of effort, the Safety and Welfare Expert should be the lead for the issue of use of force against all youth. For example, analyzing accommodations for youth who use inhalers due to breathing disabilities, the Safety and Welfare Expert should rely on the expertise of the

³⁸ OSM 19, Section V.

³⁹ This issue was also discussed during the Case Management Conference held by the Court on July 7, 2011.

Disability Expert. The Office of the Special Master will continue to monitor this issue and provide regular reports to the Court.

Youth With Disabilities Identification and Self and Staff Referrals for Youth With Disabilities. (Items 12, 46, 88-90, 99)

The Disabilities Expert credits Defendant for having begun to implement a protocol for the cognitive screening/testing and identification of six youth with developmental disabilities.⁴⁰ Defendant anticipates being able to access and report results via WIN by August 2011. The expert stresses, however, that Defendant must implement processes and assessment measures to identify youth with all other ADA qualifying disabilities. The expert further notes that his recommendations for satisfactory implementation have remained virtually the same for the last three monitoring rounds. Defendant must develop and utilize appropriate, standardized identification and referral processes, staff must coordinate to provide consistent services, and Defendant must ensure careful on-going monitoring by Central Office to maintain compliance.

The Special Master still believes the extent of the Disability Expert's monitoring effort should be considered within the context of the efforts of the other remedial plans. For example, developing and implementing a process to correctly diagnose youth with mental health disabilities is an essential element in Defendant's remedial effort on the issue of use of force against youth with disabilities. The Mental Health Experts should engage in a more prominent role in the development of accurate and reliable criteria for diagnosing youth with mental health qualifying disabilities and the Medical Experts for physical qualifying disabilities.

Grievance process for WDP youth (Item 72-77)

⁴⁰ Statements, Logan Hopper, OSM/Experts' meeting, August 1 and 2, 2011. This is the source for the following two sentences as well.

Although not specifically highlighted in his comprehensive report, the Disability Expert expressed a concern about the suitability of current grievance process for WDP youth. Specifically, the expert stated that he interviewed approximately 40 WDP youth, all of whom stated that they do not utilize the grievance process because they do not believe the process is useful, fair or objective.⁴¹

For the six audit items related to youth grievances, the Disability Expert rated all Defendant facilities in substantial compliance during his fifth round of audits. During his fourth round of audits, the expert rated all facilities in substantial compliance for five of six audit items and three of six facilities were rated in substantial compliance for the remaining item (Item 76). During his sixth round of audits, the expert rated all four facilities in substantial compliance on three of the items (Items 74, 75, and 77), three of the four facilities in substantial compliance on two of the items (Items 73 and 76), and one of the four facilities in substantial compliance on one item (Item 72).

Defendant's grievance policy was adopted and implemented after review and comments by the *Farrell* Experts. There have been no significant issues raised regarding the grievance process until the Disability Expert's recent disclosure. The Safety and Welfare Expert opined that the issue may be remedied through periodic reiteration to staff and youth the purpose and intent of the policy and clarify procedures.⁴² Based on the Disability Expert's ratings during the fourth and fifth rounds of audits, the problem indeed may be an inadequate reinforcement effort. The Special Master believes this issue should be addressed through the Safety and Welfare Remedial Plan subject to advice and input from the Disability Expert.

⁴¹ Statement, Logan Hopper, WDP Expert, OSM-Experts meeting, August 1-2, 2011.

⁴² Statements, Barry Krisberg, Safety and Welfare Expert, OSM-Experts meeting, August 1-2, 2011.

Educational issues for youth with disabilities while on Temporary Detention (TD) or Temporary Intervention Program (TIP) status

The Disability Expert identified a concern about treatment and service to youth with disabilities, particularly in the area of youth enrolled in special education programs. This issue was discussed extensively in the Eighteenth Report of the Special Master and the Defendant is closely monitoring the situation. As noted above, this matter is being pursued by the Education Experts and the Disability Expert also stated in his comprehensive report that there is an overlap on this issue between the WDP Remedial Plan and the Educational Remedial Plan. The Special Master believes this issue should be addressed through the Education Remedial Plan with advice and input from the Disability Expert.

IV. TRANSFER OF MONITORING

A. Development of the Monitoring Process

In late 2009, Defendant filed a motion with the Court seeking relief from monitoring certain items in the Education and WDP Remedial Plans based on Paragraph 23 of the Consent Decree, which states:

When a facility is found to be in substantial compliance on an issue for one full year, and is found to remain in substantial compliance after review by the relevant expert(s) one year later, expert tours regarding that issue at that facility shall end. If a violation of the relevant remedial plan(s) occurs within the two-year substantial compliance period that is serious or systemic but, in the opinion of the relevant expert, may be fully resolved and repaired within 30 days, the period for measurement of substantial compliance shall continue to run, unless the matter is not fully resolved and repaired within thirty (30) days.

The Court on February 9, 2010 denied Defendant's motion for several reasons including that "the historical record of the case contains instances in which a facility was in substantial compliance as to an individual audit item, then fell back out of compliance." Clearly, the Defendants' ability to sustain reform is contingent upon its

capability to monitor and to develop internal quality assurance systems. The Special Master has worked with the parties and the experts to develop an approach to the transfer of *Farrell* monitoring that supports these objectives.

In July 2010, the Special Master organized a meeting of *Farrell* Experts to discuss issues of mutual interest, identify priorities for the upcoming year, and explore means to improve the efficiency and effectiveness of the monitoring process. General agreement was reached to initiate a process to allow Defendant to gradually assume monitoring responsibility for certain items in the remedial plan that meet the consent decree requirement of two rounds of substantial compliance.

The purpose of the partial transfer is two-fold. First, it helps Defendant to start building into daily operations of facilities on-going quality assurance strategies, which is critical to sustain reform after the experts' eventual exit from the case. In addition, by relieving the experts from the task of monitoring items that have already been corrected, greater focus can be devoted to addressing the remaining issues that are essential in accomplishing the purpose and intent of the remedial plans.

Following the experts' meeting, transfer of monitoring occurred in the following three remedial plans:

- Educational Remedial Plan -- The Education Experts had completed five rounds of auditing under the plan and the percentage of items rated in substantial compliance has increased with each round of audits. The overall percentage was 90% after the fifth round of audits.⁴³

⁴³ DJJ Quarterly Compliance Report as of March 15, 2011, p. 6. As the items in the Standards and Criteria of the Educational Remedial Plan and other remedial plans are not weighted by the level of importance, the overall percentage of items in substantial compliance by itself is not a valid indicator of effectiveness of DJJ's remedial effort. However, it does provide certain perspective on the progress of remedial effort and the degree of which monitoring responsibility could be transferred to DJJ.

- Wards with Disability Remedial Plan (WDP) ó The Disability Expert also completed five rounds of audits and the overall percentage of items rated in substantial compliance was 86% after the fifth round of audits.⁴⁴
- Safety and Welfare Remedial Plan ó After three rounds of audits, the overall percentage of items rated in substantial compliance was 75% under the Safety and Welfare Remedial Plan.⁴⁵ The Standards and Criteria (audit instrument) of the remedial plan divides audit responsibilities between the Safety and Welfare Expert, Mental Health Experts, and the Office of the Special Master. The standards and criteria assigned to the Office of the Special Master are items that are more easily quantified to measure compliance. The Office of the Special Master agreed to transfer monitoring of these items to Defendant, subject to spot-check.

To facilitate the transfer of monitoring, the Office of the Special Master analyzed compliance ratings and developed a preliminary list of proposed items to be transferred. The list was based primarily on the past compliance ratings of the experts. The Office of the Special Master then met with each of the experts to refine the list. Exceptions were made based on the experts' qualitative judgment and the systemic nature of some of the items. For example, under the WDP Remedial Plan, the expert retained most of the monitoring of Central Office items because they impact the operations of all facilities. Therefore, whereas approximately 60% of the audit items for the facilities were transferred to Defendant, only 8% (2 of 24) of the Central Office items were transferred. The refined list was presented to Defendant for comment and adjustments were made before it was finalized.

A protocol was developed to promote a smooth transition of monitoring from the experts to Defendant, which consists of the following:

- The experts and the OSM provide training to Defendant staff performing the monitoring function. Defendant decided that the staff of the California Department of Corrections and Rehabilitation's Office of Audits and Court Compliance (OACC), an entity external to the Division of Juvenile Justice, would

⁴⁴ *Id.* at p.14.

⁴⁵ *Id.* at p.37.

conduct the audit with assistance from a team of DJJ Court Compliance staff and DJJ subject matter experts.

- Approximately 45 days prior to the expert's site visit, the staff from OACC accompanied by the staff from the DJJ Court Compliance Unit conduct an audit of the facility and identify compliance items that may result in non-compliance or partial compliance ratings and afford the facility an opportunity to correct deficiencies.⁴⁶
- Defendant's audit team accompanies the experts on their audit of each site. The purpose of this practice is to provide documentation of continued compliance, and to ensure an understanding of what constitutes compliance from the expert's perspective.
- The experts monitor the items for which they retained audit responsibility and spot-check those items transferred to Defendant.

Defendant eventually decided that, as a part of his 45-day review, the OACC audit team should expand the scope of its review to include all items in the audit instrument rather than only the transferred items. This is Defendant's prerogative and the Special Master supports this approach as it accelerates the development of Defendant's self-monitoring capabilities.

B. Progress and Assessment

To date, both the Education Experts and the Disability Expert have completed an audit round under the new protocol and issued their comprehensive reports, which are analyzed and discussed above. The Safety and Welfare Expert is in the middle of his round of audit, so the process is still evolving. The Special Master focuses on the transfer process itself by comparing the rating variances between the ratings in OACC's 45-day review and the Experts'⁴⁷

Education Remedial Plan

⁴⁶ See Memorandum, July 29, 2011, John Blackwell of OACC to Special Master Nancy Campbell.

⁴⁷ Appendix C, Vanderburg, "Education Audit Ratings Analysis," "WDP Audit Ratings Analysis," and "Safety and Welfare Audit Ratings Analysis," July, 2011.

The transfer of monitoring for the Education Remedial Plan was highly successful. Both the Education Experts and Defendant indicated their experience under the new protocol was positive. The fact that OACC staff accompanied the Education Experts in their fifth round of audit for on-the-job training undoubtedly facilitated the transition effort. In their report, the Education Experts noted that,

The experts feel that the OACC internal auditing system will allow monitoring responsibilities to be shifted from the court appointed experts to this independent audit team. This process demonstrates DJJ's ability to meet the mandates of the Education Consent Decree Remedial Plan and continue to maintain ongoing reform efforts.⁴⁸

The Special Master shares the Education Experts' viewpoint. Each of the four facilities audited during the last round consisted of 115 items that were audited for a total of 460 items (115 items multiplied by four). The Education Experts changed the OACC rating in only 48 of the 460 items (10%). Of the 48 rating changes, the experts rated 30 items higher (63%) than the OACC auditors and 18 items lower (37%).⁴⁹ According to Defendant, most of the higher ratings stemmed from the corrective action taken by the facilities to address the issues identified during OACC's 45-day review. This suggests that OACC's 45-day reviews were conducted thoroughly, objectively and added value to the process by correcting items identified as deficient by the OACC auditors. The Special Master commends the Experts and Defendant's staff for working collaboratively and for communicating effectively to implement the new protocol.

Wards with Disabilities Remedial Plan

Given the significant differences in function and purpose of the remedial plans, the experts and Special Master agreed that there can be some variation regarding how the

⁴⁸ Appendix A, p.11.

⁴⁹ Appendix C, "Education Audit Ratings Analysis," July, 2011

transfer of monitoring occurs. The approach to the transfer of monitoring is to be determined jointly by the expert and Defendant. The Disability Expert, like the Education Experts, provided training to the OACC and Court Compliance Unit staff. Despite the training, confusion existed regarding roles and responsibilities of the expert and Defendant that led to a less satisfactory outcome than that of the education remedial plan transfer of monitoring.

During the first joint audit, the Disabilities Expert and Defendant staff realized they had different understandings regarding the expert's role in reviewing OACC's work product during the 45-day review. Defendant believed that the expert was to review all items in OACC's reports and the facilities' remedial efforts during his site visit and to issue new ratings focusing on those items that were less than substantially compliant during OACC's audit. The expert indicated at the first site visit that he was not prepared to review all items since he only planned to review those items for which he retained monitoring responsibility. Thus, he only spot-checked the items transferred to Defendant.⁵⁰

Apparently, there was also a lack of clarity regarding how the expert would report the OACC's ratings of the transferred items in his report. Defendant was surprised and disappointed to learn that, unlike the Education Experts, the Disability Expert did not take into consideration the facilities' remedial efforts after the OACC site visits.⁵¹ By only reporting OACC's rating, the substantial compliance ratings for all four facilities declined. For example, for Chad, Defendant believes it corrected four deficiencies following the OACC audit and before the WDP Expert's audit that were not reflected in

⁵⁰ The Disabilities Expert called and spoke to the Special Master during the site visit about this dilemma. She agreed they should continue the audit based on the Expert's understanding.

his report. Since monitoring for these items had already been transferred to Defendant, OACC could have modified its own ratings if the facility provided sufficient and competent evidence that remedial action had been taken to correct the deficiencies noted in the 45-day review. The experts agreed that in the future, any remedial efforts by OACC will be noted and credit reflected in the experts' ratings.⁵² Analysis of rating variances between OACC and the Disability Expert disclosed greater disparities than those between OACC and the Education Experts. The expert changed OACC's ratings on 53 of the total of 360 items (15%) for the four facilities and the Central Office audited during the last round.⁵³ This compares to a 10% change from the Education Experts.

The Special Master also analyzed the rating variances between the items transferred to the Defendant and those retained by the expert. The OACC audit team apparently has been able to monitor the transferred items effectively as the expert's spot-check resulted in rating changes for only 3 of the 211 items (1%) transferred to the Defendant. According to the Defendant, all three rating changes stemmed from the Ventura Youth Correctional Facility using two staff members part-time to carry out the functions and duties of the WDP Coordinator.⁵⁴ However, the rating disparity for the audit items retained by the Disability Expert was very significant and suggests there may be a disconnection between the expert and OACC. Of the 149 items for which the expert retained monitoring responsibility, he changed OACC's rating in 50 instances (33%). For the 50 rating changes of items monitored by the Expert, eight were higher, 34 were lower, and eight were to other categories. While the expert-retained items certainly are

⁵² This agreement was reached at the Expert Team meeting in Berkeley, CA on August 1-2, 2011.

⁵³ Appendix C, "Education Audit Ratings Analysis," "WDP Audit Ratings Analysis," and "Safety and Welfare Audit Ratings Analysis," July, 2011

⁵⁴ *Ibid.*

more complex and subjective, the disparity could be addressed through enhanced training and communication. The Special Master will engage with the Disability Expert and Defendant and work collaboratively to resolve any difference or misunderstanding before the seventh round of audits.

Safety and Welfare Remedial Plan

The Safety and Welfare Expert is in the middle of his third round of audits. To date, the Safety and Welfare Expert has completed an audit of the Ventura Youth Correctional Facility and released a draft report. The expert also completed a site visit to O.H. Close Youth Correctional Facility. The Office of Special Master staff accompanied the expert during both site visits to provide support and assistance. Based on the review of the OACC 45-day reports and related data and documents, the Special Master and the Safety and Welfare Expert found the work performed by OACC staff to be professional, thorough and objective.⁵⁵

The transfer of monitoring from the Disability and Education Experts (and the experience of the Safety and Welfare Expert to date) to Defendant demonstrated that the combined OACC and DJJ Court Compliance audit model is effective. Defendant's auditors demonstrated rigor, integrity and an ability to garner change and improvement from DJJ staff. The process has proved to be highly valuable as a learning tool and will lead to enhancements in Defendant's internal monitoring capabilities. Any problems encountered during the last round could easily have been addressed through better coordination and communication between the expert and Defendant throughout the audit process. The Special Master has reviewed the outcome of the transfer of monitoring with

⁵⁵ See Memorandum, July 5, 2011, from Deputy Special Master John Chen to Special Master Nancy Campbell providing supplemental observations noted during the Ventura Youth Correctional Facility site visit.

the experts to support the type of collaboration and communication that is required to ensure a successful process.

As previously noted, one of the objectives of the new audit protocol was to create an opportunity to enable the experts to focus their attention on the more systemic and significant issues that remain in the remedial plans. This approach is particularly important for the Safety and Welfare Remedial Plan as it contains a number of core issues that affect other remedial plans. The Special Master and the Safety and Welfare Expert agree that the current monitoring approach needs to be reexamined and that they will work with Defendant in identifying measures to streamline and improve the monitoring process to include the transfer monitoring of many issues in the Safety and Welfare Remedial Plan to Defendant.

C. Next Steps

There is a general consensus among the experts and Defendant to continue the transfer of monitoring process.⁵⁶ The Special Master believes that if Defendant addresses the few remaining partial or non-compliant issues in the Education and WDP Plans that Defendant could monitor the plans in their entirety after the seventh audit round. In addition, the Special Master has had discussions with the Medical Experts, who indicated that they are ready to start transferring monitoring responsibility to Defendant in their next audit rounds. The Dental Expert is finishing his second round of audits and has already begun training the OACC auditor and the Supervising Dentist. He indicates the process is going well.⁵⁷

⁵⁶ The issue of transfer of monitoring was the focus of much of the OSM/Expert meeting on August 1-2, 2011. The consensus was that the transfer is going well and should continue.

⁵⁷ Conversation between Don Sauter, Dental Expert, and the Special Master on August 4, 2011 upon completion of the Chad audit.

During the seventh round of audits, the Special Master encourages the parties, in consultation with the experts, to begin exploring an exit strategy for the Education and Disabilities Remedial Plans. At a minimum, Defendant should monitor the majority of audit standards and criteria and, ideally, the experts in conjunction with Defendant should create an exit strategy for the Plaintiff to review. Based on discussion with the experts and Defendant staff, in addition to maintaining the items that are currently substantially compliant, the following items must achieve substantial compliance:

Education

- Ensure that the semi-annual reviews of high school graduation plans are completed semi-annually.
- Ensure schools are staffed in a timely manner with appropriately credentialed teachers.
- Increase school attendance to provide a minimum 240 minutes educational programming with at most, seven percent absence rate.
- Respond effectively to unexcused absences.
- Ensure youth in TIP and TD receive timely and effective access to education services.
- Provide a full continuum of services to youth with special education needs.

Disabilities

- Implement a program to identify and accommodate developmentally disabled youth.
- Ensure all staff are trained in ADA requirements with a tracking system to demonstrate compliance.
- Provide treatment services to youth with certain mental and/or physical disabilities while on Temporary Detention (TD) or TIP status.
- Provide appropriate documentation to demonstrate youth not precluded from assignment to a work or camp program based solely upon the nature of the disability.

The Special Master congratulates both the Education and Disability Experts and Defendant for their continued excellent work in these areas.

V. USE OF FORCE

In her last report (OSM 18), the Special Master reviewed and analyzed reports of the Defendant's use-of-force practices by the *Farrell* Experts, an outside expert, and a self-commissioned internal study group. The reports collectively presented overwhelming data and evidence that suggest the Defendant's current use-of-force model is not effective in achieving the desired outcome that was envisioned in the Safety and Welfare Remedial Plan. The Special Master identified key issues that need to be addressed to achieve the overarching goal of the Safety and Welfare Remedial Plan which is to create a safe and secure environment in Division of Juvenile Justice institutions that supports the development of new pro-social behaviors. The key issues include:

- Provide staff with appropriate training and skills in addressing youth behavior issues.
- Reexamine and revise the current use-of-force policy, especially the application of controlled and immediate use of force.
- Devote greater effort, especially by mental health professionals, to intervene and accommodate youth with certain mental and/or physical conditions.
- Reexamine and revise the current force review committee model to improve accountability and provide greater emphasis on intervention, de-escalation and prevention.
- Reduce application of chemical agents in living units.

Subsequent to the release of the Eighteenth Report of the Special Master, the Defendant, on July 6, 2011, issued a report of its Use-of-Force Implementation Committee.⁵⁸ The multi-disciplinary committee was formed on May 2, 2011 to review

⁵⁸ Appendix D, Division of Juvenile Justice Use of Force Implementation Recommendations, June 26, 2011.

previous reports and recommendations on the use of force and to formulate one overall recommendation and implementation plan. According to its report, the Implementation Committee supported 86% of the recommendations from the Use-of-Force Subcommittee report dated March 17, 2011 and the majority of recommendations in the *Farrell Experts* Use of Force in DJJ and Mental Health Youth, Supplemental Report dated May 10, 2011. The process is continuing to evolve as Defendant formed another subcommittee to refine the work of the Implementation Committee.⁵⁹ The Office of the Special Master will continue to monitor this issue and provide regular reports to the Court. While encouraged by the positive response, the Special Master believes the Defendant confronts significant challenges to affect meaningful reform in a timely fashion. In order to achieve the desired outcome and to meet the purpose and intent of the Consent Decree, the Defendant's senior management must fully recognize and embrace the need for change and exert strong leadership to affect cultural changes throughout the entire organization.

A. Implementation Plan Challenges

The challenges faced by the Defendant in modifying the way staff respond to behavior problems by youth are discussed in this section of the report.

Immediate Action is Required

When the panel of *Farrell Experts* issued their April 26, 2010 report, which found disturbing patterns and practices of force incidents against youth in mental health living units, the Special Master encouraged the experts and the parties to engage in a process where both the methodology and underlying data was available for review. Defendant

⁵⁹ See Memorandum transmitting the Use-of-Force Implementation Recommendations from Rachel Rios, July 6, 2011.

agreed and initiated a review. Unfortunately, completion of the review process took far longer than expected. The review by the multi-disciplinary use-of-force subcommittee did not begin until September 2010 and the subcommittee report was not released to the full committee until February 26, 2011. There were numerous factors that led to the lengthy timeframe of the multi-disciplinary use-of-force subcommittee. For example, the scope of the project was broader and much more complex than originally anticipated. The Plaintiff expressed concerns about the composition of the use-of-force committee, which took time to address. Other conditions, such as locating missing records, also contributed to the delay.

After directing its Office of Research staff to analyze the report outcomes, Defendant released the report on March 17, 2011. The Implementation Committee was formed about six weeks later on May 2, 2011. It issued its report after another two months on July 6, 2011. Fourteen months after the *Farrell* Experts issued their report, the Implementation Committee recommends further statistical examination of use-of-force incidents by the Office of Research. It is unclear as to what additional information the statistical examination is expected to disclose given the fact that Defendant had already analyzed the subcommittee's recommendations and developed an implementation plan.

Although some of the factors that contributed to the lengthy timeframe may have been unavoidable, it has been more than 14 months after the *Farrell* experts released their preliminary report in April 2010 expressing their concerns regarding the level and type of force used in mental health units. Curtailing violence and use of force is a core issue in the *Farrell* case and has significant direct and indirect impact on all remedial plans. Addressing how to change when and how force is used is highly complex. Changing how

staff responds to youth behavior requires engagement and commitment by staff throughout the organization. It is imperative that Defendant continues to treat this as an urgent situation and take concrete steps to affect the needed improvement and changes. Defendant apparently recognizes the gravity of the situation and is taking positive action to address it. The actions that have been taken are discussed later in this section of the report.

Implementation Plan Lacks Specificity

The Implementation Committee reviewed each of the Subcommittee and the *Farrell* experts' recommendations and developed an "Implementation Plan" that is supposed to be completed within 12 months. From the Special Master perspective, the plan does not provide clear direction that describes how the reform effort is to be organized and measured. It is also unclear as to whether the 12-month timeframe is realistic. Typically, implementation plans of projects of this magnitude and complexity would, at a minimum, include the following:

- Objectives.
- Tasks and subtasks to be performed to achieve the objectives.
- Responsible individuals or units for each task and subtask.
- Completion date for each task and subtask.
- Deliverables.
- Quality Assurance Mechanisms.
- Process Measures.
- Outcome measures (if applicable).

Defendant's Implementation Plan provides a very general framework for some of the elements identified above. However, the timeframes and deliverables lack the level of detail and specificity needed to guide the implementation effort to achieve the desired outcomes. For example, under "Documentation Recommendations" section, one of the tasks is to identify a committee to revise the use-of-force policy and make modifications

within six months. Under "Training Recommendations," one of the tasks is to train staff on use-of-force policy changes within nine months. If it takes six months to modify the use-of-force policy, it would be extremely difficult to provide training on the policy changes that will affect a large group of staff within what would be a time frame of three months. Under "Program Recommendations" the first two tasks are to identify the committee to develop the program guide and to identify two programs, one in the north and one in the south, that have the highest level of force. The deliverables for each of the two tasks are to issue a memorandum. Given the nature of the tasks and the deliverables, it would appear that the timeframe for completion of these two tasks could be more precise than the 0 to 3 months range provided in the Implementation Plan.

Other than an overall goal of a 20% reduction in force incidents in the first 12 months, none of the sections in the report contain process or outcome measures. The 20% goal is not specifically tied to any of the identified tasks and the Defendant has provided no basis as to how the 20% figure was determined. The lack of identified process and outcome measures seems to imply that the Defendant may not understand what type of steps are necessary to reduce use-of-force incidents.

Defendant indicates that yet another team is being formed to guide the implementation effort.⁶⁰ Presumably the team will address the lack of specificity in the current Use-of-Force Implementation Plan. Given that the current implementation plan will require significant work to provide the level of detail and specificity needed to be a viable plan and that the new team had not been formed, the feasibility of the proposed timeframe prescribed in the Implementation Plan is questionable.

⁶⁰ See Memorandum transmitting the Use of Force Implementation Recommendations from Rachel Rios, July 6, 2011.

B. Impact of Staffing Shortage

Based on data gathered by the Defendant's Use-of-Force Subcommittee, it appears that two facilities, Ventura and Chad, face the most challenges with how force is currently used. These same facilities are at risk of significant staffing shortages. For example, in the quantitative review of 245 cases, 32 cases involved force used against a single youth for failure to follow staff orders. Of the 32 cases, 28 cases occurred at these two facilities (16 at Chad and 12 at Ventura).⁶¹ Both facilities also house mental health units. As disclosed in previous study reports, a disproportionately high number of use of force incidents occurred in mental health units.⁶²

Unfortunately, both Chad and Ventura are experiencing high vacancy rates in their custody classifications. The problem is particularly acute at Chad when it had one Senior Youth Correctional Counselor, 32 Youth Correctional Counselors, and seven Youth Correctional Officer positions vacant as of July 28, 2011.⁶³ At Ventura, the overall vacancy rate was 13% in custody classifications as of May 25, 2011 with the highest vacancy rates in the following supervisor positions⁶⁴:

- Senior Youth Correctional Counselor – four of seven positions (57%) were vacant.
- Lieutenant – four of 11 positions (36%) were vacant.
- Sergeant – four of 10 positions (40%) were vacant.

The CDCR management has been responsive and supportive in identifying short-term and long-term solutions to address the staffing challenges. At Chad, besides temporarily reassigning staff from adult institutions, other measures are being pursued

⁶¹ Appendix E, Use of Force Review, Summary of Data Used in the Quantitative Analysis, pp 2-3.

⁶² See Use of Force in DJJ and Mental Health Youth: Preliminary Findings, pp 1-2., April 26, 2010 and DJJ Use of Force Subcommittee Report, p. 29, March 17, 2011.

⁶³ See email of July 28, 2011 from Acting Superintendent Erin Brock to Deputy Special Master John Chen.

⁶⁴ See email of May 25, 2011 from Superintendent David Finley to Deputy Special Master John Chen.

such as permanent transfer of coverage of staff from adult institutions under an expedited process, use of retired annuitants, streamlining the academy background clearance process and allowing for expedited hiring of employees on a temporary status. Nevertheless, given the transitional status of some of the personnel and the uncertainty as to when the vacant positions will actually be filled, the Special Master is concerned about the ability of these two institutions to address the issue of how and when force is used within the next 12 months. For example, at Chad, the facility has temporarily postponed the mandated 40 hours of block training scheduled for the first half of 2011 and is now planning to provide the training during the second half of the year. This delay may impede the facility's efforts to deliver other training during this period. Some of the target dates in the Use-of-Force Implementation Plan may not be realistic in light of the impact of the current staffing shortages.

C. Addressing the Mental Health Diagnosis

Before and throughout the course of the use-of-force review, the Chief Psychiatrist repeatedly asserted that the current criteria for diagnosing youth with mental health conditions are inaccurate and unreliable. The Use-of-Force Implementation Team reports that the Chief Psychiatrist was contacted and stated that the criteria for mental health designation will be evaluated and modified and institutional application of these modifications will be implemented. This issue highlights the important role of the Mental Health Remedial Plan in resolving issues involving use of force. The Mental Health Experts will be encouraged to assist DJJ staff in addressing this issue as soon as possible.

D. Case Management Conference Follow-up

After the Case Management Conference on July 7, 2011, the parties had a meeting on July 12, 2011. On July 20, 2011, Acting Director Rachel Rios issued a letter to the Plaintiff indicating that the Defendant is committed to working collaboratively on the Implementation Plan and provided "preliminary" measures that have been taken to demonstrate that the Defendant is committed to changing use-of-force practices.⁶⁵ The Special Master believes that this is a positive development as the letter demonstrated that the senior leaders recognize the gravity of the situation by providing concrete examples on actions taken or to be taken. Examples include:

- "On July 13, 2011, I met with the executive staff and advised them of my expectations that all UOF employee discipline must be coordinated and discussed with the Management Team before submitting a disposition."
- "On July 15, 2011, Deputy Director Michael Minor issued a memo to facility superintendents to implement weekly treatment team meetings by August 1, 2011, on all living units to discuss force issues."⁶⁶
- "A second memo was sent on July 15, 2011, by Deputy Director Michael Minor instructing superintendents to have Crisis Prevention & Support Plans completed on all youth by October 15, 2011."⁶⁷
- Deputy Director Mike Minor and Chief Psychiatrist Ed Morales have met with executive staff, managers, supervisors and clinicians at the Northern California Youth Correctional Complex (NCYCC) to discuss UOF expectations and are scheduled to meet with administrators at Ventura on August 23, 2011.⁶⁸

The parties met again on August 2, 2011 to discuss the development of a stipulation on use of force to present to the Court. The level of collaboration and commitment between the parties on this issue is demonstrated by increased communication and prompt follow-through on agreed upon tasks by both parties. To

⁶⁵ See Letter, Acting Director Rachel Rios to Don Specter, Director of Prison Law Office, July 20, 2011.

⁶⁶ See Memo, Acting Deputy Director Michael Minor to Superintendents, July 15, 2011.

⁶⁷ See Memo, Acting Deputy Director Michael Minor to Superintendents, July 15, 2011.

⁶⁸ See E-mail, Mike Minor, Acting Superintendent to Special Master, August 7, 2011.

ensure progress on this issue, resources should be focused not on analyzing the underlying issues that demonstrate there is a problem but, rather, on developing a high-quality project implementation plan that details with specificity the steps to implement the changes agreed to by the parties regarding when and how force is used.

VI. VENTURA YOUTH CORRECTIONAL FACILITY FOLLOUP

In the Eighteenth Report of the Special Master, the Special Master detailed a chronology of events that demonstrated a failure to meet several *Farrell* mandated requirements at Ventura. The most significant of these included Defendant's inability to provide:

- An effective behavioral treatment unit (BTP) at Ventura
- Mandated education services to youth in restricted programs
- Adequate education, recreation and program space in the BTP
- Timely access to non-urgent medical appointments, and
- The full continuum of services to youth requiring special education services

While problems have existed to varying degrees with some of these issues at other DJJ institutions, the severity and consistency of these problems at Ventura rose to the level that the Special Master believes more consistent observation and monitoring of this institution is needed until such time that DJJ has demonstrated that Ventura leadership can adequately address these issues. As such, the Special Master will report on progress, or the lack thereof, on this issue in each of her quarterly reports until she has adequate documentation from either direct observation or from Court appointed experts that the problems discussed in OSM 18 have been addressed.

A. Implementing a Behavioral Treatment Program

Upon examination, it was readily apparent that many of the problems at the Ventura BTP result from an implementation failure. The Ventura BTP staff had not been trained in the protocols and procedures of a BTP. If one could say there was a model underpinning Ventura's version of a BTP, it would be akin to a segregation unit that was designed not to treat youth but to deprive youth of privileges. In short, the problems at the BTP stemmed from a failure to implement the actual BTP model.⁶⁹ Staff was being asked to run a BTP without having been trained in the purpose or the structure of a BTP.⁷⁰ DJJ senior administrators sent a team of Central Office staff to Ventura on April 7-8 and 14-15, 2011 to identify program deficiencies and to assist institution managers in developing corrective action plans.⁷¹ On June 21-23, 2011, training was provided to BTP unit staff, educators and managers about the purpose, structure and strategies of administering a BTP.⁷²

Training staff in the concept that behaviorally challenging youth require more, not less treatment, and that treatment is not a one-time event, is central to the success of the BTP. This is particularly difficult for DJJ because the Integrated Behavioral Treatment Model is only in its pilot stage and is, therefore, not universally understood. Staff need not just orders telling them what to do but time to observe the use of appropriate behavioral management techniques in various situations.

⁶⁹ For a full discussion of this issue, see OSM 18, pp. 9-11.

⁷⁰ BTP training was provided at years before at Ventura but none of the staff currently on the BTP were involved in that training. Further the program protocols were not on the unit so staff could attempt to understand the program design.

⁷¹ See Memo from Associate Director Nylund to Special Master Campbell, July 29, 2011. DJJ senior managers kept the Special Master apprised of site visit progress during several phone calls and in-person meetings.

⁷² Special Master Campbell observed the first day of the training and found the trainers to be highly capable and skilled. Most institution staff participated and demonstrated interest in the concepts and activities.

The Central Office administrative team visited Ventura on July 25-26, 2011 and continued to find issues that indicate the BTP unit staff need additional support.⁷³ The training team was scheduled to return August 17-18th to provide further assistance with areas of concern.

B. Out-of-Cell Time

A critical issue that Defendant is attempting to address is the lack of appropriate recreation and program space for youth in the BTP units. DJJ recognized that in some cases, it was not meeting its own minimum standard of a minimum of three hours of out-of-cell time for a youth.⁷⁴ To remedy this situation Defendant is working to create more recreation and program space and to closely monitor the out-of-cell time to ensure compliance with the minimum standards.

One DJJ Program Administrator and the Prison Industry Association (PIA) construction managers were at Ventura on July 21, 2011 to begin the development of construction plans for group recreation space that will be added to the BTPs. This space is in addition to the current recreation space and provides a higher level of security. The space that measures 32 x 40 and has a partial cover for inclement weather is large enough for group or individual activity. The projected completion date is September 30, 2011.⁷⁵ Defendant plans to remedy the program space deficit for the BTPs by adding modular multi-purpose buildings. The date for installation and completion of the modular units

⁷³ For example, staff does not yet fully understand which youth need to be in a BTP and the transition process out of a BTP. These issues will be addressed when Dr. Jim Telander and Henry Lum return to Ventura to assist with program implementation.

⁷⁴ This standard is contested by Plaintiff as inadequate and a violation of the Safety & Welfare Remedial Plan. The Court will hear arguments in the matter in January, pursuant to Plaintiff's motion to hold Defendant in contempt for failing to provide adequate out-of-cell time for youth.

⁷⁵ See e-mail from Mark Blaser, Program Administrator, August 8, 2011. Administrator Blaser also verbally briefed the Special Master about progress of both the recreation and program spaces.

remains January 2012.⁷⁶ Defendant is demonstrating commitment to creating remedies to resolve the physical impediments to out-of-cell problems.

Other issues Defendant is addressing include ensuring staff understand the out-of-cell policy, documentation of youth in a restricted status and consequences that ensue if a youth fails to receive the minimum out-of-cell time. Confusion existed among staff regarding the minimum criteria of three hours of out-of-cell time. Defendant believes that an instructional memo from the institution superintendent that clarifies the policy has eliminated the confusion. A review of the record that documents mandated time out of cell indicates that staff at Ventura has been ensuring the youth are out of their cells a minimum of three hours per day. Since May 1, 2011, Ventura has continued to demonstrate compliance with the delivery and documentation of time out of room services to youth. A review of TD/TIP time out of room documentation in WIN shows Ventura in 100% compliance from May 1, 2011 to July 16, 2011.⁷⁷ Review by Central Office staff of out-of-cell data has increased from monthly to weekly. Institution and Central Office staff are also monitoring to ensure that staff accurately enters data regarding restricted movement into the electronic record.

While more stringent supervision of this issue is definitely warranted and has resulted in immediate behavior change by staff, long-term change must include training staff in alternative behavior management strategies. This includes the creation of a continuum of interventions and rewards that staff understand how to use with youth. Without new skills and a broader resource tool kit, staff will quickly find themselves

⁷⁶ Recognizing that construction schedules can and do change, the current construction schedule shows an occupancy date of January 31, 2011.

⁷⁷ See Memo from Associate Director Nylund to Special Master Campbell, July 29, 2011. The Special Master also reviewed the data that delineates how out-of-cell time is spent.

once again resorting to inappropriate strategies when responding to youth misbehavior. Staff, like youth, respond better to positive incentives, rather than increased monitoring and loss of freedom. Developing new skills and behaviors is the best way to bring about change in staff or youth. How managers respond to problems with staff is an opportunity to model the behaviors they are trying to teach staff to engage in with youth.

As noted above in Section V (Use of Force), Ventura has experienced high vacancy rates in its supervisory classifications, which could compromise its effort in this regard. For example, four of seven (57%) Senior Youth Correctional Counselor (SYCC) positions were vacant as of May 25, 2011 that resulted in one SYCC being assigned to provide day-to-day supervision of two BTP units despite myriad of problems confronting those units. The Special Master urges the Defendant to closely monitor staffing issues at Ventura and intervene or provide support and assistance when necessary and appropriate.

On August 4, 2011, the Honorable Jon S. Tigar issued an order to show cause as to why Defendant should not be held in contempt for violation of Court orders in this area. The hearing is set for January 26, 2012. Order Granting Motion to Enforce Court-Ordered Remedial Plans and to Show Cause Why Defendant Should Not Be Held in Contempt of Court, August 4, 2011 (August 2011 Order), at 5.

C. Provision of Education Services

As noted above in Section II, Defendant is making significant strides in hiring needed credentialed education staff to ensure adequate education services for youth. The Education Experts have indicated a willingness to help Defendant understand how to address education services for youth in TD, TIP or a BTP. TD and TIP create serious challenges in the provision of education services and the Special Master believes that

with a full staff complement and the needed technology services, the Principal of Mary B. Perry High School can and will address this issue. The Special Master requests follow-up regarding what is being done to remedy the technology challenges raised in OSM 18.

On August 4, 2011, the Honorable Jon S. Tigar issued an order to hire adequate teaching staff within 90 days and to ensure adequate classroom space within 150 days. August 2011 Order at 5.⁷⁸

D. Integration of Youth

One of the disturbing findings of the investigation of problems with the BTP Ventura is that some youth have not integrated into the general population for several years. Staff reported that some youth refuse to integrate and they have not been integrated since 2005 or 2006.⁷⁹ Attention in the reform effort regarding integration has been focused largely on gang issues and yet it appears that race issues are equally important. The idea that some youth have not integrated into the general population for so many years raises concerns and questions.

Defendant has been investigating these issues. The Safety and Welfare Expert has requested data based on risk and need, not just disciplinary history regarding these youth and the youth viewed as having the most problematic behavior issues at Ventura. Defendant is considering contracting with someone to work with these youth. Defendant is advised to consider whether the proposed contractor has an evidence-based program with proven outcomes that is consistent with the Integrated Behavioral Treatment Model (IBTM). One of the goals of the IBTM is to focus limited resources on a smaller number of proven strategies and to not use resources on programs that do not use evidence-based

⁷⁸ See 08.04.2011 Order Granting Motion to Enforce (3).pdf.

⁷⁹ *Id.* at p.6.

strategies. The Special Master requests that the data requested by the Safety and Welfare Expert is provided as soon as possible and that the IBTM implementation committee and the IBTM consulting group review any proposed new program.

VII. CLOSURE OF SOUTHERN YOUTH CORRECTIONAL RECEPTION CENTER AND CLINIC

On June 13, 2011, Acting Director Rachel Rios announced the closure of SYCRCC to facility staff. The closure is an effort to further reduce service delivery costs. On June 14, 2011, the announcement was codified in writing and sent to all DJJ staff. Youth, families, experts and the Special Master were notified of the closure on the same day. As with the recent closure of the Preston Youth Correctional Facility, the Defendant is soliciting the experts' input and feedback.⁸⁰

The closure is scheduled for December 2011. Defendant has developed a transition plan and projects all youth will be transferred by November 2011.⁸¹ The Defendant anticipates that the closure will not result in a violation of the *Farrell* living unit caps.⁸² Defendant has been conscientious in efforts to inform and engage both the Plaintiff and experts about the closure.⁸³ The Special Master will organize conference calls between the experts and Defendant to ensure that Defendant and experts have opportunities to discuss and explore the best way to ensure a smooth transition.

Plaintiff is concerned about the transfer of any additional youth to Ventura. Plaintiff believes that any new youth at the institution would exacerbate the violence and racial tensions already present.

⁸⁰ See Southern Youth Correctional Reception Center and Clinic Closure Update, July 27, 2011.

⁸¹ See Proposed Transition Plan of SYCRCC, July 26, 2011.

⁸² Statement made by Acting Director Rios at the August 2, 2011 OSM/Expert Meeting.

⁸³ See Letter, Acting Director Rachel Rios to Plaintiff Counsel Sara Norman, June 17, 2011 and Norman's response letter, June 23, 2011. regarding SYCRCC Closure.

VIII. CONCLUSION

Five of the Farrell experts have begun to transfer different aspects of monitoring to Defendant. In two of the areas, education and disabilities, it is clear that not only is Defendant capable of performing the monitoring functions, there has been no notable loss of progress and, in many areas, compliance ratings have improved for items monitored by Defendant. The transfer of monitoring functions is important not just because it provides Defendant an opportunity to develop necessary compliance and quality assurance systems but because it allows the experts to focus their energy and resources on the remaining issues that require resolution to achieve substantial compliance in the entire remedial plan. The Education and Disabilities Remedial Plans have only a few remaining issues that require attention to achieve substantial compliance. The Special Master hopes the experts can now focus on these items and work with Defendant to develop an exit strategy from the case that demonstrates systemic and lasting solutions to the issues raised in the remedial plans.

The Dental, Medical and Safety and Welfare Experts are all in various stages of transferring monitoring functions. Each expert is working with Defendant to determine training strategies, what items to transfer and how to assess outcomes. These efforts will be discussed in future reports of the Special Master.

The most challenging issues that remain in the case reflect the failure of DJJ to have an Integrated Behavioral Treatment Model (IBTM). Issues such as use of force and implementing effective BTPs are ultimately resolved not by piecemeal responses but when the IBTM is a way of life for all DJJ staff. When there is one unified case plan that is shared by staff who have clearly defined roles, understand that each person must

reinforce the case plan goals, and that the goals are driven explicitly from a credible and properly implemented risk and need assessment process that focuses on factors that are proven to reduce recidivism, issues like use of force will diminish significantly and staff will understand what a BTP is and how to run it. To do this will require breaking down the silos that currently exist between mental health treatment and daily behavior management.

To make significant progress in implementing the IBTM will require a narrowing of focus for Defendant. Defendant is building constitutional education and health care systems. This has required significant time and energy. Now it is time to refocus the limited time and energy of Defendant to focus primarily on the IBTM. One of the most important reasons to achieve substantial compliance in education, disabilities, dental and medical is to ensure that the full attention of Defendant can focus on making the mental health systems and sex behavior treatment program integrate with an effective daily management and behavioral system that supports desired change in the youth.

It is unfortunate that years were lost in this case defining the behavioral treatment model but now the parties have agreed on a model that is showing great promise. The system is small enough now that full implementation while challenging can and must be done. Significant change occurs with consistent focus. The focus in this case must now shift from doing many things to integrating the many things into one unified approach.

The Special Master respectfully submits this report.

Dated: September 9, 2011

Nancy M. Campbell
Special Master