

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

UNITED STATES OF AMERICA,

Plaintiff,

V.

THE STATE OF OHIO, et al.,

Defendants.

CIVIL ACTION NO: 2:08-cv-475

JUDGE ALGENON L. MARBLEY

**AMENDED STIPULATION FOR
INJUNCTIVE RELIEF**

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I. INTRODUCTION

- A. On June 24, 2008, the Court entered the original Stipulated Judgment. (Doc. 8.) Since that time, the parties have amended their agreement twice. (Docs. 27 and 81.) This Amended Stipulation reflects those respective sets of changes and replaces the original agreement in its entirety. This Stipulated Judgment is entered into by the parties to resolve all the claims in this action against all Defendants as to the Scioto Juvenile Correctional Facility ("Scioto"). The United States' claims concerning the remaining six facilities are resolved pursuant to the Court's Order conditionally dismissing the Complaint. (Doc. 7).
- B. On March 16, 2005, the United States Department of Justice ("DOJ") notified the State of Ohio (the "State") of its intent to investigate conditions of confinement at the Scioto Juvenile Correctional Facility in Delaware, Ohio, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. Thereafter, on April 15, 2005, DOJ notified the State of its intent to conduct a similar investigation at the Marion Juvenile Correctional Facility ("Marion") in Marion, Ohio.
- C. In response, the State of Ohio, through the Department of Youth Services ("DYS"), indicated that it intended to cooperate with the DOJ investigation, that it had determined that significant changes needed to be and would be made, and that it was embarking on a master plan to change the culture and conditions at Scioto and Marion.
- D. In this regard, before DOJ opened its formal investigations of Scioto and Marion (collectively, the "Facilities"), the State hired Fred Cohen, a juvenile justice expert, to assess conditions at the Scioto facility. In August 2004, Mr. Cohen and his team of experts issued findings (the "Cohen Report"), a copy of which was provided to DOJ. Among other things, the Cohen Report addressed issues regarding protection from harm, medical care, mental health care, and special education at Scioto.
- E. From June 27 to July 1, 2005, DOJ toured Scioto and Marion with consultants in the fields of medical care and mental health care. A tour of Marion's special education program took place from July 19 to July 20, 2005.
- F. Throughout the course of the investigation, the State has cooperated with DOJ, providing access to staff, youth, and documents at both Facilities.
- G. On May 9, 2007, DOJ issued findings letters, pursuant to 42 U.S.C. § 1997(a)(1), that concluded that certain conditions at Scioto and Marion violated the constitutional and federal statutory rights of youth confined in the Facilities. On June 1, 2009, Marion was closed.

- H. The State has indicated that it is firmly committed to providing legally adequate conditions by instituting the remedial measures required by this Stipulation and that, in many ways, this Stipulation formalizes what had been agreed to in principal in the past and what the DYS reportedly already has under way.
- I. The State represents that it is participating in a collaborative manner with plaintiffs' counsel in S.H., et al. v. Stickrath, Case No. 2:04CV1206, which is a matter before the United States District Court for the Southern District of Ohio, and that, in the S.H. case, the State has elected to implement additional remedial measures beyond those required to resolve issues raised by the DOJ findings.
- J. No person or entity is intended to be a third-party beneficiary of the provisions of this Stipulation for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Stipulation. Notwithstanding the foregoing, DOJ and the State agree that the terms of this Stipulation may be incorporated into the Stipulation for Injunctive Relief resolving the S.H. case.
- K. The court finds that this Stipulation satisfies the requirements of 18 U.S.C. § 3626 (a)(1)(A) and shall retain jurisdiction to enforce its terms. The court shall have the power to enforce the Stipulation through specific performance and all other remedies permitted by law.
- L. On May 9, 2011, the United States, then Monitor in this matter, submitted to the Court its Third Compliance Report assessing the State's compliance with the provisions of the U.S.A. v. Ohio Stipulation. [Doc. 79].
- M. On May 20, 2011, the Parties submitted a joint motion to the Court to:
(1) terminate 20 provisions under section III, "Substantive Remedial Provisions";
(2) appoint a new monitor and consultants; and (3) modify the monitoring process. [Doc. 80]. The agreed changes are incorporated within this Amended Stipulation for Injunctive Relief.
- N. Within the subject area of "Protection From Harm," the Parties agreed to terminate the following four provisions: A.2, A.4, A.6, and A.7. Within the subject area of "General Medical Care," the Parties agreed to terminate the following seven provisions: C.3, C.4, C.6, C.7, C.8, C.9, and C.10. Within the subject area of "Grievances," the Parties agreed to terminate one provision: D.3. Within the subject area of "Special Education," the Parties agreed to terminate the following eight provisions: E.2, E.3, E.4, E.5, E.6, E.9, E.10 and E. 11.
- O. On June 6, 2011, the court granted the Parties' joint motion to terminate 20 provisions under section III, "Substantive Remedial Provisions", appoint a new monitor and consultants and modify the monitoring process. [Doc. 81].

II. DEFINITIONS

In this Stipulation, the following definitions apply:

- A. “Abuse and neglect” shall mean any act or failure to act as caretaker that results in death or physical or emotional injury that harms or threatens to harm a youth’s health or welfare.
- B. “DOJ” means the United States Department of Justice, which represents the United States in this matter.
- C. “DYS” means the Ohio Department of Youth Services.
- D. “Effective Date” means June 5, 2008.
- E. “IEP” means an Individual Education Plan as defined by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400-1482 (West 2000 & Supp. 2006), and the regulations promulgated thereunder.
- F. “Facilities” is replaced with the term “Facility,” which means the Scioto Juvenile Correctional Facility or “Scioto.”
- G. “Implement” means to give practical effect and ensure actual fulfillment by concrete measures, including appropriate training of relevant staff.
- H. “Include” or “including” means “include, but not be limited to” or “including, but not limited to.”
- I. “JCOs” mean the Juvenile Correctional Officers who work at Scioto. Such positions now are called Youth Specialists (“YS”). Any use of JCO in this document is meant to refer to the new title of Youth Specialist.
- J. “Over-familiarity” means any inappropriate or unduly intimate or informal conduct between juveniles and staff or employees including conduct that may lead to a romantic or sexual relationship, such as exchanging letters, providing special favors, or inappropriate touching.
- K. “Qualified mental health professional” means a mental health care provider sufficiently trained and currently licensed to provide the services he or she undertakes to provide.
- L. “Quality Assurance/Improvement Program” means a system of self-auditing and improvement to assess the implementation and effectiveness of all remedies instituted pursuant to this Stipulation, to identify deficits that may exist, and to effectuate new measures to cure deficits identified.

- M. "Rehabilitative Services" means programming and treatment provided to all youth in the Facilities. For each youth, programming and treatment shall be suitable to the youth's particular needs, shall address the underlying causes for the youth's confinement, and shall be designed to restore the youth's socially acceptable behaviors and values.
- N. "Restraints" means any chemical or mechanical device used to control the behavior of a youth.
- O. "Scioto" means the Scioto Juvenile Correctional Facility located at 5993 Home Road, Delaware, Ohio, and any facility that is built to replace or supplement Scioto.
- P. "Seclusion" "seclude" and "secluding" mean isolating a youth in a room from which the youth's ability to egress is blocked. The term seclusion does not apply to locking a youth in a room during normal hours of sleep.
- Q. "Serious Incidents" means: use of force; injuries requiring more than first-aid treatment; and allegations of child abuse, of over-familiarity or other, inappropriate staff relationships with youth, of staff-on-youth violence, of youth-on-youth violence, of significant, actual or attempted self harm, of youth-on-staff violence, and of any sexual contact.
- R. "Serious mental illness" means the following disorders: psychoses, schizophrenia, bipolar with psychotic features, depression with psychotic features, severe post-traumatic stress disorder, and schizoaffective disorders.
- S. "State" means the State of Ohio, Harvey J. Reed, Director of the Ohio Department of Youth Services, the Ohio Department of Youth Services, and their successors, contractors and agents.
- T. "Suicide Precautions" means any level of watch, observation, or measures to prevent self-harm.
- U. "Superintendent" means an individual who is appointed to oversee all aspects of facility operations and is responsible for all facility staff and youth.
- V. "Train" means to instruct in the skills addressed to a level that the trainee has the demonstrated proficiency to implement those skills as and when called for in the training. "Trained" means to have achieved such proficiency.
- W. "Unified Case Plan" means the primary DYS document used to establish and describe youth and staff short term responsibilities in high risk/need domains, identify and address release authority and court expectations, document special concerns and summarize youth progress and completion of programs in these areas.

- X. “Use of Force” means any physical contact with a youth by a staff person that has the likely effect of restricting the youth’s freedom of movement, that applies physical pressure to the youth’s body, or that causes or is likely to cause physical discomfort to the youth, including hand or arm holding to escort a youth over his or her resistance to being escorted. Use of Force does not mean brief and isolated use of physical guidance or positioning that is unlikely to cause physical discomfort and that is for the purpose of redirecting a youth or providing medical or related treatment.
- Y. “Youth” means any juvenile or juveniles committed by a court to, and residing at, the Facilities during the operation of this Stipulation.

III. SUBSTANTIVE REMEDIAL MEASURES

The Department of Youth Services shall provide youth in its charge with a safe and humane environment. Each youth entrusted to the Ohio Department of Youth Services shall receive individual care, treatment, and rehabilitative services in the least restrictive setting consistent with the youth’s needs, documented security concerns, and generally accepted professional standards of care. In no event will the level of care in such areas such as safe environment, mental health, special education, programming or any other requirement encompassed in this Stipulation fall below the level described or required in this Stipulation. The provisions under Section III reflect the fact that 20 provisions were terminated on June 6, 2011 and therefore are not numbered sequentially.

A. PROTECTION FROM HARM

1. Generally: The State shall, at all times, provide youth in the Facilities with safe living conditions. As part of this requirement, the State shall take appropriate measures to ensure that youth are protected from abuse and neglect, use of excessive force, undue seclusion, undue restraint, and over-familiarization.
2. Use of Force: [Removed per Court Order on June 6, 2011, Doc. 81.]
3. Seclusion: The State shall develop and implement policies, procedures and practices so that staff use seclusion (as defined in this Stipulation) only in accordance with policy and in an appropriate manner and so that staff document fully the use and administrative review of any imposition of seclusion, including the placing of youth in their rooms outside normal sleeping hours.
4. Restraint: [Removed per Court Order on June 6, 2011, Doc. 81.]

5. Investigation of Serious Incidents: The State shall develop and implement policies, procedures, and practices so that appropriate investigations are conducted of all incidents of: use of force; staff-on-youth violence; serious youth-on-youth violence; inappropriate staff relationships with youth; sexual misconduct between youth; and abusive institutional practices. Investigations shall be conducted by persons who do not have direct or immediate indirect responsibility for the employee(s) being investigated.
6. Staff Training in Behavior Management, De-Escalation, and Crisis Intervention: [Removed per Court Order on June 6, 2011, Doc. 81.]
7. Employment Practices: [Removed per Court Order on June 6, 2011, Doc. 81.]

B. MENTAL HEALTH CARE

1. Mental Health Screening: The State shall develop and implement policies, procedures, and practices to ensure that all youth admitted to the Facilities are comprehensively screened for mental disorders, including substance abuse, depression, and serious mental illness, within twenty-four hours of admission. This screening shall be performed by qualified personnel, as part of the intake process, consistent with generally accepted professional standards of care.
2. Immediate Referral to a Qualified Mental Health Professional: If the mental health screen identifies an issue that places the youth's safety at immediate risk, the youth shall be immediately referred to a qualified mental health professional for assessment, treatment, and any other appropriate action, such as transfer to another, more appropriate setting. The State shall ensure that, absent extraordinary circumstances, qualified mental health professionals are available for consultation within 12 hours of such referrals.
3. Identification of Previously Unidentified Youth with Mental Disorders: The Facilities shall implement policies, procedures, and practices consistent with generally accepted professional standards of care to identify and address potential manifestations of mental or behavioral disorder in youth who have not been previously identified as presenting mental health or behavioral needs requiring treatment.

4. **Mental Health Assessment:** The State shall implement policies, procedures, and practices to ensure that, as part of an overall assessment of the youth's health, risks, strengths and needs, youth who are identified in screening as having possible mental health needs receive timely, comprehensive, and accurate assessments by qualified mental health professionals, consistent with generally accepted professional standards of care. Assessments shall be designed and implemented so as to identify youth with mental disorders in need of specific treatment and contribute to a full plan for managing the youth's risk. Assessments shall be updated as additional diagnostic and treatment information becomes available.
5. **Adequate Mental Health Care and Treatment:** The State shall implement policies, procedures, and practices to ensure that adequate mental health and substance abuse care and treatment services (including timely emergency services), and adequate rehabilitative services are provided to youth in the Facilities by qualified mental health professionals consistent with generally accepted professional standards of care.
6. **Treatment Planning:** The State shall develop and implement policies, procedures and practices so that treatment service determinations, including ongoing treatment and discharge planning, are consistently made by an interdisciplinary team through integrated treatment planning and embodied in a single, integrated treatment plan.
7. **Treatment Teams:** At a minimum, the interdisciplinary treatment team for each youth in need of mental/behavioral health and/or substance abuse treatment should:
 - a. Be guided by a trained treatment professional who shall provide clinical oversight and ensure the proper functioning of treatment team meetings;
 - b. Consist of a stable core of members, including at least the youth, the social worker, a JCO, one of the youth's teachers, the Unit Manager, and as warranted by the needs of the youth, the treating psychiatrist, the treating psychologist, registered nurse, and, as appropriate, other staff;
 - c. Ensure that needed psychiatric evaluations are conducted on a youth before administering psychotropic medications to the youth;
 - d. Monitor as appropriate but at least monthly, the efficacy and the side effects of psychotropic medications, including consultation with the facility medical, counseling, and other staff who are familiar with the youth;

- e. For youth under a psychiatrist's care: ensure the provision of individual counseling and psychotherapy when needed, in coordination with facility psychologists; ensure that all youth referred as possibly in need of psychiatric services are evaluated and treated in a timely manner; and provide adequate documentation of treatment in the facility medical records;
 - f. Include, to the fullest extent practicable, proactive efforts to obtain the participation of parents or guardians, unless their participation would be inappropriate for some reason (e.g., the child has been removed from the parent's custody), in order to obtain relevant information, understand family goals and concerns, and foster ongoing engagement;
 - g. Meet to assess the treatment plan's efficacy at least every 30 days, and more often as necessary; and
 - h. Document treatment team meetings and planning in the youth's mental health records.
8. Integrated Treatment Plans: The State shall ensure that each youth in need of mental/behavioral health and/or substance abuse treatment shall have an appropriate, integrated, treatment plan, including an appropriate behavior management plan, that addresses such needs. The integrated treatment plan shall be driven by individualized risks and needs, be strengths-based (i.e., builds on an individual's current strengths), account for the youth's motivation for engaging in activities contributing to his/her wellness, and be reasonably calculated to lead to improvement in the individual's mental/behavioral health and well being, consistent with generally accepted professional standards of care.
9. Access to a Qualified Mental Health Professional: The State shall develop and implement policies, procedures, and practices to ensure that youth who seek access to a qualified mental health professional are provided appropriate access in a timely manner.
10. Mental Health Involvement in Housing and Placement Decisions: The State shall develop and implement a system for ensuring that significantly mentally ill youth who do not have the adaptive functioning to manage the activities of daily living within the general population are provided appropriate housing and supports to assist them in managing within the institutional setting.

11. Staffing: The State shall staff, by contract or otherwise, the Facilities with adequate numbers of psychiatrists, psychologists, social workers, and other mental health professionals qualified through training and practical experience to meet the mental health needs of youth residents, as determined by the acuity of those needs. Mental health care shall be integrated with other medical and mental health services and shall comport with generally accepted practices. The State shall ensure that there are sufficient numbers of adequately trained direct care and supervisory staff to allow youth reasonable access to structured programming.
12. Medication Notice: Before renewing a psychoactive medication prescription from a community provider or commencing the administration of a psychoactive medication to a youth, the State shall ensure that the youth, and, to the fullest extent practicable and appropriate, his or her parent or caregiver, are provided with information regarding the goals, risks, benefits, and potential side effects of the medication and given an explanation of the potential consequences of not treating with the medication, and that the youth has an opportunity to consent to such medication.
 - a. Involuntary administration of psychotropic medication(s) to juveniles shall comply with applicable federal and state laws and regulations. The DYS clinical director, in consultation with the DYS medical director, shall review any request with DYS Legal Services prior to the approval for involuntary administration.
13. Mental Health Medications: The State shall develop and implement policies, procedures, and practices to ensure that psychoactive medications are prescribed, distributed, and monitored properly and safely, and consistent with generally accepted practices. The State shall provide regular training to all health and mental health staff on current issues in psychopharmacological treatment, including information necessary to monitor for side effects and efficacy. The State shall issue and implement policies and procedures for the administration of appropriate tests (including, for example, blood tests, EKGs, and Abnormal Involuntary Movement Scale tests) to monitor the efficacy and any side effects of psychoactive medications in accordance with generally accepted professional standards. The State shall also:
 - a. Share medication compliance data with the psychiatrist and document the sharing of this information; and
 - b. Not withhold the provision of psychostimulants to youth when such treatment is clinically warranted.

14. Mental Health and Developmental Disability Training for Direct Care Staff: The State shall develop and implement strategies for providing direct care and other appropriate staff with training on mental health and developmental disabilities sufficient for staff to understand the behaviors and needs of youth residents in order to supervise them appropriately.
15. Staff Mental Health Training: The Facilities shall train:
 - a. All staff who directly interact with youth (e.g., JCOs, social workers, teachers, etc.) on:
 - (i) basic mental health information (e.g., diagnosis, specific problematic behaviors, psychiatric medication, additional areas of concern) and recognition of signs and symptoms evidencing a response to trauma; and
 - (ii) teenage development, strength-based treatment strategies, suicide, and, for staff who work with female youth, female development.
 - b. Clinical staff on the prevalence, signs, and symptoms of Post Traumatic Stress Disorder and other disorders associated with trauma.
16. Suicide Prevention: The State shall review and, as appropriate, revise current suicide prevention practices to ensure that suicide preventions and interventions are implemented consistently and appropriately, consistent with generally accepted professional standards of care.
17. Transition Planning: The State shall ensure that staff create transition plans for youth leaving the Facilities consistent with generally accepted professional standards of care.
18. Oversight of Mental Health Services: The Facilities shall ensure that youth receive the care they need by developing and implementing an adequate mental health Quality Assurance/Improvement Program; annually assessing the overall efficacy of the staffing, treatments, and interventions used at the Facilities; and, as appropriate, revising such staffing, treatments and interventions.

C. GENERAL MEDICAL CARE

1. Generally: The Facilities shall ensure that the individuals they serve receive routine, preventive, and emergency medical and dental care consistent with current, generally accepted professional standards. The Facilities shall ensure that individuals with health problems are identified, assessed, diagnosed, and treated consistent with current, generally accepted professional standards of care.
2. Health Records: The State shall develop and implement policies, procedures, and practices to ensure that, consistent with State and Federal law, at a minimum, the juvenile courts in the State, all juvenile detention facilities, and all placement settings from which youth are committed shall timely forward to Scioto, or to the facility of placement (if the records arrive after the youth has been placed), all pertinent youth records regarding medical and mental health care. The Facilities shall develop and implement policies, procedures, and practices to ensure that health care staff, including mental health care staff, have access to documents that are relevant to the care and treatment of the youth.
3. Confidential Health Care: [Removed per Court Order on June 6, 2011, Doc. 81.]
4. Initial Health Assessment: [Removed per Court Order on June 6, 2011, Doc. 81.]
5. Access to Health Services: The Facilities shall ensure that youth can request to be seen by medical staff confidentially and independent from JCOs and custodial staff.
6. Medication Management: [Removed per Court Order on June 6, 2011, Doc. 81.]
7. Dental Care: [Removed per Court Order on June 6, 2011, Doc. 81.]
8. Management of Chronic Illnesses: [Removed per Court Order on June 6, 2011, Doc. 81.]
9. Access to Specialty Care: [Removed per Court Order on June 6, 2011, Doc. 81.]
10. Immunizations: [Removed per Court Order on June 6, 2011, Doc. 81.]

D. GRIEVANCE PROCESS

1. The State shall develop and implement policies, procedures, and practices to ensure that the Facilities have an adequate grievance system including: no formal or informal preconditions to the completion and submission of a grievance; review of grievances by the Incident Review Team; timely initiation and resolutions of grievances; appropriate corrective action; and written notification provided to the youth of the final resolution of the grievance.
2. A clear explanation of the grievance process shall be provided to each youth upon admission to the Facilities during orientation, and to their parent(s) or guardian(s), and the youth's understanding of the process shall be at least verbally verified.
3. [Removed per Court Order on June 6, 2011, Doc. 81.]

E. SPECIAL EDUCATION

1. Provision of Special Education: The State shall, at all times, provide all youth confined at the Facilities with adequate special education in compliance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400-1482 (West 2000 & Supp. 2006), and regulations promulgated thereunder, and this Stipulation.
2. Oversight: [Removed per Court Order on June 6, 2011, Doc. 81.]
3. Special Education upon Intake: [Removed per Court Order on June 6, 2011, Doc. 81.]
4. Parent or Guardian Involvement: [Removed per Court Order on June 6, 2011, Doc. 81.]
5. Staffing: [Removed per Court Order on June 6, 2011, Doc. 81.]

6. Screening for Special Education Needs: [Removed per Court Order on June 6, 2011, Doc. 81.]
7. Individual Education Plans:
 - a. The State shall develop an IEP as defined in 34 C.F.R. § 300.320 for each youth who qualifies for an IEP. Following development of the IEP, the State shall implement the IEP as soon as possible. As part of satisfying this requirement, the State shall conduct required annual reviews of IEPs, adequately document the provision of special education services, and comply with requirements regarding participation by the professional staff, parents, and student in the IEP process. The State shall, if necessary, develop, review or revise IEPs for qualified special education students.
 - b. In developing or modifying the IEP, the State shall ensure that: the IEP reflects the individualized educational needs of the youth and that services are provided accordingly; each IEP includes documentation of the team's consideration of the youth's need for related services and transition planning, and identifies the party responsible for providing such transition services; the student's educational progress is monitored; teachers are trained on how to monitor progress toward IEP goals and objectives; and teachers understand and use functional behavioral assessment and behavior intervention programs in IEP planning and implementation.
8. Vocational Education: The State shall provide appropriate vocational services that are required transition services for disabled youth under the IDEA.
9. Forwarding Screening and Assessment Information upon Transfer: [Removed per Court Order on June 6, 2011, Doc. 81.]
10. Training and Quality Assurance: [Removed per Court Order on June 6, 2011, Doc. 81.]
11. Transition Services: [Removed per Court Order on June 6, 2011, Doc. 81.]

F. PROGRAMMING

1. Structured Programming: The State shall provide adequate, structured Rehabilitative Services, including an appropriate mix of physical, recreational, or leisure activities, during non-school hours and days

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

2. Orientation:

- a. Admissions Intake and Orientation: The State shall develop and implement policies, procedures, and practices to establish a consistent, orderly admissions intake system, conducive to gathering necessary information about youth, disseminating information to staff providing services and care for youth, and maintaining youth safety. The orientation shall also clearly set forth the rules youth must follow at the Facility, explain how to access medical and mental health care and the grievance system, and provide other information pertinent to the youth’s participation in the Facility’s programs.
- b. Notice to Youth of Facility Rules and Incentives/Consequences for Compliance: The State shall explain the Structured Programming to all youth during an orientation session that shall set forth the facility rules, the positive incentives for compliance and good behavior, and the sanctions for rule violations. The State shall provide the Facility rules in writing
- c. Introductory Handbook, Orientation and Reporting Abuse: Each youth entering the Facilities shall be given an orientation that shall include simple directions for reporting abuse and assuring youth of his/her right to be protected from retaliation for reporting allegations of abuse.

G. DOCUMENTATION

The Facilities shall develop and implement policies, procedures, and practices setting forth clear standards regarding the content, integration, and timeliness of progress notes, transfer notes, school progress notes, discharge notes, and other records, including, but not limited to, an expectation that such records include meaningful, accurate, and coherent assessments of the individual's progress relating to treatment plans, goals and objectives, and that clinically relevant information remains readily accessible.

1. **Progress Notes:** The Facilities shall promulgate and implement a policy requiring that all health professionals be required to create and use progress notes to document, on a regular basis, interactions and each assessment of youth with mental/behavioral health or substance abuse needs. In particular, progress notes shall:
 - a. In the assessment, address the efficacy of interventions, currently presenting problems, and the available options to address those problems; and
 - b. Provide thorough documentation of all crisis interventions or, if not thoroughly documented in the progress notes, provide a reference to alert staff to another document in the youth's file containing the details of the crisis intervention.
2. **Accessibility of Relevant Information:** The Facilities shall ensure that youth records are organized in a manner providing treatment teams prompt access to relevant, complete, and accurate documentation regarding the youth's status.

IV. COMPLIANCE COORDINATION, POLICIES, TRAINING, AND QUALITY ASSURANCE/QUALITY IMPROVEMENT

- A. **Compliance Coordinator:** The State shall assign the responsibility for coordinating compliance with this Stipulation to a compliance coordinator who shall report directly to the Director of the Department of Youth Services on these issues and shall coordinate and assess the State's compliance with this Stipulation and with State policies governing the Facilities.
- B. **Policies:** The State shall revise or develop policies, procedures, protocols, and practices to ensure that they are consistent with, incorporate, address, and implement all provisions of this Stipulation. The State shall revise or develop as necessary other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Stipulation.

- C. Document Review: Within 30 days after execution of this Stipulation, the State shall submit a master plan to the Monitor (see § V below), DOJ, and the S.H. plaintiffs' counsel that establishes a time line of up to one year to revise and/or develop written policies, procedures, protocols, training materials, and screening and assessment tools to effectuate the provisions of this Stipulation. The master plan and the policies, procedures, protocols, training materials, and screening and assessment tools shall be submitted to the Monitor, DOJ, and the S.H. plaintiffs' counsel for review and comment consistent with this paragraph. DOJ shall provide prompt guidance to the State, including specific explanations as to how the provisions, policies, or procedures, if any, are inconsistent with the terms of this Stipulation, and shall suggest revisions. In the event that DOJ asserts that policies, procedures, and other written documents are not in compliance with the terms of this Stipulation, the parties, in collaboration with the S.H. plaintiffs' counsel, will agree to a schedule for the parties' experts and the Monitor to communicate. If the parties are unable to agree on revisions to the policies, procedures, or practices, the parties shall submit the issue to the Monitor for resolution, consistent with the dispute resolution mechanism (at paragraph 256) of the Stipulation approved the court in S.H.
- D. Training: The State shall ensure that any person acting for the State in implementing any requirement in Section III of this Stipulation has been trained on the implementation of that provision and any corresponding State or Facility policies and procedures.
- E. Performance Data: On an ongoing basis, each Facility shall collect and analyze objective statistical data measuring the Facility's performance as to uniform performance indicators through which the implementation of each provision of Section III of this Stipulation can be reliably assessed ("Performance Data"). At least annually, the Compliance Coordinator shall independently audit each facility to verify the accuracy of the Facility's data collection and reporting.

V. MONITORING

A. Monitor and Consultant Selection, Reporting, and Removal

1. This Stipulation, as originally written, and the agreement in the S.H. v. Stickrath class action ("S.H. litigation") (See Docs. 92-4 and 108 therein) fashioned a unitary monitoring system. Specifically, Fred Cohen started serving as the only Monitor for both this case and in the S.H. litigation. However, on September 24, 2009, Fred Cohen submitted his resignation as the Monitor in U.S.A. v. Ohio. In response, the DOJ, the State, and the Plaintiffs in the S.H. litigation intended to establish a separate monitoring system in U.S.A. v. Ohio, which neither interferes nor conflicts with the monitoring system in the S.H. litigation.

2. Effective July 1, 2011, Dr. Kelly Dedel shall serve as the Monitor in U.S.A. v. Ohio, replacing the DOJ in that role.

2.1 The Monitor and any consultants assisting in monitoring remediation efforts shall coordinate their monitoring activities in this matter with the State to minimize conflicting schedules or other undue burdens on the State. As such, absent exigent circumstances, the Monitor, consultants, or sub-experts, in this case may not visit Scioto within a week of a previously scheduled visit by the Monitor of the S.H. litigation, unless the State consents to such scheduling.

2.2 Dr. Dedel will conduct substantive monitoring activities pertaining to Sections III.A and III.D-G of this Stipulation (Protection from Harm, Grievance Process, Special Education, Programming, and Documentation, respectively). Dr. Dedel will coordinate preparation of, and issue, all Monitor reports required by this Stipulation.

2.3 Dr. Daphne Glindmeyer, M.D., a mental health consultant, will assist the Monitor as a consultant to oversee monitoring activities pertaining to Section III.B (Mental Health) of this Stipulation. Dr. Glindmeyer will provide substantive information to the Monitor to help the Monitor to prepare and issue the reports required under this Stipulation as to the mental health terms set forth in the Stipulation.

2.4 Dr. Michelle Staples-Horne, M.D., a medical care consultant, will assist the Monitor as a consultant to oversee monitoring activities pertaining to Section III.C (General Medical Care) of this Stipulation. Dr. Staples-Horne will provide substantive information to the Monitor to help the Monitor to prepare and issue the reports required under this Stipulation as to the medical care terms set forth in the Stipulation.

3. All Monitor and Consultant Reports shall be provided to DOJ and DYS at least two weeks prior to their issuance. These reports shall be written with due regard for the privacy interests of individual youth and staff and the interest of the State in protecting against disclosure of non-public information.

4. Upon one of two grounds, the Monitor or any consultant assisting the Monitor may be removed from their respective positions on the monitoring team.

4.1 The Monitor or any consultant may be terminated from their duties as Monitor or consultant for good cause, either by prior notice to such Monitor or consultant and the stipulation of DOJ and DYS, or by order of the Court pursuant to a motion filed by DOJ or DYS.

4.2. If either DYS or the class Plaintiffs in the S.H. litigation determine in good faith that the monitoring process in this case has resulted in conflicting standards for DYS to attain lawful conditions of confinement, then either such party may seek a court order in this case to remove the Monitor or any consultant to the Monitor. The

reasonably supported results of any monitoring report may not constitute good faith grounds to seek the removal of a Monitor or a consultant to the Monitor.

5. If the position of Monitor becomes vacant, the following steps will apply:

5.1 DOJ and DYS shall confer regarding the selection of a new Monitor.

5.2 If DOJ and DYS are all unable to agree within thirty (30) days of the vacancy occurring, or within a time agreed to by each of those parties, then DOJ and DYS shall submit two names, along with resumes and cost proposals, to the Court. The Court shall then select the replacement monitor.

5.3 A vacancy occurs upon the removal by notice of the Monitor or a consultant as set forth in 4.1 or 4.2 above, by Court order, or upon the Court's acceptance of a written letter of resignation from the Monitor or consultant.

6. DOJ and DYS agree that no other Monitors or consultants, except those named in Part 2 above, will be used to conduct monitoring activities in this case. This does not bar either the Monitor or any approved consultant from retaining a sub-expert for additional input. However, the State has no obligation to permit such sub-experts to tour any facilities subject to this Stipulation. Further, the State has no obligation to respond to any request for documents, files, or data of any kind from such sub-expert. And, the State has no obligation to fund such sub-experts without its prior approval and agreement.

B. Cost of Monitor and Monitoring Team: The State shall pay the costs of the fees and expenses for both the monitor and the other members of the monitoring team.

C. Monitor Autonomy: Neither party to this Stipulation, nor any employee or agent of either party, shall have any supervisory authority over the monitor's activities reports, findings, or recommendations.

D. Monitor Qualifications: The Monitor shall have experience and education or training in the field of juvenile justice. The Monitor may also have education, training, or experience in general or special education, adolescent health and mental health needs (particularly the needs of institutionalized adolescents), and institutional abuse and incident investigations.

E. Monitor Access: The Monitor shall have full and complete access to the Facilities, all facility records, staff, and residents. The State shall direct all employees to cooperate fully with the Monitor. All non-public information obtained by the Monitor shall be maintained in a confidential manner.

F. Monitor Ex Parte Communications: The Monitor shall be permitted to initiate and receive ex parte communications with all parties in this and the S.H. case.

- G. Limitations on Public Disclosures by Monitor: Except as required or authorized by the terms of this Stipulation or the parties acting together, the Monitor shall not: make any public statements (at a conference or otherwise) or issue public findings with regard to any act or omission of the State or its agents, representatives or employees, or disclose non-public information provided to the Monitor pursuant to this Stipulation. Any press statement made by the Monitor regarding his/her employment must first be approved, in writing, by the parties. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of the State or any of its agents, representatives, or employees related to this Stipulation, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Stipulation. Reports issued by the Monitor shall not be admissible against the State in any proceeding other than a proceeding related to the enforcement of this Stipulation. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Stipulation, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the State or its departments, officers, agents or employees. The records maintained by the Monitor shall be kept confidential to the extent permitted by Ohio's Public Records Law and the federal Freedom of Information Act. Neither the Monitor nor any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Stipulation shall be liable for any claim, lawsuit or demand arising out of the Monitor's performance pursuant to this Stipulation. This paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Stipulation.
- H. Monitor Reports: The Monitor shall provide DOJ and DYS with reports describing the steps taken by the State to implement this Stipulation and evaluate the extent to which the State has complied with each substantive provision of the Stipulation. The Monitor shall prepare the report based upon a site visit of Scioto conducted no more than six weeks before the report's issuance. For each requirement of Section III of this Stipulation, the report shall specify: (1) the steps (including documents reviewed, meetings attended, and persons interviewed) the Monitor took to assess compliance; (2) the self-assessment steps the facility undertook to assess compliance and the results thereof; (3) the level of compliance. i.e., "noncompliance" or "substantial compliance"; and (4) the Monitor's recommendations, if any, to facilitate or sustain compliance. The Monitor shall issue a report for Scioto every six months, with interim reports as the Monitor determines appropriate. The Monitor is primarily to assess and report upon compliance; if there is an ambiguity in the meaning or intent of a provision, the Monitor shall seek guidance from the parties. The reports shall be provided to DOJ and DYS in draft form for comment at least two weeks prior to their issuance. These reports shall be written with due regard for the privacy interests of individual youth and staff and the interest of the State in protecting against disclosure of non-public information.

- I. Monitor Budget: The Monitor shall have a budget sufficient to allow the Monitor and the consultants named in Part A.2 above to carry out the responsibilities described in this Stipulation, and shall provide DOJ and DYS with a copy of each invoice, when issued by the Monitor, and notice of payment, when received by the Monitor. The Monitor will consult with the Defendants to set the monitoring budget for each fiscal year while injunctive relief is in place. Defendants shall pay the fees associated with the monitoring under this Stipulation.

VI. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

- A. DOJ Access: DOJ shall have full and complete access to the youth at the Facilities upon reasonable notice to DYS. DOJ shall have full and complete access to the Facilities, youth records, staff records, and staff of the Facilities regarding the topics addressed in this Stipulation upon reasonable notice to DYS. DOJ shall have the right to conduct interviews with staff, and confidential interviews with residents and former residents. State attorneys may be present at interviews of staff and tours of Facilities. All non-public information obtained by DOJ shall be maintained in a confidential manner.
- B. Response to DOJ Questions: Within 30 days of receipt of written questions from DOJ concerning the State's compliance with this Stipulation, the Monitor shall provide DOJ with written answers and access to any requested documents regarding the State's compliance with the requirements of this Stipulation.
- C. State Documentation of Compliance: The State shall maintain sufficient records to document its compliance with all of the requirements of this Stipulation. The State shall also maintain (so long as this Stipulation remains in effect) any and all records required by or developed under this Stipulation.
- D. Privileges: This Stipulation shall not be deemed to waive the attorney/client, attorney work product, deliberative process, or executive privileges. The State shall not assert physician/patient or psychotherapist/patient privileges with respect to the monitoring of this Stipulation.

VII. IMPLEMENTATION, ENFORCEMENT, AND TERMINATION

- A. Information to Employees: The State shall ensure that all current and future relevant State employees understand the terms of policies and procedures addressed by this Stipulation (to the extent necessary to carry out their job duties and responsibilities).

- B. Implementation: The State shall implement all reforms necessary to effectuate this Stipulation. The implementation shall begin on the effective date of the Stipulation in the S.H. case. Minor, inconsequential, sporadic, unintentional or isolated harmless instances of noncompliance with this Stipulation shall not be a basis for enforcement, provided they do not affect a substantial interest of the youth.
- C. Integration: This Stipulation shall constitute the entire integrated Stipulation of the parties. With the exception of DOJ's findings letters referenced in Section I. G., no prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in any proceeding.
- D. Enforcement: If DOJ believes that the State has failed to substantially comply with any obligation under this Stipulation, the parties will use the dispute resolution mechanisms in the Stipulation in the S.H. case (paragraph 256).
- E. Termination: This Stipulation shall terminate when the State has substantially complied with each of the provisions of the Stipulation and has maintained substantial compliance for two consecutive reporting periods following the initial finding of substantial compliance. The burden shall be on the State to demonstrate this level of compliance. Any of subsections A through G of Section III of the Stipulation may be terminated if the State sustains its burden with respect to that subsection of the Stipulation. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained noncompliance shall not constitute substantial compliance. The Defendants shall retain all rights, protections, and remedies under the Prison Litigation Reform Act of 1995, 18 U.S.C. § 3626 et seq.
- F. Defense of Stipulation: The parties agree to defend the provisions of this Stipulation. The parties shall notify each other of any court challenge to this Stipulation. In the event any provision of this Stipulation is challenged in any local or state court, removal to a federal court shall be sought. The terms of this Stipulation shall apply only to this Stipulation, and may not be used to affect or interpret any other agreement including S.H. v Stickrath regarding the State of Ohio.
- G. Successors: This Stipulation shall be binding on all successors, assignees, employees, agents and all those working for or on behalf of the State.

- H. No Waiver for Failure to Enforce: Failure by either party to enforce this entire Stipulation or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Stipulation.
- I. Notice: "Notice" under this Stipulation shall be provided electronically or by courier or overnight delivery and shall be provided to the State to the Director of the Department of Youth Services of the State of Ohio, to the Ohio Attorney General, and to the United States to the Chief of the Special Litigation Section, Civil Rights Division, United States Department of Justice.
- J. Unforeseen Delay: If any unforeseen circumstance occurs which causes a failure to timely carry out any requirements of this Stipulation, the State shall notify DOJ in writing within 20 calendar days of the time that the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform under the Stipulation. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The State shall implement all reasonable measures to avoid or minimize any such failure.
- K. Non-Retaliation: The State agrees that it shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Stipulation. The State is not precluded from taking appropriate action where an individual knowingly asserts a false complaint or knowingly makes false statements.
- L. Subheadings: All subheadings in this Stipulation are written for convenience of locating individual provisions. If questions arise as to the meanings of individual provisions, the parties shall follow the text of each provision.
- M. Severability: In the event any provision of this Stipulation is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Stipulation.
- N. Attorneys' Fees and Expenses: Each party shall bear the cost of their fees and expenses incurred in connection with this matter.

IT IS SO STIPULATED AND AGREED.

FOR THE UNITED STATES:

DATE: June 20, 2011

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IT IS SO STIPULATED AND AGREED.

FOR THE STATE:

DATE: June 20, 2011

s/ Harvey J. Reed
HARVEY J. REED
Director
Ohio Department of Youth Services

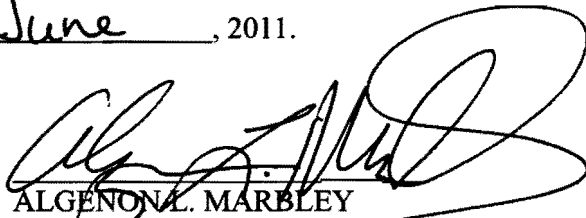
s/ J. Eric Holloway
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WHEREFORE, for good cause shown,

it is SO ORDERED this 28 day of June, 2011.


ALGENON L. MARBLEY
United States District Court Judge