



U.S. Department of Justice

Civil Rights Division

*Assistant Attorney General
950 Pennsylvania Avenue, NW - RFK
Washington, DC 20530*

May 9, 2007

The Honorable Ted Strickland
Governor
State of Ohio
30th Floor
77 South High Street
Columbus, OH 43215-6117

Re: Investigation of the Scioto Juvenile
Correctional Facility, Delaware, Ohio

Dear Governor Strickland:

I am writing to report the findings of the Civil Rights Division's investigation of conditions at the Scioto Juvenile Correctional Facility ("Scioto"), located in Delaware, Ohio. On March 16, 2005, we notified you of our intent to conduct an investigation of Scioto, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA"), and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"). We informed you that our investigation of Scioto would focus on protecting residents from harm, medical care, mental health care, grievances, and provision of special education.¹ As we noted, both CRIPA and Section 14141 give the Department of Justice authority to seek a remedy for a pattern or practice of conduct that violates the constitutional or federal statutory rights of children in juvenile justice institutions.

We note that the State has worked cooperatively and, under the leadership of Director of Ohio Youth Services Thomas Stickrath, has unequivocally indicated its clear desire to improve both facilities since being placed on notice of possible constitutional deficiencies. Prior to the Department of Justice investigations of Scioto and Marion, the State hired a team of expert consultants, led by Mr. Fred Cohen, to evaluate the

¹ Shortly thereafter, on April 15, 2005, we notified you of our intent to conduct an investigation of the Marion Juvenile Correctional Facility in Marion, Ohio ("Marion") regarding similar issues. Our findings regarding Marion are addressed in a separate letter.

constitutional conditions at the girls' section of the Scioto facility.² Mr. Cohen issued an Interim Report on August 16, 2004 and an Action Plan on September 28, 2004. In each of these documents, Mr. Cohen found constitutional deficiencies in the areas of protection from harm, medical care, mental health care, grievances, and provision of special education. The State agreed to adopt and stipulate to Mr. Cohen's findings, for the purpose of our investigation, and to apply those findings to the entire Scioto facility and the Marion facility.

Given the State's stipulation that the conditions identified in our March 16, 2005 notice letter are constitutionally deficient, we agreed to conduct limited facility tours.³ On June 29-July 1, 2005, we conducted an on-site inspection of Scioto, accompanied by expert consultants in mental health care and medical care. During our inspections, we interviewed mental health providers, medical providers, other staff, youth residents, and facility administrators. Before, during, and after our visit, we reviewed an extensive number of documents, including policies and procedures, mental health records, youth detention records, unit logs, and orientation materials. Consistent with our commitment to provide technical assistance and conduct a transparent investigation, we conducted an exit conference with facility staff and Ohio Department of Youth Services officials upon the conclusion of the tour, during which our expert consultants conveyed their initial impressions and concerns.

² Although the main Scioto facility houses female youth, a separate section of the facility acts as state-wide intake for all male youth.

³ This investigation is anomalous because Mr. Cohen's 2004 factual findings regarding the conditions of confinement at Scioto revealed significant deficiencies in each of the areas that were the subject of our investigation and because the State has stipulated to all of Mr. Cohen's generally well-supported findings. Together, these factors created the unusual circumstance in which it was not necessary for the Department to conduct a facility tour regarding each of the specific subject areas of our investigation. However, we did tour Scioto regarding areas in which we required additional factual information to make a thorough and complete finding or to frame appropriate corrective measures. For example, as Mr. Cohen's 2004 report is admittedly not thorough regarding its assessment of medical and mental health care, we reviewed these subjects on-site with expert consultants before issuing our findings.

We commend the Scioto staff for their helpful, courteous, and professional conduct throughout the course of this investigation. We also wish to express our appreciation for the cooperation of Ohio Department of Youth Services officials and staff.

Consistent with our statutory obligation under CRIPA, we set forth below the findings of our investigation, the facts supporting them, and the minimum remedial steps that are necessary to address the deficiencies we have identified. As described below, we conclude that youth confined at Scioto suffer harm or the risk of harm from constitutional deficiencies as to: protecting residents from harm; certain discrete elements of medical care; mental health care; grievances; and special education services. Notwithstanding the foregoing, we are pleased to report that our review indicates that Scioto's general medical programs are, for the most part, good. In particular we find that Scioto's medical quality improvement program, environmental conditions, and management of special dietary needs for youth are appropriate. However, certain discrete aspects of medical care, identified below, substantially depart from generally accepted professional standards of care and expose youth to harm.

I. BACKGROUND

The State of Ohio, through its Department of Youth Services, owns and operates Scioto, located approximately 15 miles north of Columbus, Ohio. Scioto is the reception center for all juvenile males entering Department of Youth Services' juvenile justice facilities and serves as Ohio's sole facility for girls adjudicated, of felony-level crimes, in juvenile courts. Reportedly, many of these girls were in the State's foster care system before being confined. The facility has a rated capacity of 192 and currently houses approximately 185 males and 120 females, aged 12 to 21.

II. FINDINGS

As a general matter, States must provide confined juveniles with reasonably safe conditions of confinement. Youngberg v. Romeo, 457 U.S. 307 (1982); Nelson v. Heyne, 491 F.2d 352 (7th Cir. 1974); see also Miletic v. Natalucci-Persichetti, No. C-3-89-299, 1992 WL 1258522, *2, *4 (S.D. Ohio Feb. 6, 1992) (holding, in a case against the Ohio Department of Youth Services, that "a juvenile who is involuntarily committed to a correctional as opposed to mental health facility has a right to treatment under the Fourteenth Amendment similar to that which was recognized in Youngberg").

A. PROTECTION FROM HARM

Juveniles in state custody have a constitutional right to reasonable safety. See Youngberg, 457 U.S. at 315-16 ("personal security constitutes a historic liberty interest protected substantively by the Due Process Clause") (internal quotation omitted).

Our review of conditions of confinement at Scioto reveals significant constitutional deficiencies regarding use of physical force, grievance investigation and processing, and use of seclusion. For purposes of our investigation, the State has stipulated to Mr. Cohen's August 2004 findings, agreeing to the applicability to Scioto's intake program of Mr. Cohen's findings for each of the above-mentioned subject areas. In addition, our experts concur with Mr. Cohen's findings and suggested remedies.

1. Use of Physical Force

Juveniles at Scioto have a right to be free from unnecessary restraint and the use of excessive force. Youngberg, 457 U.S. at 315-16. Since 2003, 14 Scioto staff have been indicted on charges relating to physical and sexual abuse of youth at Scioto. In response to this crisis, the State hired Mr. Cohen and a team of experts in 2004 to review protection from harm issues in Scioto's Girls' Program. For purposes of our investigation, the State has stipulated to Mr. Cohen's August 2004 findings, agreeing to the applicability of Mr. Cohen's findings to Scioto's intake section.

In his report, Mr. Cohen concludes that "there has been (and remains) a culture of violence among the uniformed staff, that verbal and physical abuse are common, [and] sexual misconduct by staff occurs" Mr. Cohen indicates that he and his team of experts "have the most serious reservations as to whether [the State's] investigators are presently able to produce the quality of investigative work required to identify those use of force incidents that merit corrective actions for staff who violate the [Department of Youth Services'] use of force policy." Finally, Mr. Cohen concludes that "there can be no debate on the constitutional obligation under the Fourteenth Amendment to provide a safe environment. Scioto has not met its obligations to provide such an environment"

In reviewing Scioto's use of force incidents, Mr. Cohen reported that "verbal and physical abuse are common" at Scioto. Since 2003, five defendants have been convicted of various charges such as sexual battery, attempted sexual battery,

assault, falsification, and dereliction of duty. In addition, as of July 2006, one defendant awaits trial on charges of assault, child endangerment, falsification, dereliction of duty, and tampering with evidence.⁴

One officer was convicted of attempted sexual battery as a result of allegations that he ordered a female youth to undress while he watched and engaged in inappropriate sexual touching. Another officer pled guilty to misdemeanor assault for slapping and punching a youth, and then kicking the youth after she fell to the floor. A female officer pled guilty to dereliction of duty as a result of allegations that she ordered a male youth to expose himself and engage in inappropriate sexual touching. Another officer tendered an Alford plea⁵ to misdemeanor assault and falsification charges for striking a youth during an altercation, puncturing her eardrum. Finally, an officer was convicted of sexual battery and attempted sexual battery for forcing one youth to perform sex acts on him and for inappropriately sexually touching another female youth.

In his report, Mr. Cohen stated that he and his team "found countless examples of situations where no force at all should have been used and others where the force used was excessive." Further, according to Mr. Cohen, verbal abuse is rampant and often serves, perhaps intentionally, to precipitate physical confrontations with juveniles.

Finally, we note that Scioto currently allows use of a physical restraint technique directing staff to place an arm across a youth's chest below the neck and push on the cheek with the back of the hand. As our medical expert observed during the tour, use of any technique calling for an arm to be placed across the neck during a physical altercation or other incident exposes the youth to a significant risk of harm. This practice is especially problematic in light of allegations that we have received that youth have been choked by staff during altercations.

Based on these assessments and the State's stipulation as to the applicability of Mr. Cohen's findings, we agreed that it was

⁴ One defendant was acquitted and seven other defendants were indicted, but the charges were later dismissed.

⁵ In an Alford plea a defendant does not admit the act, but admits that sufficient evidence exists with which the prosecution could likely convince a judge or jury to find the defendant guilty. North Carolina v. Alford, 400 U.S. 25, 38 (1970).

not necessary to perform additional fact-finding regarding use of force at Scioto and we conclude that youth at Scioto are subject to use of excessive physical force and physical abuse.

2. Grievances (Investigations and Processing)

Just as prisoners and juvenile detainees have a constitutional right of access to the courts, they have a right to a grievance system that does not carry risk of punishment as a price for using it. See Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6th Cir. 1999); see also Bounds v. Smith, 430 U.S. 817, 822 n.17 (1977) ("Our main concern here is protecting the ability of an inmate to prepare a petition or complaint.") (internal quotation marks and citations omitted).

We adopt the following findings by the State's experts. As part of Mr. Cohen's assessment, the State's experts conducted a review of Scioto's incident investigation and grievance process,⁶ finding that several factors contribute to its inadequacy. In particular, Mr. Cohen's report finds that Scioto investigations are "pedestrian, time consuming, and full of errors or oversights." The State's experts also determined that, with the exception of a few cases, investigators rarely attempt to determine if officers followed existing protocol.

In his report, Mr. Cohen found that investigations contain few facts other than repetition of the complaint and denials by involved individuals. The investigations reveal a trend of repetitive questioning of involved youth, as though questioning was to continue until the youth provided the "correct" answer. Incidents involving physical aggression contained no evaluation of events preceding the incident, nor questions regarding use or attempted use of lesser physical interventions.

Although Scioto grievances contain serious allegations, such as verbal harassment and abuse, use of physical force, loss of programs and privileges, sexual harassment, and medical issues, such investigations rarely result in corrective action for staff or youth or any attempt to recognize or identify patterns of behavior requiring intervention.

Finally, given the facility's population, the number of grievances filed appears low and, when examined in conjunction with the above, supports the conclusion that Scioto youth view the grievance process as ineffective. We note that some investigations completed by the Department of Youth Services'

⁶ Mr. Cohen's team reviewed the 984 incidents filed from January 1, 2003 through August 18, 2004.

Bureau of Chief Inspector contained more facts than those completed by Scioto personnel. However, these investigations varied widely in quality and accuracy and were not completed in a timely manner necessary to sustain a proper incident review and grievance system and implement warranted corrective actions.

The dysfunctional grievance system at Scioto contributes to the State's failure to ensure a reasonably safe environment. An adequately functioning grievance system ensures that youth have an avenue for bringing serious allegations of abuse and other complaints to the attention of the administration. It also provides an important tool in evaluating the culture at the facility, and alerting the administration about dangers and other problems in the facility's operations.

3. Seclusion

The State's experts reviewed over 200 seclusion reports regarding Scioto girls from May 2004 to June 2004. In his report, Mr. Cohen concluded that staff use seclusion as a "knee-jerk, prolonged first response" and often hold youth in seclusion for hours even though they do not pose an imminent threat. For example, many Scioto youth are held in seclusion for lengthy periods for refusing breakfast, cursing, and talking in class. In one instance, Scioto held a youth in seclusion for 14 hours for being "argumentative" and using a racial epitaph. Additionally, the State's expert found that Scioto's routine use of seclusion as immediate punishment is often accompanied by use of force. We adopt Mr. Cohen's findings.

B. MEDICAL AND MENTAL HEALTH CARE

Juveniles in state custody have a due process right to adequate mental health care. The Supreme Court in Youngberg broadly labeled health care as "medical care," but recognized that this would include care provided by various disciplines, including persons with appropriate training in psychology. See id., 457 U.S. at 322-323, n.30. The Sixth Circuit also has recognized that medical care encompasses mental health care. See Horn v. Madison County Fiscal Court, 22 F.3d 653, 660 (6th Cir. 1994) ("A detainee's psychological needs may constitute serious medical needs, especially when they result in suicidal tendencies.").

1. Medical

We are pleased to report that our review indicates that Scioto's general medical programs are, for the most part, good. In particular we find that Scioto's medical quality improvement program, environmental conditions, and management of special

dietary needs for youth are appropriate. However, certain discrete aspects of medical care, identified below, substantially depart from generally accepted professional standards of care and expose youth to harm.

a. Identification of Health Problems and Initial Health Assessments

Based on our review, Scioto's health records are inadequate insofar as they do not contain problem lists identifying all active health problems. Problem lists are necessary tools in monitoring youth health status and providing adequate health care. Scioto's initial health assessments are similarly inadequate, due to the absence of problem lists. These lists and plans of care should be reviewed and approved by a physician after reviewing all relevant assessment information.

b. Evaluation and Treatment of Sick Residents

Scioto's sick call procedures make youth access to medical care dependent upon line staff and force youth to submit requests through line staff in a non-confidential manner. It is a generally accepted professional standard of care that youth should be able to submit sick call requests confidentially and independent of the line staff.

c. Dental Care

Scioto's dental program fails to meet the dental needs of its youth. We found numerous instances of youth with significant, untreated, dental health needs.

We find that Scioto dentists' practice of not providing crowns and rarely replacing missing or damaged front teeth conflicts with Department of Youth Services policies and generally accepted professional standards of care requiring that such services are to be provided, as needed, upon the dentist's recommendation. We also note that Scioto's dental program for the girls' section of the facility fails to provide timely restorative care for youth with cavities. As a general matter, Scioto must develop a system for tracking the dental needs of its youth and providing services in a timely manner. The treating dentist should determine the necessity of dental care on a patient-by-patient basis.

We also found that documentation of oral surgery procedures and recommendations of post-operative management of youth was missing in the files we reviewed.

Finally, Scioto has no dental assistant or dental hygienist. Consequently, its dentists are forced to choose between foregoing basic dental care that such practitioners provide, or delaying or ignoring more significant dental needs.

d. Special Services for Chronically Ill and Disabled Youth

We find Scioto's care provided to patients with asthma substantially departs from generally accepted professional standards. The facility must acquire peak flow meters to properly assess patients when healthy and ill, to determine the effectiveness of treatment. Scioto nurses also do not clinically assess youth when administering rescue inhalers, and youth who use such inhalers frequently are not referred to the physician for more intense treatment. Scioto's current treatment approach results in preventable asthma hospitalizations due to inadequate treatment of active asthma.

e. Disease Prevention and Health Promotion

Fifteen percent of Scioto's youth had incomplete immunizations, and youth are not fully immunized for their age. This is a substantial departure from generally accepted professional standards.

In addition, Scioto's blanket discontinuation of all oral contraception for youth entering the facility and Scioto's failure to offer emergency contraception conflict with applicable standards of care, exposing female youth to harm.

f. Medical Quality Improvement Program

While we find that Scioto's current medical quality improvement program is adequate, we suggest that Scioto begin to place more emphasis on health outcomes and use the topics identified in this section to establish such a system.

g. Environmental Conditions

As a matter of technical assistance, Scioto youth should be provided opportunities to practice appropriate hygiene in order to reduce transmission of communicable diseases.

h. Special Dietary Needs for Youth

Scioto adequately manages food allergies and special medical diets.

i. Abuse Reported By Medical Professionals

While nurses at Scioto assess youth after a use of physical restraint, they only report suspected abuse to the facility administration, rather than to State child abuse authorities. This reporting scheme is a substantial departure from generally accepted standards of practice and, in light of the State's stipulation regarding use of excessive force, is especially problematic.

2. Mental Health Care

The Constitution requires that youth in juvenile justice institutions receive adequate mental health care. Youngberg, 457 U.S. at 323, n.30; Nelson, 491 F.2d at 360; see also K.H. v. Morgan, 914 F.2d 846, 851 (7th Cir. 1990); A.M. v. Luzerne County Juvenile Detention Center, 372 F.3d 572, 585 n.3 (3d Cir. 2004). We find that mental health care at Scioto's intake facility and girls' facility is constitutionally inadequate.

As a threshold matter, we note the assessment of the State's expert that the girls' mental health unit "is little more than a residence for girls with mental disorders" and that "[m]ental health care is so deficient" that it was not feasible to comment on the various elements of such care, indicating that "[a] more refined analysis must await another day - a day when constitutionally required, minimally acceptable care is instituted." Given this assessment, we conducted an independent review of mental health care at the facility and found significant deficiencies in almost every aspect of mental health care encompassed within screening and assessment services and the provision of treatment.

a. Scioto Intake

1. Screening and Assessment Services

Upon arrival at Scioto, all male juveniles receive an assessment in the reception area. The assessment includes a review of the youth's offense history, his behavior in the reception facility, his scores on various assessments, and a social worker's recommendations for specific programming. We found that assessments were implemented in a consistent manner and often contained an impressive range of information collected from sources outside the facility (i.e., court records, previous mental health records). Nevertheless, we conclude that there are a number of constitutional deficiencies with respect to the assessment of youth for mental illness.

(i) Reception Assessments: We found that many reception assessments were incomplete, failing to address numerous factors important to an accurate and complete assessment of a youth's mental condition. In addition, the assessments are primarily deficit oriented, focusing little on strengths or family functioning. As a result, they fail to identify important bases for treatment interventions. We also note that assessment records are poorly integrated and that there is no reliable system of communication among various contributors to the assessment. Furthermore, the assessments do not include structured consideration of data to determine placement or appropriate programming. In this regard, placement and planning recommendations are often made with no justification. As a result of these weaknesses, placement decisions and specific treatment plans for youth are arbitrary in important respects and are otherwise excessively generic.

(ii) Mental Health Assessments: In addition to the reception assessment, youth entering Scioto receive a mental health assessment. A social worker administers the Massachusetts Youth Screening Instrument ("MAYSI") checklist to each youth and the MAYSI is scored by a psychologist. Youth answering positive to questions regarding suicidal thinking or behavior on the MAYSI, or on medical screening questions, meet with a psychologist or psychologist assistant for a mental health assessment. Youth receiving psychiatric medication upon arrival at Scioto and youth whose psychological assessment reveals serious acute psychopathology are referred to a psychiatrist for psychopharmacological assessment and treatment.

Like the reception assessment, the mental health assessment follows a consistent, reliable format. Nevertheless, the process suffers from poor data gathering and recording. In this regard, we note that assessments often fail to address important considerations such as cognition problems, impact of trauma, school history, past treatment experiences, past treatment responses, and dysphoric (i.e., anxious or despairing) moods. Moreover, we found that data collection regarding positive adaptations, peer relationships, developmental information, and family history and functioning is completely inadequate. As a result, the assessment lacks information that is fundamental to making appropriate recommendations.

In addition, Scioto's mental health assessments do not employ validated structured instruments for diagnosis or functional assessment. Without such instruments, assessments tend to be arbitrary as to identifying clinical disorders and appropriate treatment. Additionally, the assessments rely heavily on a structured interview of the youth, which provides questionable information and fails to make use of information

regarding current behavior adaption or school functioning. Lastly, Scioto's use of checklists to be read and completed by youth is problematic, because these checklists are used without establishing that the youth can read and comprehend them.

Scioto's psychological assessments are also inadequate. Most assessments we reviewed rarely include specific treatment recommendations or consider multiple concurrent conditions, despite the prevalence of such conditions among the facility's population. The assessments fail to contain differential diagnoses (considering alternative diagnostic hypotheses) and do not link the diagnoses to likely functional problems, such as socialization problems and aggressiveness. As a result, Scioto's assessments do not provide information and opinions adequate for coherent treatment planning.

We found similar problems with Scioto's psychiatric assessments, in that the assessments appeared perfunctory, with little follow-up. Also, we noted that a number of obvious candidates for psychiatric care were not referred for psychiatric assessment.

Finally, we found that Scioto's overall mental health staffing is inadequate, allowing for only superficial assessment without any routine follow-up. We also could not find any explicit criteria used for determining who should receive ongoing mental health treatment while in reception.

As a consequence of these deficiencies, youths' mental health needs are often untreated or inappropriately treated, resulting, among other things, in no treatment, counterproductive treatment, exposure to inappropriate or unnecessary medications posing serious physical and other side effects, longer periods of confinement, and needlessly greater potential for recidivism.

b. Scioto Girls' Program

Girls come to Scioto only after failing to complete a number of other, less restrictive, state-sponsored juvenile programs. Given the Scioto girls' prior programming failures, and that our consultants have estimated the prevalence of mental disorders among female juvenile offenders to be as high as 87 percent, a female youth at Scioto without significant mental health problems would be in the minority. Nevertheless, it was evident from our expert's review of randomly selected files that Scioto's current process for identifying youth with mental illness is inadequate, and that girls' significant mental disorders often go unidentified and untreated. For example, in three randomly selected cases our consultant reviewed, each youth showed clear signs of mental health issues. Two of the youth were identified

as having mental health issues within nine months (one was only identified after undergoing multiple risk assessments in response to several instances of self-injurious behavior and reports of hallucinations instructing her to hang herself).⁷ The third youth showed clear signs of mental distress but did not complain of specific symptoms, and she received no mental health follow-up. Scioto's failure to reliably identify girls in its custody with significant mental health concerns is a substantial departure from generally accepted standards of practice that exposes girls to risk of significant harm, in the form of serious, untreated mental disorders.

1. Provision of Treatment

Scioto's attempt to establish and implement individual treatment plans for its residents is clearly in its beginning stages. We noted that few records of girls with identified mental disorders included a treatment plan. Records containing such plans provided no indication that the treatment services provided to the girl were linked to a specific plan. In addition, we found no regularly scheduled treatment meetings involving clinicians and residents with clearly identified treatment needs. In fact, apparently because of current inadequate staffing, most Scioto youth with mental health disorders do not receive regular, scheduled treatment sessions, allowing these disorders to go neglected. As a result, the quality and effectiveness of the treatment provided is deficient, resulting in an ongoing risk of self harm and disruptive behavior, and lack of progress in rehabilitation, which, in turn, can lead to an extended period of confinement.

While we note that Scioto provides psychopharmacological treatment in a more consistent manner, our record review indicates underutilization of applicable medications for attention problems and impulse control disorders. In addition, we noted a lack of collaboration between psychiatry and psychology regarding psychopharmacological treatment. Such lack of collaboration causes the psychiatrist to be less informed regarding youth behavior, thus reducing the effectiveness of psychiatric treatment regarding attention and impulse control problems.

⁷ Although these two youth were eventually identified as having mental health problems, the significant delay was a factor causing each youth to spend additional time in the program, to suffer behavioral and emotional instability over a longer period of time resulting in impairment in their growth and rehabilitation, to remain at increased risk for self harm, and to create considerable disruption in the program.

Indicative of many of these problems, Scioto's Special Needs Unit for girls with heightened mental health or behavioral needs provides no improvement in the intensity, specificity, or consistency of mental health care in comparison to other units, other than having a better youth-to-social worker ratio and a dialectical behavioral therapy skills group. In this regard, we note that the State's expert determined that Scioto's Special Needs Unit "is little more than a residence for girls with mental disorders."

We do note that Scioto's risk assessment procedures have resulted in preventing self-harm among its population. However, as implemented, these procedures contribute to Scioto's current crisis atmosphere (teaching youth that the way to get attention is to engage in, or to threaten, self-harm) and divert psychologists from providing consistent treatment to other youth.

In summary, Scioto does not provide supports and services adequate to meet the needs of its population, in contravention of generally accepted professional standards, exposing girls to harm or a significant risk of harm in the form of significant, untreated mental health disorders, and leading to heightened emotional distress, longer periods of confinement, and greater potential for recidivism.

C. SPECIAL EDUCATION SERVICES

Students with disabilities have federal statutory rights to special education services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400-1482 (West 2000 & Supp. 2006).⁸ As part of the review conducted by the State's expert, Mr. Cohen, the Ohio Department of Youth Services retained Ms. Ava Crow to review special education services at Scioto.⁹ Ms. Crow conducted an exhaustive study, including two three-day site visits, numerous interviews, classroom observation, and document review. In her August 31, 2004 report, Ms. Crow concluded that Scioto's special education program suffers from systemic failure and violates residents' rights under the IDEA by failing to provide adequate special

⁸ We note that the IDEA was reauthorized and amended by the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647 (2004), effective July 1, 2005.

⁹ The IDEA provisions cited herein are substantively the same as those in force at the time of Ava Crow's review. At the time of Ms. Crow's tour, slightly less than half of Scioto residents had been identified as qualifying for special education services under the IDEA.

education.¹⁰ As indicated earlier, the State has stipulated, for the purpose of resolving this investigation, to the following deficiencies identified in Ms. Crow's report. In addition, our expert consultant concurs with Ms. Crow's findings and recommendations.

1. Child Find

The IDEA requires that states implement systems to identify all students who are eligible for special education services and provide such services to all those identified as having disabilities. 20 U.S.C. § 1412. The State's expert determined that Scioto does not meet "Child Find" requirements of the IDEA. In this regard, school guidance counselors acknowledge that Scioto does not comply with "Child Find."

2. Parental Involvement

Parental involvement is an essential element of the IDEA, which requires parental consent for decisions about eligibility, evaluation, and placement. 20 U.S.C. § 1414.

However, based on the State expert's review of a sample of youth files, Scioto often fails to contact parents, sometimes sending parental notices and consent forms to social services agencies. In one instance, a consent form was signed by a "former social worker." In the same manner, two additional files revealed students whose placements were restricted in scope without parental consent or notification, in clear violation of the IDEA.

3. Provision of Transition Services

The IDEA requires schools to actively attempt to involve outside agencies in transition plan meetings to help students progress from school to adult life. The State's expert found that Scioto's transition plans are inadequate: students do not have written transition plans, and there is no indication of any outside agency involvement or any evidence of sustained efforts to involve outside agencies.

4. Implementation and Monitoring of Individualized Education Plans

The IDEA requires that each student with a disability have an IEP ("Individual Education Plan"), and describes the IEP components required to ensure that each student receives adequate special education services. The State's expert determined that

¹⁰ Scioto's school program is called the William K. Willis School.

IEPs developed at Scioto do not ensure that students with disabilities receive required special education services.

For example, all Scioto IEPs reviewed by Mr. Cohen's team contain an identical, barely exploratory list of services. Document review also revealed a pattern in which Scioto adopts IEPs from local education authorities but fails to implement them. In addition, while the IDEA requires consideration of positive behavioral interventions for students whose behaviors interfere with their learning or that of other students, document review revealed almost no individualized interventions for any Scioto student. Given the makeup of the Scioto population, lack of such clearly relevant interventions is telling. Finally, classroom observations indicate that there is substantially no difference in Scioto regular education classrooms versus special education classrooms and no indication that special education students were expected to perform less work or offered extended time to complete projects.

Separately, the IDEA requires a multidisciplinary team reevaluation of the information included in a youth's multifactored evaluation, which is the basis for the IEP, every three years. We find that Scioto failed to update its multifactored evaluations for more than one-third of its special education population within the required three-year period.

The IDEA also requires that all IEPs are to be reviewed periodically and at least annually. The State's expert found that Scioto failed to complete the required reviews and that 60 percent of Scioto's IEPs had expired.

Lastly, the State's expert found that Scioto has no appropriate system to monitor specific IEP goals. Document review indicated that some teachers at Scioto use weekly reporting forms to attempt compliance with IDEA monitoring requirements. However, such forms appear inadequate to document specific IDEA goals and fail to inform parents of students' progress as required by the IDEA. Even if Scioto's current forms were adequate, they are not sent to parents for review as required.

In light of these findings by the State's expert and of the State's stipulation, we find that the State fails to comply with the IDEA in the areas set forth above.

III. REMEDIAL MEASURES

In order to rectify the identified deficiencies and protect the constitutional and statutory rights of the youth confined at Scioto, the facility should implement, at a minimum, the following measures:

A. Protection from Harm

1. Ensure that youth are provided with safe living conditions and are protected from abuse, use of excessive force, undue seclusion, and undue restraint.
2. Develop appropriate policies and procedures that govern the use of force, requiring reliable documentation and limiting use of force to situations where a youth is physically violent and poses an immediate danger to himself and/or others or the youth is physically resisting institutional rules and the institution has attempted a hierarchy of non-physical alternatives.
3. Prohibit verbal and physical punishment, and use of force practices that are incompatible with minimum actions necessary to prevent harm or obtain compliance with reasonable orders, including practices such as shoving, pushing, kicking, striking, or using inappropriate holds on youth.
4. Monitor and supervise staff, maintaining appropriate staff ratios and holding staff accountable for the use of excessive force or abuse.
5. Develop policies and procedures to ensure that seclusion and restraint are only used in appropriate, documented, instances by trained staff.
6. Provide youth with an effective and reliable process to raise grievances, without exposing them to retribution from staff, ensuring that all grievances are reviewed and addressed in a timely matter that provides youth with notification of the final resolution.
7. Employ sufficiently trained and independent investigators to ensure that all incidents of violence, use of force, or serious injury are adequately investigated, and documented, and that appropriate personnel actions are taken in response to substantiated findings.

B. Medical and Mental Health Care

1. Ensure that youth receive routine, preventative, and emergency medical and dental care consistent with current, generally accepted professional standards, including identification, assessment, diagnosis, and treatment of health problems.
2. Develop policies and procedures to ensure that youth are provided with: complete and accurate health records, access to confidential health care, a complete initial health

assessment, appropriate access to health services, appropriate medications and care to manage chronic illness, access to specialty consults, proper immunizations, and female reproductive health care managed according to generally accepted medical standards.

3. Maintain appropriate dental staffing and require that generally accepted professional standards are followed to ensure that: youths' restorative needs are met in a timely manner, youth are not denied appropriate pain medication, needed prosthetic dental services are provided, and health records contain adequate documentation of outside dental consults.
4. Provide mental health and rehabilitative treatment consistent with generally accepted professional standards and ensure that there are an adequate number of qualified mental health professionals to provide mental health and rehabilitative services in a timely manner to all youth who require such services.
5. Develop and implement policies, procedures, and practices to ensure that, consistent with generally accepted professional standards of care, youth are: (1) comprehensively screened by appropriately trained personnel for mental disorders, including substance abuse, depression, and serious mental illness within 24 hours of admission; (2) systematically evaluated in response to problem indicators to address potential manifestations of mental or behavioral disorders in youth who have not been previously identified as requiring treatment; and (3) provided appropriate mental health care, substance abuse care, and treatment services.
6. Ensure that any youth determined at screening to be at immediate risk is immediately referred to a qualified mental health treatment professional for: assessment, treatment, and other appropriate actions, including facility transfer when necessary.
7. Implement policies, procedures, and practices according to generally accepted professional standards to ensure that: mental health assessments, including health, risks, strengths, and needs are performed within two weeks of a youth's arrival at Scioto; youth identified in screening receive timely, comprehensive, and accurate assessments by qualified mental health professionals; and assessments are designed to incorporate data necessary to identify youth with mental disorders and contribute to a plan for managing the youth's risk.
8. Develop and implement policies and procedures consistent with generally accepted professional standards of care to:

- (1) ensure that treatment determinations are made by an interdisciplinary team through integrated treatment planning; (2) create and implement treatment plans that are current and individualized; (3) maintain readily accessible records containing meaningful, accurate and coherent assessments of the individual's treatment plan progress, goals, and objectives.
9. Develop and implement a system to ensure that mental health issues are adequately considered in making housing decisions and that mentally ill youth receive appropriate housing.
 10. Prior to administration of prescribed psychoactive medication, Scioto must: (1) ensure that youth and their parents (or guardians, if parents have lost custody due to abuse or neglect) are provided with goals, risks, benefits, and potential side effects of the medication, along with the potential consequences of not treating with the medication; (2) follow state law in order to administer such medication without consent.
 11. Develop and implement policies, procedures, and practices to ensure that psychoactive medications are prescribed, distributed, and monitored properly and safely, consistent with generally accepted professional standards of care.
 12. Provide training to all staff who interact directly with youth regarding mental health information, developmental disabilities, recognition of signs and symptoms of trauma, teenage development, strength-based treatment strategies, suicide risks, and (for staff working with female youth) female development.
 13. Develop and implement policies and procedures that comply with generally accepted professional standards for the management of suicidal youth.
 14. Create transition plans for youth leaving the facility that are consistent with generally accepted practice standards.
 15. Develop and implement policies and procedures to maintain oversight of mental health services and ensure that such services are provided consistent with generally accepted professional standards of care.

C. Special Education

1. Provide prompt and adequate screening, and ongoing rescreening and referral, of youth for special education needs and ensure that all students requiring special education services receive services in compliance with the IDEA within a reasonable time following intake.

2. Ensure that all eligible youth have current, accurate IEPs that are developed and implemented consistent with IDEA requirements.
3. Create and implement a system to routinely develop, implement, and monitor youths' IEPs, with involvement of parents and guardians, as required by the IDEA.
4. Develop and implement a staffing plan that allows for a sufficient number of certified special education teachers and staff to provide all youth with the opportunity to attend school full-time and to obtain adequate educational services while providing teachers with sufficient time to plan lessons, grade assignments, and participate in special education meetings.
5. Develop a quality assurance program to ensure the quality of IEPs, compliance with the IDEA, and monitoring of teaching staff on compliance issues.
6. Ensure that special education staff receive in-service training and maintain current educator licenses appropriate to the courses they teach.

* * *

As stated above, we appreciate the cooperation we have received from Ohio Department of Youth Services officials and facility staff throughout this investigation. We hope to be able to continue working with the State in an amicable and cooperative fashion to resolve the deficiencies found at Scioto. Provided that our cooperative relationship continues, we will forward our expert consultant reports under separate cover. Although this report is our consultants' work - and does not necessarily reflect the official conclusions of the Department of Justice - the observations, analyses, and recommendations contained in the reports provide further elaboration of the issues discussed in this letter and offer practical assistance in addressing them.

In the unexpected event that we are unable to reach a resolution regarding our concerns, the Attorney General is empowered to institute a lawsuit pursuant to CRIPA to correct the deficiencies of the kind identified in this letter 49 days after appropriate officials have been notified of them. 42 U.S.C. § 1997b(a)(1).

We would prefer, however, to resolve this matter by working cooperatively with you. We have every confidence that we will be able to do so in this case. The lawyers assigned to this matter will be contacting your attorneys to discuss this matter in further detail. If you have any questions regarding this letter,

please contact Shanetta Y. Cutlar, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-0195.

Sincerely,

/s/ Wan J. Kim
Wan J. Kim
Assistant Attorney General

cc: The Honorable Marc Dann
Ohio Attorney General
Department of the Attorney General

Thomas J. Stickrath
Director
Ohio Department of Youth Services

Amy Ast
Superintendent
Scioto Juvenile Correctional Facility

The Honorable Gregory G. Lockhart
United States Attorney
Southern District of Ohio