

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF ALAMEDA

MARGARET FARRELL,)
) CASE NO. RG03079344
 Plaintiff,)
)
 vs.)
)
 RODERICK HICKMAN,)
)
 Defendant.)
 _____)

SECOND REPORT OF SPECIAL MASTER
COMPLIANCE STATUS INTERIM MEASURES,
DISABILITY, EDUCATION, SEXUAL BEHAVIOR TREATMENT

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I. INTRODUCTION

Over the past 5 months, the parties and several of their jointly selected experts have focused much of their attention on revising and amplifying DJJ's November 30, 2005 Safety and Welfare and Mental Health remedial plans. The final versions of these remedial plans are due to be filed with the court by June 30, 2006.¹

The Special Master's last report assessed DJJ's compliance with the "interim measures" provisions of the original Consent Decree and the parties' January 31, 2005 Stipulation Regarding California Youth Authority Remedial Efforts ("January 31 Stipulation"). Most of those provisions were superceded by the parties' November 30, 2005 Stipulation Regarding Safety and Welfare Remedial Plan and Mental Health Care Remedial Plan ("November 30 Stipulation"). Section II.A addresses Consent Decree provisions that have not been superceded, *i.e.*, intake criteria and project management. It also provides follow-up information on two superceded issues, *i.e.*, use of force and restricted programs.

When the parties negotiated the November 30 Stipulation, they were at an impasse over the interim measures that the Consent Decree and the January 31 Stipulation required DJJ to improve some conditions for DJJ youth pending the development of the longer-range reform plans. During the preceding year, DJJ had struggled with the interim measures and made little progress towards improving conditions.² Plaintiff attributed the limited actions and progress to incompetence and recalcitrance. In the second half of 2005, DJJ's new

¹ This report was provided to the parties in draft in early June 2006. Revisions based on their comments are being entered in July 2006. Necessary updates are added by footnote. The Safety and Welfare Remedial Plan was filed July 10, 2006 after the parties agreed to extend the deadline to that date. The parties extended the deadline to file the Mental Health Plan to July 31, 2006.

² See, *First Report of Special Master, Compliance with Interim Measures Provisions of Consent Decree and January 31, 2005 Stipulation* ("*First Report of the Special Master*") for an assessment of the progress.

leadership acknowledged some past mistakes and failures, but asserted that chief among them was the prior leadership's underestimation of what it would take even to begin to ameliorate the conditions in DJJ facilities that were the basis for the Consent Decree. As a result, they said, the prior leadership had agreed to interim measures that could not be implemented and to changes and improvements that were beyond reach in the near-term. The parties resolved their impasse by agreeing that jointly selected experts would outline the steps that DJJ could and should take to address the conditions that plaintiff had targeted in the original interim measures provisions. In Part II.B of this report, the Special Master assesses the progress that has been made towards the development and implementation of new "interim" plans.

Although DJJ, in consultation with the parties, the Special Master and many experts is still refining its Safety and Welfare and Mental Health remedial plans to be filed by June 30, 2006,³ its remedial plans to improve sexual behavior treatment programs, disability access and education have been in place for a year or more. The experts for those areas have completed their first comprehensive reviews of DJJ's progress towards compliance. The experts' reports, with findings and recommendations for further action, are appended to this report. The Special Master and Monitor also have reviewed the experts' reports and their assessments of DJJ's progress in those areas are presented in parts III, IV and V of this report.

Finally, over the past six months, DJJ has continued the work of developing core health services policies and procedures which are expected to be completed in June 2006. The Consent Decree medical experts have been focused on supporting that effort, reviewing drafts and providing feedback. It appears that the effort has been successful, and that DJJ is in

³ The dates were extended to July 10 and July 31, 2006 respectively.

a position to schedule the necessary labor negotiation processes and to move towards implementation. The medical experts also have focused on developing the standards and criteria for determining compliance with the Health Care Services Remedial Plan. The medical experts will begin on-site audits and compliance reporting this summer.

II. INTERIM MEASURES

A. Consent Decree Interim Measures

1. Follow-Up On Use Of Force And Restricted Program

In late 2004, as a part of its interim measures to exercise central oversight over the use of force, DJJ modified its use of force policies and procedures and created the Department Force Review Committee (“DFRC”). The DFRC, however, did not begin functioning until March 2006.⁴ Since then, it has met monthly and it is scheduled to continue to meet monthly.⁵ An AGPA-level Department Use of Force Coordinator is being trained to review and analyze the Institutional Force Review Committee and underlying use of force reports and to make appropriate referrals for DFRC review.⁶ Consent Decree expert Barry Krisberg will review the DFRC proceedings and process this year. DJJ is taking some steps to standardize and improve the methods by which reports of uses of force are collected and reviewed.⁷

The Special Master’s last report noted that, in March 2006, N.A. Chaderjian had achieved a schedule providing a minimum of 3 hours out of cell time to all youth on the Special Management Program (“SMP”). This was achieved by giving all SMP youth a three-hour time slot in the recreation “SPAs” or “cages.” Youth receiving out-of-cell education

⁴ *Statement*, Steve Cambra at May 23, 2006 meeting with DJJ.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *See*, Appendix A, May 1, 2006 Director DJJ directive to Superintendents and Security Chiefs.

and/or counseling had the opportunity for more than 3 hours out of their cells. In April, recreation time was reduced to 1 hour due to damage to some of the “SPAs.” As a result, the nine of twenty-five youth who were on the most restricted program in the SMP were allowed out of their cells for only 1 hour per day.⁸

2. Revised Intake Criteria

The Consent Decree provides that DJJ must “develop formal criteria for accepting wards into the CYA pursuant to Welfare and Institutions Code Section 736.” This was to be done by November 2004. The Consent Decree further prohibits DJJ from accepting “more wards than can be materially benefited by the CYA’s reformatory and educational discipline” and it prohibits DJJ from accepting “wards for whom the CYA does not have adequate facilities.” The Consent Decree also requires DJJ to comply with California Code of Regulations, Title 15 §§ 4171, 4184 and 4184.5.⁹

Juvenile court judges have legislatively limited discretion to commit youth to DJJ, and DJJ has legislatively limited discretion to accept commitments.¹⁰ DJJ is required to accept any youth referred to it “if it believes that the person can be materially benefited by its reformatory and educational discipline, and if it has adequate facilities to provide that care.”¹¹ “A person will be materially benefited when there is reasonable possibility that his likelihood to commit delinquent behavior can be significantly reduced or eliminated within the

⁸ Special Master’s interviews of staff at Sacramento Hall, N. A. Chaderjian, April 11, 2006. The Special Master did not attempt to quantify out-of-cell hours for the rest of the 25 youth, all of whom had recreation time reduced from 3 hours/day to 1 hour/day.

⁹ Consent Decree, ¶ 7.f. The regulations purport to implement Welf. & Inst. §§ 736, 780 and 1712 and concern acceptance and rejection of youth referred and the return of youth to the referring counties. The text of the statutes and regulations cited herein is attached as Appendix H.

¹⁰ Welf. & Inst. C. § 1736.

¹¹ Welf. & Inst. C. § 736.

confinement time and jurisdiction time available.”¹² DJJ is required to accept youth who are “borderline psychiatric or borderline mentally deficient cases,” or certain types of “sex deviate[s]” and youth who “suffer [] from a primary behavior disorder” without regard to “material benefit” as long as “staff and institutions are available.”¹³

Even after it has accepted a youth, DJJ may return him or her to the committing court if he or she “appears to be an improper person to be received by or retained in any institution or facility under [its] jurisdiction [] or to be so incorrigible or so incapable of reformation under the discipline of any institution or facility under [its] jurisdiction [] as to render his or her retention detrimental to [its] interests . . .” DJJ remains responsible for the committed youth unless and until the committing court vacates the commitment.¹⁴

The parties differ in their interpretations of these statutes, particularly as to the meaning of “material benefit” and “adequate facilities” and as to DJJ’s responsibility to referring juvenile courts and their counties. DJJ is committed to proceeding according to its interpretation of the statutes and plaintiff will evaluate the results. Plaintiff may in the future invoke the dispute resolution procedures under the Consent Decree on this issue.¹⁵ Expert Krisberg will add to the parties’ information by studying a sample of youth accepted this year.

As discussed in the Special Master’s last report, DJJ had developed draft intake/rejection criteria to divert youth with serious health conditions and disabilities for whom DJJ could not provide appropriate care and who would not be able to participate meaningfully in DJJ treatment and rehabilitation programs even with reasonable

¹² Title 15, § 4171.

¹³ Welf. & Inst. C. § 736.

¹⁴ Welf. & Inst. C. § 780.

¹⁵ Safety and Welfare Remedial Plan (July 10, 2006), p. 60.

accommodations. The draft criteria were provided to plaintiff and the Special Master in November 2004. DJJ's Medical Director reported that he informally applied those criteria to deflect admissions in a few cases in 2005. After a period of inaction on the issue and a change in leadership, DJJ committed to collaborate with state and local stakeholders to finalize these criteria by March 2006.¹⁶ As of June 2006, the draft criteria had not yet been finalized.¹⁷

In its November 30, 2005 proposed Safety and Welfare Remedial Plan, DJJ disclosed future plans to work with state and local partners to improve the assessments of youths' risks and needs and to effectuate their placement in appropriate programs based on those risks and needs. DJJ anticipates that the initial assessments eventually will be accomplished in the counties before commitment to DJJ, and inform placement decisions. In the interim, DJJ will clarify policies and procedures governing commitments and begin to collaborate with state and local entities so as to limit DJJ's population to youth who both pose a risk to their communities such that secure confinement is necessary and whose rehabilitation and treatment needs are within DJJ's capacity to address.¹⁸

3. Project Management And Quarterly Reporting

The Consent Decree requires DJJ to "hire a project manager to manage the remedial plans resulting from this Decree." The project manager is required to "be at the CEA I level, or equivalent Exempt level, with support as necessary to manage the successful development

¹⁶ Defendant's Proposed Safety and Welfare Remedial Plan (November 30, 2005), p. 31. The Special Master attended a meeting of state and county stakeholders convened by DJJ to discuss its draft on acceptance and rejection considerations and criteria on February 22, 2006.

¹⁷ The Safety and Welfare Remedial Plan (July 10, 2006) (p. 60) provides that DJJ would finalize the criteria and acceptance/rejection process for these youth by September 1, 2006.

¹⁸ See, Defendant's Proposed Safety and Welfare Remedial Plan (November 30, 2005), Intake Section; Safety and Welfare Remedial Plan (July 10, 2006), p. 60-61.

and implementation of the remedial plans.”¹⁹ The Consent Decree further requires DJJ to “provide plaintiff’s counsel and the Special Master with quarterly reports regarding progress made, compliance with deadlines and actions taken in implementing this Decree.”²⁰

As the Special Master has previously reported, DJJ assigned a project manager of the requisite rank to manage its compliance effort by February 2006. He was responsible for DJJ’s first quarterly report under the Consent Decree, which DJJ provided to plaintiff and the Special Master at the end of April 2006. Unfortunately, he retired in early May 2006 and has yet to be replaced. Defendant and DJJ’s top administrator, however, have assured plaintiff and the Special Master that the project manager will be replaced as quickly as possible, and that the project management and compliance function will be fully staffed.²¹

DJJ’s first quarterly report covers the period November 2004 through March 31, 2006 and discusses (1) the interim measures required by the Consent Decree and the January 31, 2005 and November 30, 2006 stipulations concerning remedial efforts and the Safety and Welfare and Mental Health remedial plans; (2) the Wards with Disabilities Remedial Plan; (3) the Health Care Services Medical Remedial Plan; and (4) the development and revision of the Safety and Welfare and Mental Health remedial plans. Of the report’s four sections, only the disability section is sufficiently comprehensive, factual and accurate to serve as a meaningful status report and to demonstrate that DJJ is able to track its compliance with its obligations and its progress in its reform effort in a subject matter area.

¹⁹ Consent Decree, ¶ 32.

²⁰ *Id.*, ¶ 25.

²¹ Statements by Secretary (A) California Department of Corrections and Rehabilitation James Tilton and Chief Deputy Secretary Juvenile Justice Bernard Warner during monthly meeting of the parties and Special Master, May 19, 2006. The July 10 Safety and Welfare Remedial Plan (at p. 20) sets a deadline of October 1, 2006 for the appointment of the Farrell Project Director.

B. November 30 Stipulation – Expert Interim Plans

By the November 30 Stipulation, the parties agreed to ask jointly chosen experts to prepare interim plans to achieve immediate improvements in conditions and practices related to risk classification, restricted programs and lockdowns, use of force, disciplinary time-adds, and training of clinical staff to better manage self-destructive youth.²² The experts were only a little more successful than DJJ had been in crafting interim plans for quick implementation to achieve immediate improvements. The particulars in each area are discussed below.

1. Risk Classification

The first and subsequent drafts of the interim plan for custody classification, prepared by classification expert Christopher Baird, essentially reaffirmed the approach that DJJ had proposed in November 2004: DJJ would identify all of the high risk youth living in dormitories and move them to more secure housing. To free up single room beds, DJJ would move low risk youth from rooms to dormitories. DJJ took steps towards implementing its November 2004 interim risk classification plan, but then abandoned it without contemporaneous explanation.²³ By the second half of 2005, the new DJJ management explained that the interim plan had been abandoned because it was not practical and it would not have improved safety significantly. With the support of Consent Decree expert Krisberg, plaintiff contended that DJJ unreasonably was resisting risk classification that would improve safety.

When expert Baird proposed an interim classification plan that was essentially identical to the one that the new DJJ management previously had rejected, DJJ reiterated the

²² November 30 Stipulation, ¶¶ 6, 8-13.

²³ See, *First Report of the Special Master*, pp. 8-10.

facts and conditions that had led it to abandon the November 2004 plan. Specifically, DJJ contended that there was a paucity of rooms occupied by nonviolent, lower risk youth outside of the special programs (mental health, sexual behavior treatment, etc.) and that youth could not be moved immediately between the northern and southern facilities without exacerbating gang violence. DJJ shared classification and disciplinary data and raised logistical issues. With the support of experts Baird and Krisberg, plaintiff maintained that DJJ's objections were without merit, though the experts did not specifically address DJJ's logistical issues. The Special Master suggested that classification expert Baird revise the interim plan to address the DJJ data and logistical issues and to detail the steps that DJJ could take to achieve the prescribed goal. This was not done. As of May 19, 2005, the parties agreed that DJJ would proceed with implementation of the central features of expert Baird's custody classification plan, unless and until DJJ could show that further implementation was logistically impracticable.²⁴

2. Restricted Program And Lockdown

In early January 2006, the parties agreed that DJJ would implement the experts' plan to restrict the use of the Inyo housing unit at the O.H. Close facility, and to modify practices and improve conditions there.²⁵ Specifically, the plan provides that Inyo will be used to house only (1) youth in need of "temporary interventions" by staff to de-escalate potentially dangerous situations, (2) youth awaiting transfer to other facilities or to court proceedings and

²⁴ The Safety and Welfare Remedial Plan (July 10, 2006) provides that DJJ will work with expert Krisberg to develop the implementation schedule for custody classification. Future monitoring of this issue will be under the Safety and Welfare Remedial Plan.

²⁵ The interim plan is attached as Appendix B.

(3) youth suspected of serious assaults on staff or on youth involving the use of a weapon.²⁶ The experts' plan also provides that rooms adjacent to O.H. Close's open dorm housing units may be used for other kinds of youth who require temporary detention or separation from their peers.²⁷ Finally, the plan requires that the youth housed on the Inyo unit be afforded the same program treatment, privileges, property and state issued items as youth housed on other units.²⁸

One of the experts chosen by the parties to prepare the plan, Steve Cambra, was part of a two-person team that audited DJJ's compliance. The February and March 2006 progress reports detail the reasons for each Inyo placement and individual lengths of stay on the unit. Once the plan was implemented, the number of youth assigned to Inyo and their lengths stay decreased significantly. The experts found DJJ in substantial compliance with all requirements of the Inyo plan.²⁹ Consent Decree expert Krisberg will review compliance with the plan in June 2006.

At the end of March 2006, the Safety and Welfare planning experts provided draft plans to revise DJJ policies concerning restricted programs³⁰ and lockdown, in order to reduce the extent and duration of the time that youth spend in relative idleness and isolation in lock-up units. The parties agreed that the plans required further revisions. The experts provided a

²⁶ *Id.*, at pg. 2

²⁷ *Id.*, at pg. 1.

²⁸ *Id.*, at pg. 5.

²⁹ *See*, Appendix C.

³⁰ "Restricted program" policies cover the Special Management Program ("SMP") and Temporary Detention ("TD") housing units where youth tend to be locked in cells for 21 or more hours per day. *See, First Report of Special Master*, pp. 34-41.

revision on May 7, 2006. The parties have agreed to discuss and resolve any remaining concerns by early June.³¹

3. Use Of Force And Disciplinary Time-Adds

At the end of March 2006, the designated Safety and Welfare Planning experts provided the parties with draft plans designed to measure and reduce the use of force, to limit the use of restraint chairs and to modify policies and practices concerning disciplinary time-adds. Both parties agreed that the draft plans for measuring and reducing the use of force and concerning disciplinary time-adds needed to be revised. DJJ accepted the draft plan for limiting the use of restraint chairs; the plaintiff did not. The experts agreed to provide revised drafts, but prioritized activities related to finalizing the Safety and Welfare and Mental Health remedial plans.³²

4. Plan For Clinicians Managing Self-Destructive Youth

Pursuant to paragraph 13 of the November 30 Stipulation, Consent Decree expert Dr. Trupin, in consultation with DJJ, was to develop an interim plan for enhancing the ability of DJJ clinical staff to manage youth with self-destructive behavior. The plan was to be consistent with DJJ's legal restraints and it was to include a reasonable implementation timetable. DJJ was to implement the plan absent compelling reasons not to implement it.

Dr. Trupin recommended, as his proposed plan, that DJJ contract with a specific expert psychologist trainer to provide training and supervision to all clinicians in the

³¹ As of late July, the parties planned to revisit and resolve issues related to the interim plans for restricted program and lockdowns by early August.

³² In July 2006, the parties agreed to cover the use of force and time-add issues in the Safety and Welfare and Mental Health remedial plans. The November 30 Stipulation separate "interim" plans will not be completed.

management of youth with self-destructive behavior at a cost of \$75,000 to \$100,000.³³ DJJ reasonably objected that this proposal was not consistent with the legislative budget restriction that required it to await completion of the legislatively mandated Chico State Training Needs Assessment before it committed training funds for training required by Farrell remedial plans. Further, DJJ could not responsibly commit to contract for training and supervision of this scope without the context of a yet-to-be-developed integrated plan for clinician training and supervision.

III. SEX BEHAVIOR TREATMENT REMEDIAL PLAN

The sexual behavior treatment expert serving under the Consent Decree, Dr. Barbara Schwartz completed her first round of monitoring in November 2005. Her November 30, 2005 report is attached as Appendix D.³⁴ Her findings, conclusions and recommendations are based on site visits conducted October 20 through 26, 2005. During those visits, she reviewed documents, met with DJJ's Sexual Behavior Treatment Program administrators, clinicians and other care providers and observed the "residential" sexual behavior treatment programs at O.H. Close, N.A. Chaderjian, H.G. Stark, and Southern Reception Center facilities.³⁵ She subsequently attended a meeting in March 2006 of the Sex Behavior Treatment Program Task

³³ Correspondence from Dr. Henry Schmidt to Dr. Trupin, March 25 and 27, 2006, forwarded to the Special Master.

³⁴ Dr. Schwartz's report was the first report submitted by an expert serving under the Consent Decree. The Special Master provided it to the parties but did not file it pending the parties' agreement concerning the procedure for filing experts reports. The parties agreed in April 2006 that reports would be filed quarterly with the Special Master's quarterly reports, after the parties had an opportunity to review and respond to them. Any responses also will be filed.

³⁵ See, Appendix. D, pp. 11-14. These four facilities are the only ones that provide "residential" treatment programs.

Force. Dr. Schwartz expects to complete a second round of monitoring in the summer of 2006.³⁶

DJJ's Sexual Behavior Treatment Task Force is comprised of a Program Administrator, several clinicians who work in the "residential" programs and the expert consultant retained by DJJ to help it implement the Sexual Behavior Treatment Remedial Plan. While the task force has been diligently and skillfully trying to accomplish the projects set out in the remedial plan, it has been handicapped by DJJ's failure to hire someone to fill the Sexual Behavior Treatment Coordinator position.

Dr. Schwartz noted the urgent need to secure a qualified coordinator in her November 30, 2005 report.³⁷ DJJ created and has advertised the position as a senior psychologist position without attracting any applicants, apparently because the compensation is too low (less than the compensation of the DJJ psychologists who the coordinator is supposed to supervise).³⁸ DJJ reports that the California Department of Personnel Administration has refused its requests to increase the compensation.³⁹ Dr. Schwartz also recommends that the position be open to other-than-psychologist sex behavior treatment specialists so as to expand the pool of potentially qualified applicants.⁴⁰

The task force has completed one of the several treatment curricula required by the remedial plan. Dr. Schwartz reports that the completed curriculum is very good. She is concerned, however, that DJJ may not be devoting sufficient resources to the development of

³⁶ Special Master's email communications and telephone conversations with Barbara Schwartz, March 24, 26 and April 2006.

³⁷ See, Appendix D, p. 7.

³⁸ Letter Monica Anderson to Special Master, June 15, 2006.

³⁹ Statements of counsel to Special Master during meeting concerning draft of this report, June 16, 2006.

⁴⁰ See, Appendix D, p. 7.

the remaining curricula, choosing instead to rely on DJJ clinicians who lack experience in curriculum development and who have other full-time responsibilities.⁴¹

Since November 2005, the Sexual Behavior Task Force also has been developing a Policies and Procedures Manual with the goal of completing it by July 2006.⁴² Such a Manual is, according to Dr. Schwartz, needed to make all staff aware of the legal and ethical issues affecting their work, particularly those involving confidentiality and informed consent.⁴³

Dr. Schwartz's report contains detailed recommendations on the maintenance of standardized and accessible treatment files.⁴⁴ Adequate treatment requires standardized files accessible to all members of the treatment team.⁴⁵ The Special Master has reviewed this issue with knowledgeable DJJ staff and they acknowledge that, at present, the sex behavior treatment notes are entered in four different files (paper and electronic), some of which cannot be accessed by non-clinical members of the treatment team (counselors, parole agents).⁴⁶

Dr. Schwartz was very impressed by the program staff (psychologists, parole agents and correctional counselors) who she observed working in the residential treatment programs. They were "professional, caring and competent" and generally knowledgeable about the areas for which they were responsible. She observed them skillfully using positive reinforcement and following the principles of Motivational Interviewing. She observed comfortable, constructive human interaction between staff and youth at each of the residential program

⁴¹ Special Master's email communications and telephone conversations with Barbara Schwartz, March 24, 26 and April 2006.

⁴² See, Appendix D, p. 2.

⁴³ *Ibid.*

⁴⁴ See, Appendix D, p. 7.

⁴⁵ See, Appendix D, p. 7.

⁴⁶ Special Master's meeting with DJJ staff and counsel concerning information requests, May 23, 2006.

housing units. She could not obtain documentation of the staff members' qualifications and, therefore, was not able to find DJJ in compliance with that aspect of the remedial plan's standards and criteria.⁴⁷

DJJ has followed Dr. Schwartz's recommendation⁴⁸ that it adopt the normed and validated J-SOAP as one of the instruments to be used to assess sexual behavior treatment needs of DJJ youth.⁴⁹ The adoption of J-SOAP will require special training, which DJJ cannot implement until the Chico State Training Needs Assessment is completed.⁵⁰ Other necessary staff training has been deferred pending the completion of the Chico State Training Needs Assessment.⁵¹

In addition to the residential programs, the Sexual Behavior Treatment Remedial Plan provides for DJJ to implement an "outpatient" program for youth with less severe sexual behavior issues. But, while the remedial plan requires that youth be placed in programs according to their assessed needs, it does not reference sexual behavior treatment for youth with co-morbid conditions who are currently being treated in DJJ's mental health treatment units. There has, therefore, been some confusion as to whether the youth who need (and may be Board ordered to receive) sexual behavior treatment but who are not in one of the residential programs are receiving such treatment.⁵²

⁴⁷ See, Appendix D, p. 9.

⁴⁸ *Id.*, p. 10.

⁴⁹ Email from Dr. Schwartz to the Special Master, March 26, 2006.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² On January 8, 2006, the Special Master interviewed youth at a Preston ITP whose clinicians had told them that their sexual behavior treatment in the ITP might not count towards their Board requirements because it was not part of the formal sexual behavior treatment program. A DJJ administrator later confirmed that clinicians in mental health programs treated provided sexual behavior treatment to youth who required it, albeit, entirely independently of the sexual behavior treatment program. She said that the treatment would count as meeting the youths' Board requirements.

At present, the clinicians providing sexual behavior treatment to youth in mental health treatment housing units have no connection with the developing sexual behavior treatment program. “Outpatient” sexual behavior treatment has yet to be defined or designed. Further, consistent with the observations and recommendations of other experts, Dr. Schwartz notes the need for institutional schedules for treatment and other program activities to ensure that prescribed treatment activities are not supplanted, shortened or disrupted.⁵³

Dr. Schwartz also found that many of the sexual behavior treatment clinicians, counselors and parole agents are not aware of the aftercare programs available in the community for paroled and discharged youth. Yet, as Dr. Schwartz and a number of the other experts have noted, a program for institutional treatment that is not coordinated with the available aftercare programs is of little or no value.⁵⁴

IV. DISABILITY REMEDIAL PLAN

The Consent Decree expert in physical and programmatic access for youth with disabilities, Logan Hopper, conducted compliance audits at all DJJ facilities between September 2005 and April 2006. His “Wards with Disabilities Program Remedial Plan Auditor’s Report” is attached as Appendix E. The first two pages summarize his compliance findings approximately one-year after DJJ filed the Wards with Disabilities Remedial Plan (“disabilities remedial plan”). The body of the report provides specific facility-by-facility assessments for each item audited. He provided the Special Master, and the Special Master provided the parties, with the individual facility audits as they were completed.

⁵³ See, Appendix D, pp. 8-9.

⁵⁴ See, Appendix D, p. 6, 10; email and telephone communications from Dr. Schwartz to the Special Master May 2005, March and April 2006.

DJJ has made significant progress in the year since the disabilities remedial plan was filed.⁵⁵ A key achievement and factor in DJJ's progress was its retention of department and facility level disabilities program coordinators and, at six facilities, assistants to the coordinators.⁵⁶ With the leadership and management of a department coordinator, and of facility coordinators, DJJ has been able to plan and track its progress as demonstrated by the Wards with Disability Remedial Plan section of DJJ's quarterly report for the first quarter of 2006.⁵⁷ Mr. Hopper reviewed the report and found it to be generally accurate and consistent with his own report (with only a few minor discrepancies).⁵⁸ He has made suggestions for improvement of facility monthly reports for more complete compliance reporting.⁵⁹

Among noncompliance issues, the most significant is that DJJ is falling far behind the plan's June 2006 deadline for training all staff in disability sensitivity, awareness and harassment. This training is to be prepared with the assistance of an outside disability organization or consultant, in consultation with Mr. Hopper as the Consent Decree expert.⁶⁰ DJJ does not yet have a plan to get the necessary assistance and design and to give this training. DJJ missed the December deadline for special higher-level training by outside trainers for facility program coordinators.⁶¹ As in other subject matter areas, training has been delayed pending completion of the Chico State Training Needs Assessment. Aware of the

⁵⁵ Appendix E and email and telephone communications from Logan Hopper to the Special Master and Monitor Beltz, May 2006.

⁵⁶ Appendix E, p. 1.

⁵⁷ The WDP Remedial Plan section of DJJ's quarterly report for the first quarter of 2006 is attached as Appendix F. Its description of the coordinators' activities shows how key they are to what DJJ has accomplished in the area of disability access.

⁵⁸ Email from Logan Hopper to the Special Master, May 2, 2006.

⁵⁹ Appendix E, p. 1.

⁶⁰ Wards With Disabilities Remedial Plan, pp. 56-57.

⁶¹ *Id.* at 57.

deficiency, DJJ headquarters staff have provided training and supervision to facility coordinators based on the requirements of the disabilities remedial plan. Nonetheless, the required trainings that are being delayed, especially the system-wide sensitivity-awareness-harassment training, are key to successful and timely implementation of the disability remedial plan.⁶²

The disabilities plan requires coordination with special working groups and staff implementing other remedial plans under the Consent Decree.⁶³ The special working group to make recommendations for improvements to IEP accommodations and parent participation had been convened, but the work was not planned or begun in the other areas.⁶⁴

DJJ has completed some projects removing architectural barriers ahead of the schedule set by the plan.⁶⁵ This bodes well for the prospects for the successful and timely removal of architectural barriers.

V. EDUCATION REMEDIAL PLAN

The Consent Decree education experts, Dr. Thomas O'Rourke and Dr. Robert Gordon, conducted compliance audits at all DJJ facilities between September 2005 and April 2006. Their first Summary Education Program Report with two appendices is attached as Appendix G.⁶⁶ The summary report displays compliance status for each facility, the audit criterion and recommendations where action is required to remediate serious deficiencies. If DJJ is to begin to make adequate progress under the Education Services Remedial Plan ("education

⁶² Email and telephone communications from Logan Hopper to the Special Master and Monitor Beltz, May 2006.

⁶³ See, e.g., disabilities plan, p. 15, 26, 34 and 58.

⁶⁴ Appendix E, p. 2.

⁶⁵ Appendix E, p.1.

⁶⁶ The experts provided the Special Master with and the Special Master provided the parties with the individual facility audits as they were completed.

plan”), priority needs to be given to addressing these findings. Their recommendations are noted for each of the major sections of the education plan.

DJJ has made significant progress under the education plan in the past year, most particularly in that it has established competitive pay levels for teachers, expanded its efforts to recruit quality teachers and adopted a 220 day school schedule to be implemented in August 2006 as required by the plan.⁶⁷ Continued attention must be give to hiring and retaining enough teachers to meet the educational needs of the entire student population. Unfortunately, through April 2005, classes often were cancelled and schools did not offer all of the courses necessary to enable the students to make reasonable progress towards graduation.⁶⁸

DJJ will not be able to achieve compliance with the education plan without cooperation and collaboration between custody, treatment and education staff. The plan requires that there be a written cooperation agreement at each DJJ facility detailing how custody, treatment and education management and staff work together to ensure that youth receive all necessary services, including their full education day.⁶⁹ As of yet, none of DJJ’s facilities have such an agreement in place.⁷⁰ As important, school principals do not have the level of autonomy from facility superintendents necessary for the principals to be able to manage the education program to meet the needs of the youth population.⁷¹

⁶⁷ See, Appendix G. The 220-day school year was approved but was still pending contract negotiations in May 2006. The contract negotiations were since concluded.

⁶⁸ See, Appendix G, Attachment A pp.1-2.

⁶⁹ Education Services Remedial Plan, Section III.D.

⁷⁰ See, Appendix G, Summary, p.6.

⁷¹ Statements by Drs. O’Rourke and Gordon to Special Master May 30, 2006.

DJJ has not had a permanent Superintendent of Education since the education plan was filed, and this is a problem. It will take strong leadership to address all the obstacles that stand in the way of providing state mandated education to DJJ youth. The Educational Superintendent will have to be empowered by the DJJ Chief Deputy Secretary in order to be able to effectuate the changes that are necessary.

VI. CONCLUSION

The experts' 2003 reports underlying the Consent Decree documented harmful conditions for youth that resulted from decades of California's attriting resources from treatment and rehabilitation and from increasingly punitive attitudes towards prisoners, whether juvenile or adult. California's juvenile correctional facilities, initially intended for the reformation of youth, were transformed into adultified prisons characterized by high levels of youth violence and staff use of chemical agents, punitive and restrictive conditions and a paucity of treatment and constructive activities for youth.

National experts jointly selected by the parties have cogently explained how difficult and lengthy an undertaking it will be to reform DJJ.

No one should underestimate the difficulty of implementing such sweeping reform in a system as troubled as this. The task is do-able, but it will take long-term commitment and cooperation between parties who don't always agree. Players will change. Mistakes will be made. The process will take years. The end result, however, will be worth it. Lives will be changed and futures restored. Communities will be safer and prisons less full.⁷²

DJJ's first tasks are to build the capacity for change and to regain control of its facilities and greatly reduce the violence.⁷³ In the eighteen months since the Consent Decree in this case was entered, DJJ has taken significant steps towards building the capacity and

⁷² Murray, et al., *Safety and Welfare Plan: Implementing Reform in California* (March 31, 2006), p. 36.

⁷³ Id. at pp. 36-40; Safety and Welfare Remedial Plan, p. 8, 23.

conditions for the reform that is so necessary. DJJ has filled a number of key leadership and management positions with people who appear to have the skills and abilities to lead and manage the reform. It has organized and supported a high-level reform planning team that has led the successful effort to develop credible reform plans. That effort has involved conducting extensive analysis of existing resources and predicting needed resources; planning for the immediate, four-year and long-term time frames; developing and supporting budget proposals resulting in a substantial increase in DJJ's budget; and developing duty statements and justifications for contracts. DJJ has engaged outside experts to assist in the development of the reform plans, and it has begun to engage state and local stakeholders in the planning process. Other accomplishments are noted in this report.

It is now incumbent on DJJ to begin to change practices and conditions in substantial ways at the facility level. This will require strong leadership at all levels and in all operational areas. Leaders will have to make and enforce decisions that cause discomfort. They will have to build an infrastructure capable of managing all aspects of operations and implementing and enforcing central policy at the facility level. They will have to ensure that departments and individuals responsible for treatment and rehabilitation services have the autonomy and support necessary to develop and deliver those services. They will have to foster collaboration between management and labor and among staff of different disciplines to deliver treatment and rehabilitative services to youth. They will have to begin to transform the way that staff and youth relate by training to enhance staff skills for teaching youth and managing their behavior. Institutional reform is slow, and initiating reform is the most

difficult step. DJJ now has the opportunity to begin to make real change and improve conditions for the youth it is charged to rehabilitate and it must not delay.

Dated: June, 2006

Donna Brorby
Special Master