

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

UNITED STATES OF AMERICA, )  
950 Pennsylvania Avenue, N.W. )  
Washington, D.C. 20530 )

Plaintiff )

vs. )

STATE OF TEXAS )  
P.O. Box 12428 )  
Austin, Texas 78711-2428 )  
County of Residence: )  
Travis; )

TEXAS YOUTH COMMISSION )  
4900 N. Lamar Blvd. )  
Austin, TX 78765 )  
County of Residence: )  
Travis; )

Civil Action  
No. 7:08 cv 00038

COMPLIANCE REPORT

CHERIE TOWNSEND, )  
 Executive Director )  
 Texas Youth Commission )  
 4900 N. Lamar Blvd. )  
 Austin, TX 78765 )  
 County of Residence: )  
 Travis; )  
 )  
 EDUARDO MARTINEZ, )  
 Superintendent )  
 Evins Regional Juvenile Center )  
 3801 East Monte Cristo Road )  
 Edinburg, TX 78541 )  
 County of Residence: )  
 Hidalgo, )  
 )  
 )  
 )  
 )  
 )  
 Defendants. )

UNITED STATES' FIRST COMPLIANCE REPORT

Pursuant to Paragraph 25 of the Agreed Order in the above-captioned matter, the United States submits to this Honorable Court its first report assessing the State's compliance with the Agreed Order. The report includes the factors considered by the DOJ in monitoring the State's compliance and includes: (1) a verbatim recitation of each paragraph of the Agreed Order; (2) the DOJ's assessment of the State's compliance with each paragraph of the Agreed Order, including a narrative of the information the DOJ considered in reaching its assessment; (3) to the extent that the State is not in compliance with any particular paragraph(s) of the Agreed Order, the report includes the specific factual basis for this assessment and technical assistance recommendations to assist the State in achieve compliance with such paragraphs(s); and (4) the report identifies any noncompliance with mere technicalities or temporary failures to comply during a period of otherwise sustained compliance.

As detailed below, DOJ's assessment is that the State has achieved compliance with Paragraphs 5, 12, and 21, and partial compliance with Paragraphs 1-4, 6-11, 13-20, and 22-26. The term "partial compliance" is used to indicate that the State has made notable progress in achieving compliance with the key components of the paragraph, but that significant work remains. DOJ is pleased to report that no paragraphs were determined to be in non-compliance.

DOJ recognizes that achieving compliance with each paragraph of the Agreed Order will require time and effort going forward. Further, DOJ acknowledges the significant efforts that the State has

made to date in working towards achieving compliance with the Agreed Order.

**COMPLIANCE RATINGS**

- (1) *Protection from Harm The State shall, at all times, provide youth at Evins with reasonably safe living conditions, and shall implement policies, procedures, and practices to reasonably ensure that youth are protected from harm by staff (e.g., improper restraint and excessive use of force) and harm from other youth.*

This Paragraph provides the overarching standard and a compliance assessment is dependent upon the State's compliance with the remedial measures contained in Paragraphs 2-24, which are discussed in detail below.

Compliance Rating: Partial Compliance.

- (2) *Protection from Undue Restraints Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to reasonably ensure that only safe methods of restraint are used at Evins, and only in those circumstances necessary for safety and security, and that restraints are never used to punish youth.*

The State included a working draft of General Administrative Policy (GAP) 97.23 (Use of Force) in its 60-day Response. GAP.97.23 is being revised to place greater emphasis on the use of de-escalation and other non-physical intervention methods as a means to alleviate the need for uses of physical restraints. Since the execution of the Agreed Order, TYC has updated DOJ regarding its policy ratification process. While the relevant policies are not yet finalized, DOJ is encouraged by the positive steps TYC has undertaken thus far. DOJ is also encouraged by the videotapes TYC

submitted regarding staff use of force training, which, along with written documentation, show improvement in use of force practices. The final approved policy will be forwarded to DOJ for review and comment when completed.

Current TYC policy permits its employees to use the appropriate degree of force when reasonably necessary to protect persons and property, overcome unlawful resistance, and maintain safety and order. Crisis de-escalation and behavior management techniques are expected to be used to the greatest extent possible to ensure force is the last resort. When physical restraint becomes necessary, TYC's current policy authorizes staff to use restraint techniques that minimize the risk of harm to the youth and staff and provides that force is to be used as a last resort and when other less restrictive interventions have failed or are not practicable under the circumstances existing at the time. The degree of force used is predicated by the circumstances of the situation including the amount of resistance presented by the youth. Under no circumstances is force to be used that is greater than necessary to achieve control of the youth and maintain safety and order.

Following policy finalization, TYC must ensure that all existing staff and any new staff are trained on these measures. At present, DOJ has not received sufficient information to comprehensively assess this Paragraph.

Compliance Rating: Partial Compliance.

- (3) Reporting of Staff Misconduct and Other Serious Incidents  
Within 60 days of the effective date of this Agreed Order, the State shall develop and implement appropriate policies and procedures which contain definitions approved by DOJ after review and comment by the DOJ for the terms "use of force," "staff-on-youth assault," "youth-on-youth assault," and "inappropriate staff relationships with youth," and will develop and implement such policies, procedures, and practices so that:
- (a) appropriate Evins staff report all incidents of use of force, staff-on-youth and youth-on-youth assault, inappropriate staff relationships with youth, and sexual misconduct between youth, to appropriate individuals at the facility;
  - (b) appropriate Evins staff notify appropriate supervising officials and document in writing all incidents involving mechanical restraints to control youth; incidents resulting in bodily injury to youth and/or staff; inappropriate staff relationships with youth; sexual misconduct between youth;
  - (c) reporting may be done without fear of retaliation; and
  - (d) all such incidents are appropriately documented and reported, including the facts of the incident, any injury that occurred as a result of the incident, and in a way that permits review.

The State included working drafts of GAP.07.03 (Incident Reporting), GAP.93.33 (Alleged Abuse, Neglect, and Exploitation); Personnel Policy Manual (PRS) 01.03 (Work and Personal Conduct); Institutions Operations Manual (INS) 91.91 (Incident Reports); GAP 93.37 (Security Intake) with the its 60-day Response. The final approved policies will be forwarded to DOJ for review and comment when completed.

The draft policies require that staff immediately report incidents categorized as critical or serious and suspected abuse, neglect, or exploitation to the Chief Local Administrator and/or the Incident Reporting Center (IRC). A toll-free hotline number was

established for the reporting of incidents to the IRC. This hotline is to be available 24 hours a day.

PRS 01.03 requires employees to report suspected mistreatment of youth, incidents of fraud, and other job-related illegal activities to their chief local administrator, TYC Central Office, or anyone in authority inside or outside of TYC to whom they feel comfortable reporting without fear of retaliation. Failure to report such incidents could result in disciplinary action.

INS 91.91 requires that incidents involving youth-on-youth assaults are documented on Use of Force Reports (CCF-225s).

GAP.93.37 is the current working TYC policy designed to comply with state law requiring the development of policies mandating zero tolerance for sexual abuse, GAP 93.37 is a zero-tolerance policy, requiring all employees to report any suspicion of sexual abuse.

TYC has placed an emphasis upon eliminating inappropriate and improper uses of force by staff, sexual misconduct by staff, and other inappropriate activities. The establishment of the Incident Reporting Center (IRC) as a part of the Office of Inspector General (OIG) is an important step in assuring the safety of the juveniles committed to the care and custody of TYC. In addition, TYC has staffed a full time investigator from the OIG office at Evins. While this investigator is also responsible for additional facilities within the region, DOJ is encouraged that TYC has created a permanent, on-site, presence from the OIG at Evins.

DOJ was encouraged to see that CCF-225s are collected, along with restraint review forms. The CCF-225 forms appear adequately documented. The restraint review forms that are attached to CCF-

225s are designed to improve quality assurance measures at Evins. Each review form requires staff to confirm whether the CCF-225 was filled out correctly, interventions leading up to the restraint were chronologically documented, and requires staff to discuss whether options other than restraints were available. The review form also provides a comment area, where additional training may be recommended for the staff involved in the incident. The review forms should then be signed by both staff and a supervisor. While we commend Evins' current practices, we note that some of the review forms are not completely filled out, and of the sample set we received during our October 2008 tour, none of the forms were signed by supervisors.

Additionally, the strengthening of the requirements for employees to report abuse, misconduct, and serious incidents are an added safeguard. During our October 2008 tour, we found no evidence that staff were discouraged or otherwise reluctant to report misconduct. Moreover, PRS.01.03 allows employees to report alleged misconduct without fear of retaliation.

In addition, TYC's participation in the Performance Based Standards (PbS) project should assist the agency in standardized data collection which will make assessment of trends and activities more credible and useful. This Paragraph will require careful monitoring on an on-going basis.

Compliance Rating: Partial Compliance.



(4) *Review of Incidents by Senior Management* Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices so that senior management review all incidents involving mechanical restraints to control youth, incidents resulting in bodily injury to youth and/or staff, inappropriate staff relationships with youth, and sexual misconduct between youth.

The State included drafts of GAP.07.03 (Incident Reporting) and INS.91.91 (Incident Reports) in its 60-day Response. GAP.07.03 requires senior management to review all serious incidents or critical incidents and all allegations of abuse, neglect, and exploitation. Additionally, INS.91.91 requires the Accident/Physical Restraint Review Board to review all incidents involving manual and mechanical restraints and uses of OC spray. The final approved policies will be forwarded to DOJ for review and comment when completed.

Senior management now appear to review serious incidents at Evins. Policy requires that all incidents involving use of force or inappropriate conduct of staff with youth are currently reviewed by the Superintendent or his designee. DOJ interviewed senior management, including the Superintendent, regarding this Paragraph. We are encouraged that management not only reviews incidents, but also demonstrated familiarity with facts surrounding each of the incidents we discussed. We are also encouraged to see that Evins utilizes a Restraint/Accident Review Board (RARB), and that the minutes of those meetings are adequately recorded. The RARB include trainers, direct care staff, and senior Evins officials. The minutes include a summary of the incidents discussed, and

recommendations designed to prevent reoccurrence of preventable incidents, and are ratified by the Superintendent.

For serious incidents or incidents involving an allegation of abuse, neglect, or exploitation, the on-site OIG investigator prepares a report on the findings of the investigations for review by TYC's Executive Officer and legislative oversight committees. The OIG also reviews all incidents in which force is used for a possible referral for investigation. During our October 2008 tour, we reviewed OIG documents and interviewed the OIG investigator, and conclude that an adequate process is currently beginning at Evins. However, careful monitoring needs to occur in order to assure these practices become a routine part of the operation.

Compliance Rating: Partial Compliance.

- (5) *Health Care Inquiries Regarding Injury* If, in the course of the youth's infirmary visit, a health care provider suspects staff-on-youth abuse, that health care provider shall:
- (a) *report the suspected abuse to the appropriate officials, the Office of Inspector General, law enforcement and social service agencies;*
  - (b) *adequately document the matter in the youth's medical record; and*
  - (c) *complete an incident report.*

DOJ interviewed the head nurse at Evins during our October 2008 tour, and observed the nursing operations. We are pleased to confirm that the requirements of this Paragraph are a part of the standard operating procedure at Evins. We are also encouraged by TYC's efforts to expand on-site clinical services at Evins to 24 hours per day, seven days per week coverage of the campus. Should

this occur as planned, this will be an important step in assuring that the requirements of this Paragraph continue to be in place.

Compliance Rating: Compliance.

- (6) *Uses of Force* Within 60 days of the effective date of this Agreed Order, the State shall develop and implement comprehensive policies, procedures, and practices governing uses of force, ensuring that the least amount of force necessary for the safety of staff, youth residents, and visitors is used on youth.

The State submitted drafts of GAP.97.23 (Use of Force) and PRS.01.09 (Staff/Youth Relationships) in its 60-day Response. GAP.97.23 only allows use of force, including restraints, as a last resort. Pursuant to this policy, under no circumstances is it permissible to use force greater than necessary to achieve control. Only trained techniques are permissible when using physical restraint. PRS.01.09 also prohibits staff from using any force that is not permitted by GAP.97.23 and provides that a violation of this requirement constitutes grounds for termination of employment. The final approved policies will be forwarded to DOJ for review and comment when completed.

TYC permits its employees to use the appropriate degree of force when reasonably necessary to protect persons and property, overcome unlawful resistance and maintain safety and order. Crisis de-escalation and behavior management techniques are expected to be used to the greatest extent possible to ensure force is the last resort. When physical restraint becomes necessary, it is the policy of TYC to use restraint techniques that minimize the risk of harm to the youth and staff. Force is to be used as a last resort when

other less restrictive interventions have failed or are not practicable under the circumstances existing at the time. The degree of force used is predicated on the circumstances of the incident including the amount of resistance presented by the youth. Under no circumstances is the force used authorized to be greater than necessary to achieve control of the youth and maintain safety and order.

The use of force as punishment or for convenience of staff is prohibited.

Any youth suffering an injury following a restraint is to be seen by the medical staff for medical treatment and to determine the extent of any injuries. All injuries shall be documented in the medical record along with an explanation from the youth describing how the injuries occurred. Photographs are to be taken of all injuries.

TYC policies appear to be adequate and within generally accepted national standards of practice for secure juvenile correctional facilities. It will be important to carefully monitor the actual practice to assure that the practices at Evins are reflective of and implement the policies which TYC has enacted. DOJ is encouraged with the positive steps TYC has undertaken.

Compliance Rating: Partial Compliance.

(7) Documentation and Tracking of Investigations Within 60 days of the effective date of this Agreed Order, the State shall develop policies, practices, and procedures for documenting all incidents of use of force, staff-on-youth assault, youth-on-youth assault, inappropriate staff relationships with youth, sexual misconduct between youth, and for documenting and tracking the status and outcome of all investigations. Where there is evidence of staff

*misconduct, the State shall initiate appropriate personnel actions and systemic remedies, where appropriate.*

The State submitted drafts of GAP.07.03 (Incident Reporting) and GAP.93.33 (Alleged Abuse, Neglect, and Exploitation) in its 60-day Response. The final approved policies will be forwarded to DOJ for review and comment when completed.

The OIG documents and tracks all investigations (administrative and criminal) involving alleged abuse, neglect, and exploitation, including the review of incidents of use of force including allegations of improper uses of restraints, staff-on-youth assault, youth-on-youth assault, inappropriate staff relationships with youth, and sexual misconduct between youth. As noted above, DOJ is encouraged by TYC's placement of an OIG investigator on site. However, this compliance with this paragraph will require further evaluation to assure that the system which has been put into place functions in such a way as to assure that all allegations are logged, tracked, and investigated appropriately.

Compliance Rating: Partial Compliance.

(8) *Investigations Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to reasonably ensure an effective system for investigation of uses of force, physical restraint, alleged child abuse, youth-on-youth assault, and alleged sexual contacts.*

The OIG is responsible for conducting administrative and criminal investigations involving allegations of abuse, neglect, and exploitation, incidents of use of force, staff-on-youth assault,

youth-on-youth assault, inappropriate staff relationships with youth, and sexual misconduct between youth.

TYC has taken important steps in developing policies and procedures to assure the safety and well being of the youth at Evins. In addition, the presence of a full time investigative officer on campus and the current effort to employ a second officer should help assure the integrity of the process.

This Paragraph will require careful monitoring to assure that the system which is being set in place is functioning and adequate to assure the safety of the youth.

Compliance Rating: Partial Compliance.

(9) *Reporting Possible Criminal Violations Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, practices, and procedures governing when possible criminal violations must be reported to the appropriate law enforcement authorities.*

Through Senate Bill 103 (SB 103), signed into law in June 2007 and codified at Human Resources Code § 61.0356, the Texas Legislature established OIG as an independent law enforcement division of TYC. OIG is tasked with investigating allegations of criminal misconduct occurring at Texas Youth Commission facilities, and is an appropriate law enforcement entity to receive reports of possible criminal violations.

As noted above, TYC now has an OIG investigator placed on the Evins campus. This individual appears to have free access to all areas of the campus, all documents, and all staff and youth at Evins. It appears that the officer has been active at the campus with criminal investigations involving staff. In addition, an

employment posting has been announced which, if a successful candidate is identified, should bring a second officer to the campus in late 2008 or in early 2009.

These are important steps in this process. It will be important to monitor the work load of the officer(s) assigned to Evins over time to accurately assess compliance with this Paragraph.

Compliance Rating: Partial Compliance.

(10) *Behavior Management Program* Within 90 days of the effective date of this Agreed Order, the State shall develop and implement an evidence-based behavior management program. The behavior management program shall be implemented throughout the day, including during school time. The State shall develop and implement policies, procedures, and practices to reasonably ensure that mental health staff provide regular consultation regarding behavior management to custody and other staff involved in the behavior management program, and shall develop and implement a mechanism to assess the effectiveness of interventions utilized.

The State is currently in the process of revising its policies and procedures relating to its Behavior Management Program. Currently, agency policy provides for the Behavior Management Program (BMP), the Aggression Management Program (AMP), and the Primary Intervention Program (PIP) as behavior management programs for the agency. However, neither the BMP, AMP, nor the PIP are used for behavior management programs at Evins. Evins uses a newly developed program, "Re-direct" for addressing youth behavior. The Re-Direct program is an effort to de-emphasize the use of the facility's security unit and move the focus back to the general living units. The procedures for the Re-direct program require mental health and treatment staff to consult daily to address

programming and behavior. All educational services are to be provided while the youth are in the Re-direct program and program expectations are to be met even when a youth is attending class.

Of significance is the State's effort to provide positive re-enforcements to youth on the campus as a whole. This effort appears to be lagging behind the effort to de-emphasize the use of the security unit. It is important that all youth have the opportunity to participate in behavior management programs which emphasize rewards for desired positive and constructive behaviors. Rewards need to be quick, tangible and of some practical value to the youth. At this time, the Evins staff and administration do not have a wide range of positive rewards for the youth nor a widespread ability to quickly re-enforce desired pro-social behaviors when they are demonstrated by the youth.

The Behavior Management Program at Evins is in a state of change. The changes outlined above are new, and not yet fully implemented. The staff and administration have taken important first steps in constructing a daily living program at the facility. This work will need to be expanded and re-enforced with both staff and youth. Behavior management programs are challenging to manage and must be administratively supported until they become part of the over-all culture at the facility.

Compliance Rating: Partial Compliance.

(11) Staffing Within 60 days of the effective date of this Agreed Order, the State shall provide sufficient numbers of adequately trained direct care and supervisory staff to (a) supervise youth safely, (b) protect youth from harm, (c) allow youth reasonable access to medical and mental



*health services, and (d) provide youth with adequate time spent in out-of-cell activities. The State shall establish mandatory minimum staffing requirements, including a determination of all direct supervision posts that must be filled on each shift. In establishing mandatory post coverage, the State shall include provisions for coverage for all required staff training as well as authorized leave time.*

SB 103 requires that TYC maintain a staff-to youth ratio of not less than 1:12. The staffing patterns for Evins were provided in the State's 60-day Response. Policies detailing staffing requirements and procedures will be provided as they are developed. The current practice, as shown in the staffing reports, is that at least a 1:12 ratio is being maintained. Appropriately, only those individuals providing direct youth care are counted for the staffing ratio. To ensure proper staffing, INS.15.01 requires direct care staff to remain on duty until relieved.

The number of direct care staff needed to safely operate a facility is impacted by several factors. For example, the population being served by the facility and their social and offense histories, as well as the risk they represent to their home communities and the persons who are around them. The physical layout of the building or buildings, and the skill level of and training available to the staff also influence the staffing pattern that is required to ensure adequate safety.

Staffing levels at Evins have improved significantly since the DOJ conducted its first tour in 2006. This has been accomplished by filling direct care staff vacancies and by reducing the youth population. These are positive steps. However, the continued existence of the open bay dormitories which house most of the youth

on campus continue to provide a difficult challenge for the staff and administration.

Until the retrofitting is completed, adequate staffing to ensure youths are reasonably protected from harm will continue to pose a challenge at Evins. We are encouraged that as of our October 2008 tour, the ratio of Junior Corrections Officers (JCOs), who are the primary direct care staff tasked to supervise youth, has dramatically improved. Currently, the JCO to youth ratio at Evins is between 1:8 and 1:11. These ratios account for direct staff working with youth; staff who "float" or "roam" Evins to assist in maintaining security throughout the facility are not included in the ratio. This improved ratio is a remarkable improvement, and we encourage Evins to seek to ways to further reduce staffing ratios.

Compliance Rating: Partial Compliance.

(12) *Employment Practices* Within 60 days of the effective date of this Agreed Order, the State shall continue to conduct a criminal record check for all current employees at Evins, taking appropriate actions where new information is obtained. At least as often as every year thereafter, the State shall update such criminal record checks for all employees who come into contact with youth. The Evins administration shall develop and implement policies and procedures to require that applicants and all current staff immediately report to it any arrest other than a minor traffic violation and also report the issuance of a restraining order entered against the staff member due to alleged abusive behavior.

SB 103, requires that TYC perform background and criminal history checks annually on all employees at Evins. Policies governing this requirement are provided in PRS.01.08 (Criminal Records of Current Employees), 05.11 (Selection and Hiring Process), 05.13 (Background Checks), and 05.14 (Texas and National Crime

Information Center System). According to these policies, no individual is permitted to be employed in a direct care position without having successfully completed a background and criminal history check.

During the FY 2007 legislative session, the Texas Legislature mandated that TYC conduct annual criminal history checks on all employees, contractors, and volunteers. Personnel policies have been revised to require fingerprinting and background checks of all employees upon employment with the agency and then annually. Additionally, policies are pending approval that will require fingerprinting and background checks on contractors and volunteers who work with TYC youth.

During our October 2008 tour, we reviewed logs at Evins which indicated criminal background checks are being performed on staff before working with youth, consistent with Texas law.

Compliance Rating: Compliance.

(13) *Due Process Within 60 days of the effective date of this Agreed Order, the State shall implement policies, procedures, and practices to reasonably ensure that youths confined to the Security Unit for disciplinary reasons for more than 24 hours receive an appropriate due process hearing by an impartial supervisory staff member to determine whether cause exists for continued disciplinary confinement.*

The State submitted drafts of GAP.97.37 (Security Intake), GAP.97.40 (Security Program), and GAP.97.43 (Institution Detention Program) with its 60-day Response. These policies establish the required due process for placement in the security unit. GAP.95.55 (Level II Hearings), GAP.95.57 (Level III Hearings), and GAP.95.59

(Level IV Hearings) contain the procedures for the hearings that must be held for placement in the security unit. Pursuant to these policies, a youth placed in the security unit must have at a minimum a Level III hearing within 24 hours of placement. The security policies are in the process of revision and will be submitted to DOJ once they are finalized.

During our October 2008 tour, staff confirmed that they do not use segregation as a disciplinary sanction. However, it is clear the security unit has been used as a behavioral control device. As a practical matter, many of the youth who sleep in the security unit participate in routine daily activities such as education, recreation and other program activities. We are encouraged that the Superintendent has emphasized that youth housed in the security unit are typically taken to and from school, and given reasonable opportunities to reintegrate into the general population. As a result of such efforts, youth are generally not confined in their rooms for extended periods of time such as for 22 or 23 hours per day.

Still, it is important that due process safeguards are in place for youth who are taken out of normal campus programming and living arrangements. Essentially, there should be a process which prohibits a youth's confinement beyond 24 hours without having an opportunity to explain himself or otherwise contest his confinement.

Since the use of the security unit is changing, it will be necessary to continue to monitor its use and the corresponding provision of due process.

Compliance Rating: Partial Compliance.

(14) *Youth Grievances* Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to reasonably ensure that there is a functional and responsive youth grievance system.

The State submitted draft working policy GAP.93.31 (Youth Grievance System) in its 60-day response. GAP.93.31 provides the policies and procedures for the youth complaint/grievance system. Responses to youth grievances must be completed within 15 business days. The grievance policy is in the process of revision and will be submitted to DOJ once it is finalized.

The grievance system at Evins appears to be generally functional. It would be helpful if the grievance system would incorporate a function to assure that resolutions or accommodations that are to occur as a result of a grievance having been filed are actually implemented. At present, this final component of the grievance system does not seem to be in place. To take this final step would assure the administration that the necessary steps necessary to resolve a grievance have been taken.

Compliance Rating: Partial Compliance.

(15) *Admissions Intake and Orientation* Within 60 days of the effective date of this Agreed Order, 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. Each youth entering Evins shall receive an effective orientation that shall include simple directions for reporting abuse, and assure youth of their right to be protected from harm and from retaliation for reporting allegations of abuse. 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 facility programs.*

The States submitted GAP.91.15 (Youth Orientation), INS.11.01 (Admission), 11.05 (Youth Orientation), 11.06 (Local Orientation Program) in its 60-day Response. These draft policies require that youth receive orientation information, including information concerning their rights, the rules of conduct, and instructions on how to report abuse. Upon admission to TYC, youth receive a youth handbook explaining the rules and their rights. Final policies will be submitted to DOJ for review and comment.

TYC representatives have indicated the agency is in the process of revising its intake, assessment, and classification systems. A new classification system is being developed to ensure the safe and secure placement of youth within agency facilities and programs. The current assessment system is being revised to encompass performance based measures for providing rehabilitative and treatment services to youth.

Our review of a sampling of juvenile records at Evins indicates that the basic information which is collected through community resources in the juveniles' home communities and the information obtained at TYC intake facility is consistent with generally accepted professional practices. However, as indicated in Paragraph 16, below, there are concerns about the actual physical placement of the youth once they reach the Evins campus.

Interviews with youth confirm they generally have a basic awareness of their rights, how to file a grievance, how to report concerns about their treatment and so forth. If there are significant changes to the various aspects of the program, including, youth rights and related matters, it will be incumbent upon the administration to assure that all youth are made aware of the changes.

Compliance Rating: Partial Compliance.

(16) *Classification* Within 90 days of the effective date of this Agreed Order, the State shall develop and implement a classification system that considers factors including youth age, committing offense, gang affiliation, delinquent history and treatment needs to reasonably ensure that youth are safely placed within Evins, and provides for reclassification in appropriate circumstances.

The current classification system stated is designed to establish a youth's minimum length of stay and treatment needs. The agency is developing a policy surrounding a classification system for safe housing placement. In the interim, Evins has developed procedures for safe housing placement. The safe housing placement plan takes into consideration a youth's age, size, gang affiliation, delinquent history and treatment needs. The Special Services Committee (SSC) reviews these factors and makes a recommendation for dorm placement.

The system used to assign youth to particular living units is an important aspect of operating a juvenile correctional facility. It is important to assure that the youth is placed in a unit where he can best receive treatment or services and can be safely maintained. Many factors can impact housing assignment. These

include but are not limited to age, physical size, level of sophistication, assaultiveness, committing offense, mental capacity, state of mental health and so forth. Obviously, it is desirable to place youth where they can best function and have less chance of being either a predator or a victim.

The information gathered through TYC's intake and assessment process conducted at another TYC campus appears to be generally adequate and comparable to generally accepted national practices.

The design of the physical plant at Evins presents challenges to arranging safe and adequate housing for the youth who come to the campus. The facility has two small living units which are used to house specifically identified populations of youth. One unit is the Chemical Dependency Unit and the other serves younger youth. All other youth are assigned to the open bay general living units.

Evins has begun to designate certain open bay dormitories to serve particular populations. Still the design of the buildings means that youth have easy access to one another in the day room, the bathroom, and the shower areas. This is especially troubling due to the presence of sex offenders at the facility.

As a general practice, youth who have committed sexual offenses are typically housed away from a facility's general population. They are also usually housed in living units that allow for assignment to single person sleeping rooms. This is an effort to reduce the opportunity for sexual assaults and sexual acting out.

At Evins, sexual offenders are assigned to the general population. At present there are not options for single sleeping room assignments on campus without re-assigning those youth who are



assigned to the aforementioned chemical dependency and young youth units which is not suggested. This represents a significant challenge to the staff at Evins.

It is commendable that the administration of TYC and at Evins has recognized the problems they face with making dormitory assignments. It is important that they have begun to work to assign particular groups of compatible youths to particular units. However, this is clearly a new effort on the staff's part. It is important that the safe housing policy be developed and implemented as quickly as possible.

Compliance Rating: Partial Compliance.

- (17) *Training* Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to provide staff, volunteers and contractual employees of Evins with training regarding their responsibilities. These policies, practices, and procedures shall include:
- (a) a comprehensive training plan for all Evins employees, reviewed and updated annually;
  - (b) requirements by job category;
  - (c) standards for qualification of trainers;
  - (d) processes for approval of the training curriculum;
  - (e) schedules for staff training;
  - (f) criteria for determining whether Evins staff, volunteers, and contractual employees have mastered the instructional materials and methods being taught; and
  - (g) specific requirements by professional discipline for any continuing education credits established by licensure, certification, or recognized professional academies and organizations.

The State submitted SB 103; PRS.01.07 (Compulsory Training Requirements for Correctional Staff), 39.01 (Agency Training Program), 39.09 (Trainer Qualifications), and 39.25 (Continuing Education Unit Credits) in its 60-day Response. SB 103 and these draft policies require TYC to provide 300 hours of training to all direct care staff prior to receiving a dorm assignment. Final versions of the policies will be submitted to DOJ for review and comment.

TYC's renewed commitment to staff development and training is impressive and commendable. The requirement for 300 hours of training for newly hired direct care staff exceeds generally accepted national standards. During our October 2008 tour, we were pleased to see standardized logs that tracked Evins' staff training completion dates for each of the trainings offered by TYC. Those trainings include, but are not limited to: Verbal Intervention & De-escalation, Behavior Management, Incident Report Writing, Interpersonal Communication Skills for Staff, Use of Force, Mechanical Restraints, and Youth Rights. As of the date of our tour, it appears from the training logs that Evins has a 100% staff training rate for new hires.

In addition, TYC training efforts for existing staff are also impressive. TYC is endeavoring to become accredited by the American Correctional Association (ACA).

In order to achieve its training goal TYC must commit a great deal of resources to the effort. This is an area which will require on-going monitoring and assessment to assure that the agency's goals are achieved. DOJ and TYC are currently working to schedule a tour

of the agency's primary training site in order to evaluate the courses offered.

Compliance Rating: Partial Compliance.

(18) *Physical Restraint Training* Within 60 days of the effective date of this Agreed Order, the State shall train direct care staff on its approved method for physical restraint that minimizes the risk of injury to youth. The State shall only use instructors who are appropriately qualified to teach the approved physical restraint method. All training shall include each staff member demonstrating the approved techniques and meeting the minimum standards for competency established by the method. Direct care staff skills in employing the method shall be periodically re-evaluated. Staff who demonstrate deficiencies in technique or method shall be removed from direct contact with youth until they meet minimum standards for competency established by the method. Juvenile Correctional Officer Supervisory staff shall be trained to evaluate their subordinates' use of the approved restraint methods and must provide evaluation of these methods in their reports addressing use of force incidents.

See comments for Paragraph 17. Physical restraint training and recertification is an annual requirement for employees designated as direct care staff.

The object of a passive restraint system is to maintain physical control of a youth in the safest and least painful manner possible. Most passive restraint systems teach that staff are to attempt to verbally de-escalate a situation and only use the least amount of force necessary to control the youth. Most reputable passive restraint systems place as much or more emphasis on verbal de-escalation than on actual physical control techniques.

TYC has determined that it will use a passive restraint/personal protection system that is also used in a number of juvenile facilities around the United States. The certification

of new employees and re-certification of existing employee is an on-going process. This Paragraph will require careful monitoring to assure that staff are trained as required.

Compliance Rating: Partial Compliance.

(19) Staff Training in Behavior Management, De-Escalation and Crisis Intervention Within 60 days of the effective date of this Agreed Order, the State shall provide appropriate competency-based training to staff in behavior management, de-escalation techniques, appropriate communication with youth, and crisis intervention before staff may work in direct contact with youth.

See comments for Paragraph 17. Behavior Management, De-Escalation, and courses designed to provide valuable crisis intervention skills are currently being offered by TYC.

TYC is currently working to re-emphasize with staff the concepts of de-escalation and crises intervention as a part of its overall programming on campus. It is recognized this is closely related to the development of the behavioral management program and the de-emphasis on the use of the security unit. At the time of the October site visit, it was found that the new programming effort has not been fully implemented. This is not unexpected as these changes represent a major philosophical shift for the campus which will take time to successfully implement.

Compliance Rating: Partial Compliance.

(20) Staff Training in Incident Reporting Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices so that staff are appropriately trained in incident reporting consistent with the type of incident reporting required under this Agreed Order.

See comments for Paragraph 17. Staff Training and Incident Report Writing courses are currently being offered by TYC.

All employees are required to receive training on incident reporting, including the reporting incidents of abuse, neglect, and exploitation, and other incidents affecting youth. TYC is in the process of adopting policies, procedures, and guidelines for implementation of Prison Rape Elimination Act (PREA) guidelines. Specific training will be provided to staff related to these policies, procedures, and guidelines.

Compliance Rating: Partial Compliance.

(21) Document Development and Revision Throughout the term of this Agreed Order, the State shall maintain, revise and/or develop as necessary other written documents including assessment instruments, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreed Order.

TYC has provided various policies and procedures to the DOJ for review and comment. After consultation with the DOJ's expert, comments were offered to TYC. Many of the policies are currently under revision, and are proceeding through the State's process for the approval of state agency policies and procedures. DOJ is encouraged by the State's document development and revision efforts, and its prompt submission of all documents and videos requested.

Compliance Rating: Compliance.

(22) Policy Review and Training Within 45 days of the effective date of this Agreed Order, the State shall submit all policies and procedures regarding the following topics to DOJ for review and comment: use of restraints and confinement to the Security Unit, use of force, youth grievance system, investigations of alleged staff

*misconduct, behavior management program, and reporting and review of staff misconduct and other incidents. Within 120 days of the effective date of this Agreed Order, the State shall commence initial and refresher training to all Evins staff with respect to any newly-implemented or revised policies and procedures. Such training shall be completed within 180 days of the effective date of this Agreed Order. The State shall document employee training.*

See comments for Paragraph 21.

Given the current state of changes of many of TYC's working policies, we are unable to confirm whether staff have received all refresher trainings. TYC has indicated that it will provide all finalized policies after they have become ratified; training on those policies should follow immediately after ratification.

Compliance Rating: Partial Compliance.

(23) *Performance-Based Accountability System* *Within 90 days of the effective date of this Agreed Order, the State shall develop and implement a system designed to collect data necessary to assess and reasonably ensure the effective implementation and operation of all remedies instituted pursuant to this Agreed Order.*

TYC has determined to participate in the Performance Based Standards project (PbS). PbS was begun in 1995 by the US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP) to improve the conditions reported by the 1994 Conditions of Confinement study of 1,000 secure facilities. Directed by the Council of Juvenile Correctional Administrators (CJCA), PbS asks participants to collect and analyze data to target specific areas for improvement.

One of the greatest potential benefits of participating in the PbS project is the formalization and standardization of data gathering in critical areas of facility operations; many of which are key requirements of this order. For example, the gathering of data on assaults, fights, allegations of abuse, staffing levels and so forth. Over time, this participation should result in TYC administrators having an increased ability to incorporate actual hard data into management decisions.

Compliance Rating: Partial Compliance.

(24) Corrective Action Plans *With regard to the protection from harm and training remedial measures addressed in this Agreed Order, throughout the term of this Agreed Order, the State shall develop and implement policies and procedures to address problems that are uncovered during the course of performance-based accountability activities. The State shall develop and implement corrective action plans to address these problems in such a manner as to prevent them from occurring again in the future.*

Established pursuant to GAP.05.01, TYC's internal audit department is tasked with reviewing and improving performance-based accountability activities at Evins. Currently, the audit team is reportedly taking actions to improve the services provided to youth at Evins, however, a formal corrective action plan has not yet been developed for each Paragraph of the Agreed Order. We anticipate that TYC will begin formalizing correction action plans in accordance with the terms of this paragraph within the next monitoring period (November 2008-May 2009).

Compliance Rating: Partial Compliance.

(25) *The DOJ shall monitor the State's compliance with this Agreed Order. The DOJ's monitoring shall include, on-site inspections of Evins, interviews with Evins youth, staff, and administrators, and a review of relevant documents. The DOJ shall retain a juvenile justice consultant with expertise in protection of youth from harm within the context of the operation of a secure juvenile justice facility to assist the DOJ in its monitoring activities. DOJ shall routinely report its assessment of the State's compliance with the paragraphs of this Agreed Order to the Court. The DOJ's reports shall include the factors considered by the DOJ in monitoring the State's compliance, and shall include: (1) a verbatim recitation of each paragraph of the Agreed Order; (2) the DOJ's assessment of the State's compliance with each paragraph of the Agreed Order, including a narrative of the information the DOJ considered in reaching its assessment; (3) to the extent that the DOJ's assessment is that the State is not in compliance with any particular paragraph(s) of the Agreed Order, the DOJ's report shall include the specific factual basis for this assessment and technical assistance recommendations to assist the State in achieving compliance with such paragraph(s); and (4) identify any noncompliance with mere technicalities or temporary failures to comply during a period of otherwise sustained compliance. The DOJ's first report shall be submitted within six months of the effective date of this Agreed Order, and subsequent reports shall be filed every six months thereafter. Until this matter is dismissed, the DOJ shall have unrestricted access to, and shall, upon request, receive copies of any documents, records, and information relating to the implementation of this Agreed Order. The State shall provide any requested documents, records, and information to the DOJ as soon as possible, but no later than 30 days from the date of the request. The DOJ shall have reasonable access to Evins, including any newly constructed, renovated and/or designated buildings and facilities; staff and youth, including private interviews with staff; and youth records, documentation, and information relating to the issues addressed in this Agreed Order. The State shall instruct all employees to cooperate fully with the DOJ. The DOJ agrees to provide the State with reasonable notice of any visit or inspection, although the DOJ and the State agree that no notice is required in an emergency situation where the life, health, or immediate safety of youth is at issue.*

The State has been very helpful and cooperative in the monitoring of this agreement. The DOJ and its expert have received complete access to the facility, staff, and youth. TYC has



endeavored to provide all requested documents in a timely and convenient manner.

Staff from the DOJ and the DOJ's expert were on-site at Evins July 1 and 2, September 9, and October 7 and 8, 2008. DOJ and the State are currently working to schedule an additional tour.

Compliance Rating: Partial Compliance.

(26) *Information to Employees* Within 90 days of the effective date of this Agreed Order, the State shall reasonably ensure that all current and future relevant State employees understand the terms of this Agreed Order (to the extent necessary to carry out their job duties and responsibilities) and implement the terms of this Agreed Order.

TYC requires all new employees to attend an orientation session during which they are provided a copy of the Agreed Order and the terms of the Agreed Order are explained to them, including the consequences for not complying with conditions and remedies of the Agreed Order. The superintendent at the Evins facility met with all current employees on June 17, 2008, explained the terms and conditions of the Agreed Order, and gave each employee a copy of the Agreed Order. In addition to information provided directly to employees, the Agreed Order has been placed on the agency's website.

Compliance Rating: Compliance.

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2008, a true and correct copy of the foregoing COMPLIANCE REPORT was served on counsel for Defendants as identified below via the ECF system.

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