

I. INTRODUCTION

The Special Master submits for filing the Sixteenth Report of the Special Master. This quarterly report is the first produced wholly by the Office of the Special Master (OSM) under Special Master, Nancy Campbell who was appointed to this position on February 22, 2010.

In this report, the Special Master shares her assessment to date of progress made by the California Department of Corrections and Rehabilitation-Division of Juvenile Justice (DJJ) toward compliance with the *Farrell* Consent Decree including background and progression of the case over time as well as the current status of DJJ's efforts in each of six remedial areas. The Special Master acknowledges DJJ's significant progress, the obstacles that impede DJJ's success and identifies major areas for improvement. Special Master Campbell, in her short tenure on the *Farrell* case, has been encouraged by the parties' efforts to improve communication and collaboration. These efforts have resulted in compromise on several long-standing issues that are referenced in this report.

The Special Master will address her efforts to coordinate the work of the OSM and the *Farrell* experts, to streamline monitoring processes and achieve greater efficiency and effectiveness of the OSM/Expert team. Lastly, this report summarizes and attaches the fifth round of comprehensive reports from the Wards with Disabilities Program Expert, Logan Hopper and the Education Services Experts, Dr. Robert Gordon and Dr. Tom O'Rourke.¹ The OSM and experts submit these reports following careful consideration of the parties' comments.

¹Appendix A, California Department of Corrections-Division of Juvenile Justice, Wards with Disabilities Program Remedial Plan Auditor's Annual Report for FY 2009-10 (Hopper Report); and Appendix B, California Department of Corrections-Division of Sixteenth Report of the Special Master
November 19, 2010

First, however, Special Master Campbell must express her gratitude to former *Farrell* Special Master, Donna Brorby. This OSM has benefited from Special Master Brorby's wisdom and insight into the *Farrell* case as well as her continued support throughout a very complicated transition period. Special Master Brorby was certainly not required to engage in the transition at any level; however, her willingness to assist and guide Special Master Campbell affirms Special Master Brorby's commitment to the reform effort. This Special Master's few successes are attributable directly to Special Master Brorby's hard work and successes throughout her Mastership and her generosity in sharing her knowledge.

II. PAST AND FUTURE IMPEDIMENTS TO REFORM

The size and scope of the reforms envisioned by the *Farrell* remedial plans would be challenging under the best of circumstances. The reform effort has been implemented in a turbulent and ever changing environment. The reorganization of the state juvenile corrections system combined with the dramatic downsizing and subsequent change in the youth population served by the state has resulted in a chaotic environment in which to make change. Compounding the problem is the most significant fiscal crisis the State of California has suffered since the 1929 Great Depression. It is a credit to all the parties in this case that so much change has been accomplished in each remedial area despite the volatile and rapidly shifting environment.

It appears now that the nature of the youth population is stabilizing, as is the organizational structure of DJJ. The fiscal crisis, however, continues to impede DJJ's

Juvenile Justice, Comprehensive Education Program Report for School Year 2009-2010 (Gordon-O'Rourke Report).

ability to demonstrate effective and efficient management. Legislative changes also continue to complicate the strategic reform plan agreed to by the parties.² In order to identify how best to ensure progress in the remedial plans, it is important to reflect on the impact of the past impediments to reform and how they continue to influence progress in the case.

Past Challenges

The Impact of Reorganization

In 2005, California consolidated five of its state departments into one. It was a complex reorganization that required careful forethought to properly plan and execute.³ With the reorganization, the California Youth Authority (CYA), a long established independent agency, was subsumed under the California Department of Corrections and Rehabilitation's (CDCR) much larger bureaucracy.⁴ As the younger, smaller sibling to the overwhelming adult services division, DJJ has faced substantial organizational challenges.

²In the recently passed FY 2010-2011 budget, parole services were re-directed to the counties. This will again impact population projections, which in turn may result in a facility closure.

³As a part of the Governor's Reorganization Plan five departments and boards under the Youth and Adult Correctional Agency were consolidated into the new California Department of Corrections and Rehabilitation (CDCR). The departments included the California Department of Corrections (CDC), the California Youth Authority (CYA), the Board of Prison Terms (BPT), the Board of Corrections (BOC), and the Commission on Correctional Peace Officers' Standards and Training (CPOST).

⁴ DJJ was created through the Fiscal Year (FY) 2005-06 budget as a part of the Governor's Reorganization Plan. On July 1, 2005, the CYA no longer functioned as a stand-alone department and became the DJJ one of the components within the newly formed CDCR.

The timing of the reorganization could not have been worse for the newly formed DJJ as it sought to implement the *Farrell* reforms, an enormous undertaking in itself.⁵ The reorganization added yet another layer of administrative oversight to DJJ's reform planning. Immediately following the reorganization, DJJ administration necessarily focused energy on consolidating and aligning its processes with those of its new parent agency, temporarily averting attention from other DJJ priorities.

In addition, the highly dysfunctional reputation maintained by the former California Department of Corrections (CDC) in numerous aspects of its operations was inherited by CDCR-DJJ.⁶ As a stand-alone department, the CYA had control over its budget allocations to ensure that funds were used for juvenile functions, operations, and activities. Under CDCR, DJJ's budget priorities must be considered within the context of the larger agency. The needs of CDCR's much larger adult division sometimes take

⁵See SB 737 legislation signed into law on May 10, 2005 that, in conjunction with the Governor's plan to transform the Youth Adult Correctional Agency into the Department of Corrections and Rehabilitation, dramatically changed California's correctional system. During the same time period, on March 1, 2005, the DJJ filed the Education Services Remedial Plan and audit tool. On May 16, 2005, the DJJ filed the Sexual Behavior Treatment Program Remedial Plan and audit tool. On May 31, 2005, the DJJ filed the Wards with Disability Program Remedial Plan and audit tool. After a nationwide search, on July 1, 2005, the first Chief Deputy Secretary for the newly formed DJJ began his 5-year tenure with the organization.

⁶For example, the Governor's FY 2005-06 Budget Summary stated "It had become apparent that there was little fiscal accountability among CDC institutions, part of which was related to the institutions having little incentive to expend within the limits of a budget allotment that contained a shortfall from the outset." The Budget Summary further noted, "Since November 2003, this Administration has made a concerted effort in promoting truth in budgeting at the CDC. The focus of this effort has been to provide adequate funding for required activities, create institutional allotments that tie to the approved budget, and hold the institutions accountable to that allotment."

precedence over those of the juvenile offenders.⁷ When the department encounters a significant budget deficit, DJJ's budget priorities are adjusted accordingly. Similar problems exist in other areas such as personnel, contracting, and information technology.

Successful departmental transformation of the magnitude undertaken in CDCR's creation requires years to complete. Whether the reorganization was ultimately a wise decision remains unclear. It is certain, however, that CYA/DJJ's restructuring has impeded the agency's work of reforming its practices and remains a complicated and frustrating burden on the parties and the OSM/Expert team charged with measuring its progress.⁸

Change in DJJ Youth Population

The six *Farrell* remedial plans were developed at a time when the size and characteristic of DJJ's youth population were significantly different than they are today. Most of the population changes are a result of legislation that was enacted since the plans were filed.⁹

In 1996, DJJ's population reached a high of 10,122 youth. Since 1996, the population has steadily declined. Legislative changes in 2006 and 2007 further reduced DJJ's population.¹⁰ The population now served by DJJ typically has more serious

⁷ A recent example is transfer the juvenile population from Heman G. Stark, months ahead of schedule, due to a riot in the adult division's California Institution for Men; and OSM 15 pp. 16-25.

⁸ See the Fourth Report of the Special Master, pp 4-10 and the Fifth Report of the Special Master, pp 1-19.

⁹ See Office of Research, Juvenile Justice Research Branch, "Then and Now: California Department of Corrections and Rehabilitation, Division of Juvenile Justice 2005 and 2009, Incarcerated Youth Profile," published July 2010.

¹⁰ See SB 681, SB 81 and AB 191.

commitment offenses and histories and the most complicated and diverse treatment needs.

CDCR's Juvenile Justice Research Branch provided the Special Master with data from the Offender-Based Information Tracking System (OBITS) regarding youth admissions and population for 2005 and 2009. As of December 31, 2005, the initial phase of the *Farrell* reforms, DJJ housed a total of 2,915 youth (141 young women and 2,774 young men). By December 31, 2009, following implementation of Senate Bill 81 and Assembly Bill 191, the youth population was reduced by half for a total of 1,527 youth (75 young women and 1,452 young men). The trend continues in 2010.

Selected OBITS data between December 31, 2005 and December 31, 2009 shows proportional increases of more serious and violent crime committed by DJJ youth.¹¹

Specifically, the data show:

- The proportion of youth in DJJ facilities with homicide, robbery, or assault offenses was larger in 2009 than it was in 2005 (75.5%, 44.3%, and 22.6%, respectively).
- The proportion of DJJ's youth registered as non-residents, arsonists, drug offenders, sex and drug offenders, sex offenders, and gang offenders increased from 34.4% in 2005 to 46.9% in 2009. Youth registered as gang offenders, which increased from 12% to 26.5% accounted for the increases.
- Welfare and Institutions Code section 1767 and Penal Code section 3058.6 requires victim notification when offenders convicted of certain offenses have a parole hearing or are scheduled for release. The proportion of youth in DJJ's population whose offense requires victim notification increased from 52.6% in 2005 to 74.1% in 2009.
- The proportion of youth in DJJ population tried as adults, commonly referred to as E and M cases, increased from 6.2% in 2005 to 21.3% in 2009.
- The proportion of youth from all ethnic categories in the facilities decreased while the proportion of Hispanic youth increased. African American and Hispanic youth account for 80% and almost 90% of youth in 2005 and 2009, respectively.
- The proportion of youth who received an initial parole board hearing date of less than two years declined from 37.9% in 2005 to 15.5% in 2009. Meanwhile, the proportion of youth who received an initial parole board hearing date of two years

¹¹*Id.*, at item 8.

or more increased from 55.9% to 63.1%. The initial parole hearing date is based on the youth's commitment offense. OBITS does not track the initial parole board hearing dates for E and M cases, which accounted for 6.2% of the youth in the 2005 population and 21.4% of the youth in the 2009 population. These were youth tried as adults and this information is maintained by the CDCR Division of Adult Institutions.

The Juvenile Justice Research Branch staff attempted to obtain comparative data for youth with mental health diagnoses through OBITS. It was determined that OBITS data is not useful for this purpose. However, the Population Management Center maintains data about youth program placement by living unit for recent years. Of the 1,527 youth population in December 2009, 234 (15.3%) were placed in Mental Health programs and 183 (12%) were placed in Sexual Behavior Treatment Programs. This data does not account for the number of youth with mental health diagnoses assigned to other living units.

The recent passage of AB 1628 has resulted in the transfer of juvenile parole to the counties.¹² This is projected to result in a further reduction of the DJJ institutional population.¹³ It is unclear what the impact of the loss of parole supervision will have on the nature and number of incarcerated youth in DJJ. It is possible that the loss of this population in combination with the drop in other commitment types could necessitate yet additional institution closures.

¹²DJJ parolees will revert to county supervision. Local courts will hold re-entry disposition hearings on youth scheduled for discharge. DJJ jurisdiction will terminate upon discharge. Local courts will set supervision conditions and determine violations (revocations). *See* AB 1628.

¹³Most parole violators will not be returned to DJJ but will be returned to local youth facilities.

Facility Closures

In conjunction with the population reduction, DJJ has consolidated its resources and reduced its costs with the closure of three facilities and three camps. In 2003 and 2004, DJJ closed three facilities and three conservation camps to adjust for the population decline. Within the next four years, by 2008, two additional facilities had closed - DeWitt Nelson and El Paso de Robles, followed by Heman G. Stark (Stark) in 2010. From a high of 11 facilities and five conservation camps prior to 2003, DJJ now has five facilities and two conservation camps. The recent announcement of the proposed closure of Preston Youth Correctional Facility (Preston) will reduce DJJ to four facilities.¹⁴

Closures divert time and energy from the reform effort. DJJ administrators are diverted from reform efforts as they attend to multiple issues inherent to facility closures. The anxiety and instability among staff and youth throughout DJJ damages motivation and limits the ability of staff to focus on system reform. Staff members that have been trained to deliver specialized services are at times transferred which can disrupt the development and implementation of new and existing programs.¹⁵

Closures also can undermine youths' sense of stability as well as their treatment goals. Youth who have built meaningful relationships with staff can become anxious about the loss of these relationships and treatment progress can be frustrated. For youth who may be transferred farther away from their home communities, hopes of seeing their

¹⁴As of this writing there is an effort on the part of local legislators and community members to prevent the closure of the facility but there is little reason to believe that the closure will not occur.

¹⁵Statements of Edward Latessa, Consultant, University of Cincinnati, to Nancy Campbell, Special Master after a site visit to N.A. Chaderjian. Staff rotations interfere with participants completing treatment programs in a timely manner.

families are dashed, sometimes for the duration of their confinement. Transfer can also dangerously alter interactions between youth in the receiving facilities and the new transferees.

Experience with facility closures at DJJ has demonstrated the importance of adequate time to plan and to incrementally move youth and staff to remaining facilities. To ensure the safety and security of youth being transferred and at the facilities they will be transferred to, it is imperative that mistakes made in some past facility closures are not repeated.

Remarkably, with the exception of Ventura Youth Correctional Facility (VYCF), DJJ was able to complete most facility closures without significant detriment to receiving institutions. For example, when Safety and Welfare expert, Dr. Barry Krisberg and the OSM conducted site visits at the Preston Youth Correctional Facility they found that DJJ had accomplished a relatively smooth transfer from Stark to Preston. On the other hand, VYCF, which would receive most of Stark's youth, was preparing according to the 18-month time frame in which Stark was initially scheduled to close. Instead, the closure deadline was moved up and was implemented in just four months, less than one quarter of the originally scheduled time frame. The new deadline, established to accommodate the needs of CDCR's adult population resulted in a failure to have adequate custody, education and treatment staff on-site at VYCF to meet the needs of the increased population.¹⁶

VYCF, which historically has maintained a comparatively stable environment, struggled substantially to integrate Stark's youth to its campus. COMPSTAT data

¹⁶ See Fifteenth Report of Special Master, pp.19-22.

reveals that during the transition, VYCF's use-of-force incidents nearly quadrupled, from 13 incidents in January 2009 to 49 incidents in June 2010 despite a nearly 25% decline in DJJ's total incidents for the same period. To VYCF's credit, violence and use of force have reduced at the facility since mid June 2010.¹⁷ DJJ staff report that the reduction will be reflected in VYCF's 3rd Quarterly Statistical Report for 2010.¹⁸

Initially, VYCF was considered the department's model institution for implementation of the Program Service Day remedial plan requirement. In June, the OSM and DJJ compliance staff jointly monitored VYCF's Program Service Day. Sadly, VYCF ranked next to last of the five facilities in the provision of program and treatment hours. The Parties, the experts and the Special Master agree that most of VYCF's problems in the wake of Stark's closure were preventable had there been adequate time to plan the closure and to ensure that youth and staff transfers were properly sequenced.¹⁹

A successful facility closure requires months of intensive planning at DJJ's central office and facilities. It involves the balancing of each youth's security and treatment needs with housing unit availability and institutional capacity. Staffing at receiving facilities must also be adjusted via new hire or staff transfers from closed facilities. The parties have agreed that the Special Master will coordinate input and support from the experts to assist the DJJ with the closure of the Preston facility.

¹⁷Statements of Ventura Administrators to Cathleen Beltz, Site Visit, September 13, 2010. Administrators report that between June 13, 2010 and September 13, 2010, Ventura had few disturbances and none involving more than three youth.

¹⁸ Administrators referenced VYCF's third quarter incident data, which had not been completed at the time of the site visit.

¹⁹The parties, experts and OSM staff continue to discuss the problems that Ventura faces as a result of the increase in youth and the change of the facility from all female to co-ed.

Funding for Remedial Plan Implementation

For the 2004-05 Fiscal Year (FY), California appropriated a total of \$322 million to the former CYA (excluding local assistance and capital outlay) to carry out its operations and activities.²⁰ The following FY, DJJ's budget increased somewhat to \$346 million for 2005-06. By FY 2006-07, due largely to *Farrell* required reform, the state increased DJJ's budget allocation to \$443 million. An additional increase the following FY 2007-08 increased the appropriation to \$477 million. By FY 2008-09, as DJJ's population declined, so too did its budget to \$469 million. By FY 2009-10 it was again reduced to \$435 million.

Though DJJ's youth population declined by nearly 50% between FY 2005-06 and FY 2009-10 (from 2,915 to 1,452), DJJ's budget increased by approximately 25% (from \$346 million to \$435 million) during the same period. DJJ had limited resources to fully engage in the remedial effort until FY 2006-07. Moreover, DJJ did not have complete discretion over how some of the budget increases were to be used. For example, the costs of DJJ's medical care increased significantly as a result of action taken by the court-appointed California Prison Healthcare Receivership to increase the compensation of CDCR's medical personnel, including mental health clinicians. A second example is the costs of implementing a system to monitor and document compliance with the remedial plans by DJJ, the experts, and the OSM that were driven by the Consent Decree and largely were beyond DJJ's control.

There is significant disagreement between the parties regarding the effectiveness of how the increased funding was used by DJJ. The goal of the Special Master is to find

²⁰See Final Budget Summary for Fiscal Year 2004-'05.

as many ways as possible to build on any of the training or program implementation efforts that are consistent with the agreed upon direction for an integrated behavioral treatment approach. In addition, the Special Master will play an active role in working with the parties to identify the most cost effective ways to achieve program outcomes.

Current and Future Challenges

Upcoming Change in Administration

The Gubernatorial administration change in January 2011 will result in policy reassessment and changes and likely turnover in management at CDCR and possibly in DJJ. The uncertainty that typically occurs during a transition period could delay or curtail the progress of the remedial efforts. Significant policy or management change may also disrupt the continuity of the reform efforts.

The Acting Deputy Secretary, Rachel Rios, is doing a good job of ensuring continuity of effort during a time of uncertainty. The Special Master appreciates the work that she and her staff are doing to ensure progress continues and to prepare effectively for the transition in leadership.

Chronic Fiscal Challenges

Garnering the needed resources to complete the remedial efforts will be a challenge for DJJ. The current fiscal crisis, concerns raised by experts, plaintiff, and legislators regarding the use of past appropriations provided for remedial reform and/or the high cost of providing current services to the much reduced youth population has created a situation where most likely DJJ will continue to have its funding reduced. While unclear how this will impact the remedial effort, many experts have expressed

their willingness to work with DJJ to identify ways to reduce service delivery costs. Facility closures in and of themselves may reduce the costs per youth but the Special Master believes that there remain areas where program changes can save resources without compromising quality. To accomplish such changes will require a willingness on the part of the DJJ to reach agreement on some long standing differences regarding the staffing required to serve this smaller and different youth population in the most effective and efficient way.

Implementation of the Behavioral Treatment Model

Treatment of youth with techniques that support development of pro-social behavior is at the heart of the *Farrell* case. All proposed changes within the individual remedial plans may be positive, but if collectively the changes do not achieve the outcome of creating an expectation and understanding by staff how to reinforce and develop productive behaviors in youth, the ultimate goal of helping youth to reduce or eliminate criminal behaviors will not occur. Being safe, healthy and accessing equitable services are all prerequisites to achieving behavior change in youth but, by themselves, cannot achieve the ultimate goal of a pro-social youth. The parties wisely agreed to the need for an Integrated Behavioral Treatment Model (IBTM) that overarches all the remedial plan goals and ensures that all aspects of a youth's incarceration support the development of pro-social behavior.

Successful completion of several requirements in many remedial plans is dependent upon the implementation of a clearly defined behavioral treatment model. Without the model, it is impossible to prioritize resources and to deter competition between disciplines in the facilities. A unified approach to working with youth that

provides consistent messages about and support for desired behaviors couldn't be achieved without an interdisciplinary model that clearly defines each discipline's role and function in the treatment process.

While the parties agreed on the need for an integrated behavioral treatment model, they failed to agree on details of the model until recently.²¹ The inability of the parties to reach agreement on the overarching approach to behavior management has created challenges.²² Without a clearly articulated vision and operating plan for achieving the desired behavior management approach, it has been difficult for staff to understand how the many efforts of the various remedial plans fit together. When reviewing a new or revised policy or process, staff should be able to analyze whether it supports the integrated behavioral treatment model and the ultimate goal of pro-social behavior in youth. Without this staff finds themselves feeling besieged with new policies and often cannot understand the need for the policy change.

Now with a plan, DJJ is positioned to educate staff about the framework for the remedial effort. The experts will need to work closely together to assist with the sequencing and integration of changes required in their respective areas. They will need to function much more as a team rather than independent experts focused primarily on their own areas of expertise. The integrated behavioral model requires shared ownership

²¹ See IBTM Order 05272010.

²² While the parties agreed on the need for an integrated behavioral treatment model, they did not agree on details of the model until recently. Plaintiffs contend that DJJ consistently failed to develop a workable IBTM model. The failure of the parties to reach agreement on the overarching approach to behavior management has created challenges. Without a clearly articulated vision and operating plan for achieving the desired behavior management approach, it has been difficult for staff to understand how the many efforts of the various remedial plans fit together.

among experts and with DJJ. It requires the experts to understand their collective impact on the DJJ system.

A challenge for all stakeholders will be to keep the IBTM pilot limited to the two designated sites and to provide enough time to ensure adequate understanding of the model. It is critical that full implementation is achieved in the pilot sites before expanding the program. Understandably, the parties are anxious to begin the pilots and to see results. However, training and policy changes need to be sequenced thoughtfully to ensure fidelity to the program design and to reinforce desired learning.²³ Learning from the sites can be transferred before final implementation but full implementation is essential to achieving desired outcomes.

The parties have entered into an interagency agreement with the School of Criminal Justice at the University of Cincinnati to lead the implementation of the integrated behavioral treatment model at two pilot sites.²⁴ A significant challenge will be for the parties, experts and Special Master to coordinate their efforts so they collectively support and not impede the efforts of the contracted consultants.

²³In conversations with the Special Master and the parties, Dr. Latessa has pointed out that one of the challenges for DJJ right now is that there is not an adequate concentration of trained staff to effectively deliver programs in any one facility or unit. This is largely because DJJ tried to implement training across all facilities without sufficient resources or staffing stability to develop adequate complements of skilled trainers. Focusing on units rather than whole facilities creates the possibility of developing the number of trainers with adequate skill levels, as well as the treatment and security staff who can reinforce program learning.

²⁴DJJ is in the process of finalizing the agreement for University of Cincinnati to assist with the implementation of the two pilots. Services include training, coaching, booster sessions and consulting.

Facility Limitations

Critical for providing effective interventions in the lives of incarcerated youth is the program space to deliver individual and group treatment. Several of the existing DJJ facilities have limited program space.²⁵ In addition, none of the facilities are well designed for a reformed system or for DJJ's young population. Almost all of the facilities need upgrades in critical infrastructure.²⁶

Facility closures and funding challenges have resulted in delays in providing adequate program space for several existing facilities.²⁷ DJJ has found a solution, to provide recycled modulars from school systems to existing institutions. The modulars will provide needed treatment and education space but will not resolve the longer-term challenge of maintaining aging facilities.

²⁵N.A. Chaderjian is an example of a facility that harkens back to an era when the belief was punishment was the priority not rehabilitation. The Safety and Welfare Remedial plan notes "None of DJJ's existing facilities meets the long-term programmatic needs set forth in this plan," Safety and Welfare Remedial Plan, p.28.

²⁶See "Thirteenth Report of Special Master," February 9, 2010 pp.31-35; and "Farrell Mental Health Experts' 2008-2009 Site Visit Summary," January 9, 2010 p.18; and the CDCR, "Master Plan Annual Report for Calendar Year 2009," submitted January 2010. Development and implementation of the Farrell Remedial Plans requires space, appropriately configured, for the effective realization of programming and treatment pursuant to the intentions of the Consent Decree. A summary of projects planned, in progress, and completed can be found in the Juvenile Justice American's with Disabilities Act Projects section of the MPAR. In addition, the Juvenile Project Summary and more detailed project information can be found for each facility.

²⁷DJJ did receive a capital appropriation to purchase modular units for several facilities. In part, the appropriation was withdrawn because DJJ had acquired modulars at DeWitt Nelson and then closed the facility. Most likely, the continuing drop in population and the possibility of additional facility closures made external decision makers reticent to release funding for more modulars.

Developing Quality Assurance Processes

As DJJ develops and improves its capacity to monitor compliance with the requirements of the *Farrell* lawsuit, it will need to begin to focus more on assuring consistent quality in the delivery of services.²⁸ This change in thinking is essential to develop the needed internal capacity at the institutional level, not just the Central office level, to assure the Court that the reform efforts will continue long after the case has closed.

Under the leadership of the Court Compliance Unit, DJJ has been able to revise and/or implement needed policies and procedures and to meet many of the remedial plans' basic objectives. Much of this effort has been driven by staff assigned to DJJ Central Office for this purpose.²⁹ The challenge before DJJ today is how to ensure accurate implementation of the policies it has promulgated. This requires leadership at the facility level to develop processes and systems to ensure that implementation is satisfactory.

DJJ has done well in developing and/or acquiring several different data tracking systems.³⁰ As with many data systems, there are limitations of not just what is collected

²⁸This is a clear concern of most of the experts. The experts are concerned that while the basic objective of some standards has been met, the longer-term capacity to remain in compliance is unclear.

²⁹The policies and procedures are typically developed with input from facility staff. Most Court Compliance Unit members have served in positions at facilities. That said issuing and implementing a policy are two different functions that require different strategies and systems for ensuring compliance.

³⁰Major information management systems used within DJJ include the "Ward Information Network" (WIN), the "Offender Based Information Tracking System" (OBITS), "Performance Based Standards" (PbS) and "COMPSTAT." WIN provides a technology platform and system that enables DJJ to integrate and coordinate operational processes and allows for information to be shared throughout DJJ. There remain some deficiencies in proper data coordination and in preventing unnecessary duplication. DJJ,

but with what questions the systems can answer. DJJ will need to begin to take the data from these systems and to develop reports that can inform managers of their progress with regard to implementation of the remedial plans. Not surprisingly the data systems will not always provide the quality and type of data managers need to understand if systems are being implemented properly.

Compounding this is the fact that most management staff in institutional settings have come up through the ranks of the chain of command of an institution and are well trained to handle crisis and daily operational issues but often have little understanding or knowledge about how to use data to identify and determine if there are gaps in quality, programs or processes. Staff will need to be trained to learn how to use data systems to analyze and understand if implementation of policy and practice is adequate.

III. REMEDIAL PLAN IMPLEMENTATION

In this section of the report, the Special Master provides the Court with a brief status report of the progress made to date in each remedial plan, which is one of the factors in determining the extent of monitoring functions that may be transferred to DJJ. Each quarter two remedial plans will be submitted for a detailed review and status reports will be provided only if the Special Master believes there is a need to inform the Court or provide current information on a topic within a remedial plan.³¹

however, has better data tracking systems than many other juvenile and adult systems. DJJ must continue to improve its data management and analysis to disseminate quality information.

Over the past two years, DJJ has implemented many remedial plan requirements.³² Its success is due in large part to the creation in 2008 of the *Farrell* Court Compliance Unit tasked solely with facilitating and assessing remedial plan implementation. Court Compliance Unit staff assists DJJ facilities in identifying potential compliance problems and in organizing necessary documentation for the OSM/Expert team’s monitoring tours. At this stage in the case, DJJ is beginning to take over the monitoring function where sustained compliance has been demonstrated.

In assessing DJJ’s progress in each remedial area, the Special Master reviewed the experts’ individual site visit and comprehensive reports as well as DJJ’s quarterly and annual reports. Qualitative assessments of progress in each remedial area will be reported according to the quarterly schedule created for that purpose. For example, this Special Master’s quarterly report contains a qualitative discussion of the fifth round Education and WDP comprehensive reports. Bulleted points below identify DJJ’s successes as measured by substantial compliance ratings that are determined using

³¹The experts and Special Master have agreed on the following comprehensive reporting schedule for Calendar Year 2012-2013:

Subject Area	Comprehensive Report Due (by Quarter)	Comprehensive Report Filed
Mental Health	1 st Quarter (March 31)	2 nd Quarter OSM report 2012
Disability	2 nd Quarter (June 30)	3 rd Quarter OSM report 2012
Education	2 nd Quarter (June 30)	3 rd Quarter OSM report 2012
Sex Behavior	3 rd Quarter (September 30)	4 th Quarter OSM report 2012
Dental	3 rd Quarter (September 30)	4 th Quarter OSM report 2012
Medical	4 th Quarter (December 31)	1 st Quarter OSM report 2013
Safety and Welfare	4 th Quarter (December 31)	1 st Quarter OSM report 2013

³² See DJJ “Farrell Quarterly Compliance Report[s], January 31, 2008, July 31, 2009, January 2010, January 21, 2010, August 10, 2010.

standards and criteria that provide a quantitative rating.³³ DJJ's substantial compliance ratings have increased with each round of the experts' monitoring.³⁴ DJJ has had most success with remedial plan items that are objective and quantifiable and where professional standards, guidelines, and criteria exist to provide the basis for measuring compliance.³⁵

- **Wards with Disabilities Program:** The Wards with Disabilities Program (WDP) Expert, Logan Hopper, has completed five rounds of audits. According to DJJ's Quarterly Compliance Report as of August 10, 2010, DJJ has made steady progress with each monitoring round. Following the expert's first monitoring round in FY 2005-06, 41% of the WDP remedial plan audit tool items were rated "substantial compliance." Steady progress was documented with each monitoring round and the expert's most recent comprehensive report shows that DJJ has achieved substantial compliance for 86% of the WDP audit items.

There is currently no system in place to document alternatives to use of force on youth with disabilities, as described on pages 40-44 of the WDP remedial plan. See additional discussion of DJJ's Wards with Disabilities Program below as well as in the WDP Expert's attached comprehensive report. The DJJ, OSM and experts currently have a workgroup looking at use of force issues, including those related to Wards with Disabilities.

- **Education Services:** The Education Experts have also completed five monitoring rounds of the Education Services Program Remedial Plan (Education Plan). DJJ's Quarterly Compliance Report as of August 10, 2010 found the DJJ's substantial compliance ratings increased from 42% for the first round of audits in FY 2005-06 to 90% compliance with remedial plan audit items for FY 2009-10. In the same round, three of the five facilities including O.H. Close Youth Correctional Facility (O.H. Close), Southern Youth Correctional Center and Clinic (SYCRCC), and Preston Youth Correctional Facility (Preston) achieved substantial compliance ratings in excess of 90%. Of the six major sections in the Education Plan, DJJ was particularly successful in its curriculum and in its access

³³ The quantitative rating, while a valuable measure, does not adequately reflect qualitative issues and items are not weighted for importance to the whole reform effort, so it should not be construed to reflect a complete assessment of the work remaining.

³⁴ For example, substantial compliance ratings for the WDP program were 41% in Round 1, 62% in Round 2, 68% in Round 3, 77% in Round 4, and 86% in Round 5.

³⁵ For example, all facilities achieved substantial compliance ratings for quantifiable audit items such as installing locked boxes in the living units for youth grievance filings.

to state mandated assessments. Substantial compliance ratings for those items are 97.5% and 100%, respectively.

More importantly, the outcome of certain key indicators demonstrates that DJJ is making significant strides in improving education services to youth. According to data derived from Principal Monthly Reports, the number of youth who earned high school diplomas increased from 161 in FY 2005-06 to 193 in FY 2008-09 despite an almost 50% decline in youth population for the same period. The number of college enrollments increased from 160 to 283 and the number of technical education or vocational certificates issued increased from 278 to 728 over the same period.³⁶

Despite above described successes, DJJ continues to face challenges in meeting minimum student school attendance requirements. Most of these issues result from scheduling and custody movement issues that have been exacerbated by problematic Program Service Day implementation. Additional barriers to transforming DJJ schools into a successful Education Services Program are summarized below as well as in the Education Experts' attached comprehensive report.

- **Health Care Services**

The Health Care Services Remedial Plan ("Medical Plan") covers both medical treatment and dental care for DJJ youth. The Medical Experts have completed three rounds of audits.³⁷ The Dental Expert has completed one round of audits and issued a comprehensive report. The Dental Expert's first comprehensive report and the Medical experts' second comprehensive report are summarized and appended to the Fifteenth Report of the Special Master.

Medical standards and criteria for facility audits require the experts to apply many of the compliance standards to individual health care records, so many of the compliance ratings depict the proportion of individual cases meeting applicable criteria. Both the medical and dental audit tools use numeric scores as important compliance measures.

According to DJJ's Quarterly Compliance Report as of August 10, 2010, the second round of audits by the Medical Experts, DJJ achieved a score of 85% or higher for 11 of the 18 aspects of care. DJJ received 84% for overall Medical Plan compliance. In the third round, DJJ achieved a score of 85% or higher for 14 of 18 aspects of care with an overall compliance score of 87%. Eleven of the 18 aspects of care received scores of 85% or higher in the two successive monitoring rounds.

³⁶See DJJ "2009 Annual Report in the Matter of *Farrell v. Cate*," January 2010, p. 37.

³⁷The comprehensive report for the third round audits is in process.

At the facility level, three of the five remaining facilities (Preston, SYCRCC, and OH Close) achieved overall compliance scores of 85% or higher during the second round of audits by the Medical Experts. VYCF, O.H.Close, and Preston received scores of 88%, 89% and 92%, respectively in the third round of audits. DJJ achieves substantial compliance with medical audit items once, “The facility receives a score of 85% or higher during an audit conducted by the Court experts. When determining overall compliance, areas that are determined to be in partial compliance will be considered non-compliant. The experts have discretion to find that a facility provides adequate medical care in compliance with the Medical Plan once it achieves a score of 75%. Four of five DJJ facilities are now in substantial compliance consistent with the Medical Plan criteria.

DJJ’s Health Care Services program needs to improve in, among other areas, medical reception, nursing sick call and proper documentation of services including medication administration. The OSM and experts agree that each of these issues could be resolved with proper and consistent Central Office oversight. Current restrictions on travel render such oversight impossible at this time.

In his first round of audits, the Dental Expert found three (Preston, SYCRCC, and OH Close) of the five DJJ facilities to be in substantial compliance overall. The dental audit tools identified five aspects of care and all three facilities achieved substantial compliance in all five. While the Dental Expert has been impressed with and has positively acknowledged DJJ’s provision of dental services, the expert has expressed great concern over the recent retirement and replacement of DJJ’s dental services administrator, with whom he credits much of the program’s success.

- **Safety and Welfare**

The Safety and Welfare Remedial Plan (S&W Plan) covers some issues that are applicable to all remedial areas of the case. To date, the S&W Expert has completed two rounds of audits. According to DJJ’s Quarterly Compliance Report as of August 10, 2010, DJJ has achieved an overall substantial compliance rating of 79% of the audit items, an improvement since the 67% compliance rating from the prior round.

Some items in the S&W audit tool are purely objective, such as whether a schedule has been posted on a wall or a “lock box” has been installed. However, some items such as violence reduction, gang management, and conversion of facilities to the rehabilitative treatment model are qualitative and subjective. For these important items, it is difficult to assess actual progress in the absence of pre-determined specific outcome measures. Particularly since these important issues also overlap with other remedial plans, specific outcome measures must be addressed.

Among obstacles to S&W Plan implementation, youth safety and use of force remain problematic. DJJ revised its use of force policy to include procedures intended to reduce the frequency of force used and has made progress toward replacing immediate use of force with attempts by staff to engage youth in dialogue, using force as a last resort. Experts believe that use of force by staff, especially the use of chemical agents, remains too high. This is particularly the case for mentally ill and disabled youth. DJJ is aware of the safety and use of force issues and is participating in a joint, expert, OSM and DJJ task force to identify problems that exist and possible remedies.

- **Sexual Behavior Treatment Program**

The Sexual Behavior Treatment Program (SBTP) Expert has completed three monitoring rounds. According to DJJ's Quarterly Compliance Report as of August 10, 2010, the percentage of items rated in substantial compliance in the third round was 36%, a decline since the 39% substantial compliance ratings for the second monitoring round. The SBTP is currently in transition. The original plan and audit tools, adopted without input from the SBTP Expert, contained ambiguities, conflicts, and inconsistencies that hampered remedial efforts and raised questions about the reliability of audit results. Working closely with the SBTP expert, DJJ revised the remedial plan and its accompanying audit tool and developed a "Program Guide" for implementation of the revised remedial plan. On April 30, 2010, Defendant filed the new remedial plan and program guide as well as the accompanying audit tool. The SBTP Expert reports that if DJJ's SBTP is implemented consistent with the revised remedial plan, DJJ will see rapid progress toward substantial compliance with SBTP requirements.

- **Mental Health**

The mental health remedial effort is also in transition. The Mental Health Experts resigned on August 2, 2010. The former Mental Health Experts completed one round of audits and found an overall substantial compliance rate of 36%. They resigned before the completion of their second round. According to DJJ's Quarterly Compliance Report as of August 10, 2010, the data from the partially completed second round, showed that the overall substantial compliance rating has increased to 41%.³⁸ Despite DJJ's facility closures and 50% population reduction, the number of authorized mental health clinical positions remained at

³⁸ See p.52 of DJJ Quarterly Compliance Report, August 10, 2010. While the graph and narrative show an increase to 41%, the historical progress shows a decrease to 33%. Defendant indicates the historical progress figure is an error and that the error will be changed in the next Quarterly Compliance Report.

43 in FY 2005-06 and 38 in FY 2009-10.³⁹ It appears that available treatment resources increased substantially with little progress [preliminarily] identified.

DJJ staff, including its Mental Health Administrators, believes that the Mental Health Remedial Plan and the accompanying audit tool is overly subjective and do not provide sufficient basis to measure progress or quality assurance. Once appointed, the new Mental Health Expert[s] will work with DJJ staff to carefully assess the remedial plan and the audit tools and make recommendations for necessary adjustments.

IV. ACCESS FOR YOUTH WITH DISABILITIES

From September 2009 to April 2010, the *Farrell* Expert in programmatic access for youth with disabilities, Logan Hopper, conducted his fifth round of monitoring for compliance with the Wards With Disabilities Program Remedial Plan (“WDP” or “Remedial Plan”). His comprehensive report for that round is attached as Appendix A (Hopper Report). The Hopper Report contains a description of the expert’s auditing and reporting methodology as well as a grid that identifies and explains facility-by-facility compliance ratings for each Remedial Plan item. For items rated less than substantial compliance as well as some items rated Substantial Compliance, the expert makes specific recommendations for the California Department of Corrections-Division of Juvenile Justice (DJJ) to meet remedial plan compliance goals. For reporting purposes, the expert has enumerated each audit item in the report’s grid, but notes that items in the Court approved Remedial Plan are not enumerated.⁴⁰

As of Mr. Hopper’s 2008-2009 comprehensive report, “California Department of Corrections and Rehabilitation – Division of Juvenile Justice, Wards With Disabilities

³⁹See Governor’s Budget, Salaries and Wage Supplement for FY 2005-06 and FY 2009-10.

⁴⁰ This Sixteenth Report of the Special Master will utilize the expert’s item numbering system, rather than page numbers, for citations to the Wards with Disabilities Program Remedial Plan items.

Program Remedial Plan, Auditor's Annual Report for the 2008-2009 Fiscal Year" (Hopper 2008-2009 Report), high turnover and vacancies of WDP Facility Coordinators posed difficulty and raised concern for DJJ's timely progress in many WDP remedial plan areas.⁴¹ As of the expert's report submission DJJ had filled all facility WDP Coordinator vacancies, and though WDP program implementation still feels effects of the 2007-2009 vacancies, the expert's current report reflects some successful recovery.⁴² The 2009-2010 current report also points out that, during the fiscal year, some WDP Coordinators' time was reduced to less than the full-time position required by the WDP Remedial Plan. It has since been verbally reported that these positions are back at full-time, but this has not been verified through auditing.

DJJ's WDP has made several improvements since the expert's Hopper 2008-2009 Report. The first notable improvement is DJJ's provision of educational accommodations and services to youth with disabilities in at least one DJJ facility.⁴³ Specifically, Preston stands out in this area and appears to be a sound model for other facilities that have not yet achieved substantial compliance in the same areas.⁴⁴ Among other aspects related to compliance, the expert credits Preston's school Principal for maintaining a strong commitment to achieving WDP goals.⁴⁵ Preston is also one of two

⁴¹ See Hopper FY 2008-2009, pp. 2, 8; Tenth Report of the Special Master, September 2009, p. 23. The expert reports on the loss of four experienced facility WDP Coordinators at Heman G. Stark Youth Correctional Facility, Southern Youth Reception Center and Clinic, Ventura Youth Correctional Facility and O.H. Close Youth Correctional Facility.

⁴² Compare (Hopper FY 2008-2009) with Appendix A (Hopper Report)

⁴³ See Email from Logan Hopper to Cathleen Beltz, October 15, 2010.

⁴⁴ *Id.*, Preston has improved provision of services in areas including item numbers 41, 51, 55, and 56.

⁴⁵ *Ibid.*

facilities unaffected by the WDP Coordinator vacancies reported in 2008-2009.⁴⁶ The expert credits staff continuity and increased coordination with the WDP Coordinator with contributing to Preston's success in the provision of education services to WDP program youth.⁴⁷

DJJ has also improved its procedures for documenting due process and the provision of accommodations during Parole Board hearings.⁴⁸ As of the expert's FY 2008-2009 report, "Case Report Transmittal" forms that document the accommodations were available, but not used consistently across facilities.⁴⁹ The expert reports that new forms prepared instead of the outdated Case Report Transmittal forms are now in use and that forms contain the necessary information to apprise the Board of required accommodations.⁵⁰ DJJ has now achieved substantial compliance for this Remedial Plan item.⁵¹

The WDP Remedial Plan requires sensitivity, awareness and harassment training for all staff annually.⁵² Since the expert's 2008-2009 report, DJJ training curriculum has been developed in consultation with an outside disability advocate.⁵³ Staff training is proceeding successfully across facilities with approximately 80% of staff trained or

⁴⁶ See Hopper FY 2008-2009, pp. 2, 8; Tenth Report of the Special Master, September 2009, p. 23.

⁴⁷ Appendix A (Hopper Report) item 49, 51, 55, 56; and *see*, Email from Logan Hopper to Cathleen Beltz, October 15, 2010.

⁴⁸ Compare Appendix A (Hopper Report) with Hopper FY '08-'09, item 35.

⁴⁹ See Hopper '08-'09, item 35.

⁵⁰ Compare Appendix A (Hopper Report) with Hopper FY '08-'09, item 35.

⁵¹ Appendix A (Hopper Report) item 35.

⁵² *Id.*, at item 25.

⁵³ See, Tenth Report of the Special Master, September 2009, p. 24; and letter of Todd Irby to Logan Hopper, June 30, 2009.

scheduled for training.⁵⁴ While this percentage still means that the compliance rating is less than what is required for Substantial Compliance, the expert cited increased training provided at Central Office by the department WDP Manager as a major step in attempting to meet the training goals. The expert reports that DJJ's "Ward Information Network" (WIN) tracking system is reported by DJJ staff as becoming more useful for accurately tracking all training participants, including distinguishing current staff from new hires, although this feature has not been audited to date.⁵⁵ The expert reports that WIN is being utilized but that staff should be more diligent in tracking and documenting training using WIN. DJJ's rating for this remedial plan item remains at partial compliance, however, the expert believes DJJ continues to progress and is close to completion for this item.⁵⁶

Facility WDP Coordinators are required to submit monthly reports to the Department WDP Coordinator.⁵⁷ In fiscal year 2008-2009, due to WDP coordinator vacancies, some reports were submitted sporadically, if at all.⁵⁸ While the expert recommends improvements to the report format and quality of the analysis, DJJ has now achieved substantial compliance for this item.⁵⁹ Other progress areas include DJJ's October 1, 2010 submission of the draft "Youth with Disabilities Emergency Protocol and Evacuation Plans."⁶⁰ In addition, DJJ has made some progress on the study for a

⁵⁴ *Ibid.*

⁵⁵ Appendix A (Hopper report), item 25.

⁵⁶ *Ibid.* and Hopper 2008-2009 Report, item 25.

⁵⁷ Hopper 2008-2009 Report, item 40.

⁵⁸ Appendix A (Hopper report), item 40; and Hopper 2008-2009 Report, item 40.

⁵⁹ Appendix A (Hopper report), item 40.

⁶⁰ *Id. at* item 6; and DJJ Proof of Practice (PoP) 735.

residential program for developmentally disabled youth.⁶¹ On October 6, 2010, DJJ submitted for expert review a draft memorandum regarding IQ screening at Reception Centers to help identify any developmentally disabled youth, and the expert submitted comments that, if implemented, should improve these procedures.⁶²

In this reporting period, three items have been removed from future monitoring.⁶³ First, DJJ has procured and is utilizing two wheelchair accessible vans to transport youth.⁶⁴ Next, Ventura Youth Correctional Facility's accessible visiting facility is complete and in use.⁶⁵ Appropriate modifications to Preston's visiting area have been completed and are also in use.⁶⁶ Finally, the WDP audit tool references barriers for removal as identified in a 2004 survey and report prepared for DJJ in the development of its WDP Remedial Plan.⁶⁷ Removal of these barriers is among WDP Remedial Plan requirements.⁶⁸ Remedial Plan audit item 121 requires specifically the removal of "second category," or the second most critical barriers identified in the survey and report.⁶⁹ The expert reports that all of the second category barriers have now been

⁶¹ Appendix A (Hopper Report), item 86; and PoP 738.

⁶² *Ibid.*

⁶³ *Compare* Appendix A (Hopper Report), items 13, 22, 121 *with* Hopper FY 2008-2009, items 13, 22, 121.

⁶⁴ Appendix A (Hopper Report), item 13.

⁶⁵ Appendix A (Hopper Report), item 22.

⁶⁶ *Ibid.*

⁶⁷ *See*, WDP Remedial Plan, p.64, survey and report conducted by Peter M. Robertson, Access Unlimited.

⁶⁸ *See*, WDP Remedial Plan, p 64, survey and report conducted by Peter M. Robertson, Access Unlimited; and Appendix A (Hopper Report) item 121; and Hopper FY 2008-2009.

⁶⁹ Appendix A (Hopper Report) item 121; and *see*, Hopper FY 2008-2009, item 121; and *See*, WDP Remedial Plan, p.64, survey and report conducted by Peter M. Robertson, Access Unlimited.

successfully removed.⁷⁰ DJJ's success in these three areas increases to nearly 30% WDP Remedial Plan items removed from future monitoring.⁷¹ For remaining items, DJJ central office and facilities have improved compliance ratings in multiple compliance areas since the Hopper 2008-2009 Report and have more than doubled the number of items rated in substantial compliance since the 2008-2009 report.⁷²

In an attempt to assist DJJ in implementing the WDP Remedial Plan across DJJ facilities, the expert and Special Master highlighted Remedial Plan requirements that DJJ should prioritize the first part of this fiscal year, when budget issues may not allow for full implementation. For example, DJJ should continue to support efforts to study the effects of use of force throughout the system.⁷³ It is hoped that the findings will contribute to the completion of WDP plan requirement to develop a system that documents accommodations provided during procedures involving WDP youth, including security searches and use of force as well as staff alternatives to use of force. This area has been highlighted on DJJ's own priority list and by the expert as one area in need of work.⁷⁴ DJJ should also work to establish policies to assure that placement of

⁷⁰ Appendix A (Hopper Report) item 121.

⁷¹ Appendix A (Hopper Report), 23 of 121 total items have now been removed from future monitoring.

⁷² Compare Appendix A (Hopper Report) with Hopper 2008-2009 Report. Improvement was shown in one or more DJJ facilities or central office for 31 of 121 items. Total items in substantial compliance are 41 compared to 20 in the 2008-2009 report.

⁷³ A Use of Force Review Committee was formed September 30, 2010 and includes several DJJ staff members as well as representatives from the Special Master/Expert team and the Office of the Inspector General.

⁷⁴ See WDP Remedial Plan, pp.40-44; and Appendix A (Hopper Report), item 53.

WDP youth into restrictive programs is not based on a youth's physical or mental disability, or on manifestations of that disability.⁷⁵

In some mutually agreed-upon high priority areas, facilities require additional guidance from central office in order to be successful. For example, DJJ is required to make continuous efforts to identify WDP youth in its facilities.⁷⁶ Individual facilities have made some progress in this area. However, facilities require comprehensive guidelines that are disseminated from Central Office in order to consistently determine youths' disabilities, particularly where the WDP intersects with other program areas such as medical and mental health.⁷⁷ The Remedial Plan requires that youth may make self-referrals for accommodations for documented or perceived impairments by completing the "Self-Referral to the School Consultation Team" form, yet auditing has shown continuing problems in this area.⁷⁸ Casework Specialists must use a "Referral to School Consultation Team" form to refer youth to educational professionals to verify the existence of a learning impairment.⁷⁹ Additional guidance is needed to demonstrate consistent use of appropriate referral forms.

⁷⁵ Appendix A (Hopper Report), item 17; and Hopper 2008-2009 Report, item 17; and "California Department of Corrections and Rehabilitation – Division of Juvenile Justice, Wards With Disabilities Program Remedial Plan, Auditor's Annual Report for the 2007-2008 Fiscal Year," (Hopper 2007-2008 Report) pp.12-13. This item has remained in partial compliance for three consecutive comprehensive reports with no significant progress.

⁷⁶ Appendix A (Hopper Report), item 41.

⁷⁷ *Ibid.*

⁷⁸ Appendix A (Hopper Report), item 46.

⁷⁹ *Id.* at item 101.

In consultation with the WDP Expert, DJJ is required to conduct a study regarding the need for a residential program for youth with certain developmental disabilities.⁸⁰ On August 24, DJJ submitted for review a draft “Residential Treatment Program for Youth with Developmental Disabilities.”⁸¹ DJJ’s level of compliance for this item has increased for each of the last three comprehensive reports, however, progress has been slow and work to determine the approximate number of youth affected has not commenced quickly.⁸² Likewise, DJJ should improve documentation of compliance with the requirement to ensure that WDP youth have equal access to programs, services and activities⁸³ and that they are not precluded from assignment to work or camp programs based on the nature of a disability.

V. EDUCATION

The Education Experts completed their fifth round of monitoring at all DJJ facilities between October 2009 and May 2010. Their fifth “California Department of Corrections and Rehabilitation-Division of Juvenile Justice Comprehensive Education Program Report for School Year 2009-2010” (Education Report) is appended to this report as Appendix B. The report provides an overview of DJJ’s progress and recommendations under each of six sections of the remedial plan. The attachment to the Education Report, “California Remedial Plan Site Compliance Report” (Compliance Report), displays each facility’s compliance rating for each education audit criterion.

⁸⁰ *Id. at 21.*

⁸¹ *Id.*; and *See PoP 717.*

⁸² Appendix A (Hopper Report), item 21; and Hopper 2008-2009 Report, item 21; and Hopper 2007-2008 Report, p. 14. In ’07-’08, DJJ was in non compliance, in ’08-’09 it was beginning compliance and for this report is rated in partial compliance.

⁸³ Appendix A (Hopper Report), item 51.

Prior to filing this Special Master's report, two of the experts' six site reports prepared for the present school year were filed with the court.⁸⁴ Since those reports were filed on April 22, 2010, the Education Experts have completed four additional reports.

Many of the experts' commendations and recommendations from last year's comprehensive report remain in place this year, however, the Special Master would like to acknowledge DJJ's tremendous and continuing progress and successes toward reforming its Education Services Program. The Education Experts' comprehensive reports show consistent progress toward achieving substantial compliance in Education Program Remedial Plan requirements. This year, DJJ's cumulative substantial compliance ratings, as noted in the experts' Compliance Report and reported in DJJ's "Quarterly Compliance Report as of August 10, 2010," increased 13%, from 77% substantial compliance in the 2008-2009 school year to 90% substantial compliance in the 2009-2010 school year. DJJ has achieved consistent increases in its cumulative substantial compliance ratings for each year of the experts' monitoring rounds. From 2005 to 2009, DJJ's substantial compliance ratings increased for each of four successive rounds by 15%, 8%, 12% and 13%.

In the expert's last comprehensive report, "California Division of Juvenile Justice Summary Education Program Report for School Year 2008-2009" (2008-2009 Report) they urged DJJ to appoint a permanent Superintendent of Education in order to provide necessary leadership for the Education reform effort.⁸⁵ In this Education Report, the

⁸⁴ On April 22, 2010, Education site reports were filed for James A. Wieden High School at Preston Youth Correctional Facility (Preston), and for Jack B. Clark High School at Southern Youth Correctional Reception Center and Clinic (SYCRCC).

⁸⁵ *Ibid.*

experts confirm that DJJ has hired a permanent Superintendent of Education, effective September 1, 2009.⁸⁶

DJJ has also progressed in the area of student achievement. The experts report that students have earned more high school diplomas, GED Certificates and technical education/vocational certificates than in years past.⁸⁷ For Education Remedial Plan audit item 1.6, “Progress being made toward high school diplomas,” three of five DJJ facilities have achieved substantial compliance ratings compared to one of six reported for the 2008-2009 school year.

In their 2008-2009 Report, the experts recommended that DJJ Central Office review and revise its Education Services Organizational Chart.⁸⁸ The experts make the same recommendation again this year.⁸⁹ DJJ’s substantial population reduction requires Organizational Chart revisions consistent with current Education Program Central Office needs.⁹⁰ The experts have also recommended that DJJ prepare or revise job descriptions for each position identified in the revised Organizational Chart.⁹¹ The experts first asked for the Central Office Organizational Chart and the job descriptions for all positions in the chart in June of 2008.⁹² After several months of inquiry, DJJ provided the Special

⁸⁶ Education Report, p.7; and *see* “Tenth Report of the Special Master” (OSM 10) September 3, 2009, p.8. The Special Master reported that a candidate had “reportedly” been approved and took the position effective September 1, 2009.

⁸⁷ Education Report, p.7.

⁸⁸ *See* OSM 10, pp. 8-9.

⁸⁹ Education Report, p.7.

⁹⁰ Statements of Dr. Tom O’Rourke to Cathleen Beltz during a teleconference, October 27, 2010.

⁹¹ Education Report, p.7.

⁹² Statements of Drs. Tom O’Rourke and Bob Gordon to the Special Master, October 29, 2010. The Education Experts informed the Special Master that they first requested these documents in a Central Office site visit in June 2008.

Master with its current Central Office Organizational Chart.⁹³ The Special Master has not received the job descriptions that she has requested. While there may have been some valid reasons for the delay in delivering these documents to the experts and the Special Master, the length of this delay is unacceptable. The job descriptions that have been requested should be provided immediately. The Special Master intends to work closely with the Education Experts and DJJ Central Office to review and evaluate DJJ's Central Office education staffing. cursory analysis of the organizational chart that has been provided indicates that Central Office staff support for the five, soon to be four, schools may be excessive.

The experts continue to recommend that DJJ standardize its transition services across facilities.⁹⁴ Particularly since juvenile parole services will no longer remain a DJJ entity, the development of a reliable "feedback" system from community service providers will allow DJJ to track progress of paroled youth, specifically, whether youth are enrolled in school, working or have returned to state custody. This information will prove invaluable to DJJ and compiled data should be used to inform future policy and program planning.⁹⁵

The experts report that all DJJ facilities now have "highly qualified" teachers in the appropriate fields.⁹⁶ This is an improvement from last year's finding that five of six facilities had well-qualified teachers.⁹⁷ DJJ's special education assessments continue to

⁹³ See "Dropbox" OSM 16 Reference Documents

⁹⁴ *Ibid*; and 2008-2009 Report, p.5; and OSM 10, p.7.

⁹⁵ *Ibid*.

⁹⁶ *Id.*, at p.8

⁹⁷ *Compare*, Compliance Report, p.1 with 2008-2009 Report; and OSM 10, p.1.

meet California Department of Education and Individuals with Disabilities Education Act standards.⁹⁸

The experts recommend that, as with its Central Office organizational chart, DJJ reevaluate and revise staffing patterns for general and special education teachers consistent with the needs of DJJ's current student population and remedial plan requirements.⁹⁹ The timeframe for filling staff vacancies remains in excess of six weeks and the experts again recommend that that timeframe be reduced.¹⁰⁰ Three of five schools remain in non-compliance or partial compliance with this requirement.¹⁰¹

DJJ is in substantial compliance with the Education Plan requirement to maintain a pool of substitute teachers equivalent to 15% of the teaching staff. The experts recommend DJJ's continued compliance with this requirement, particularly in light of DJJ's facility closures and related transitions.

The Education Experts commend DJJ for implementing cooperative agreements between education and other disciplines, thereby improving the youths' access to education services.¹⁰² The experts again raise concern that the "Program Service Day" is not being implemented properly and consistently throughout DJJ. Maintaining the integrity of the youths' school day, 240 uninterrupted minutes of instruction, is essential to achieving substantial compliance.¹⁰³ The Special Master and all of the experts have agreed that ensuring that an effective Program Service Day is a priority for the experts to

⁹⁸ Education Report, p.8. The next paragraph is based on the same source.

⁹⁹ *Compare*, Education Report, p.7 with 2008-2009 Report, p.5; and OSM 10, p.8.

¹⁰⁰ Education Report, p.8; and 2008-2009 Report, p.6.

¹⁰¹ Compliance Report, p.2, Item 2.4.

¹⁰² Education Report, p.8.

¹⁰³ *Id.*; and OSM 10 at p.6; and 2008-2009 Report, p.8.; and statements of Dr. Tom O'Rourke, conference call, OSM/Expert team, October 27, 2010.

work on this fiscal year.¹⁰⁴ Preliminary findings of the above mentioned Program Service Day assessment support the experts' conclusion that goals of neither the Program Service Day nor DJJ's cooperative agreements are being met.¹⁰⁵ Scheduling conflicts remain between education and other service areas.

Compounding scheduling problems are current work schedules maintained by most medical and mental health providers. The bulk of the providers work only during weekdays and during regular school hours. Most clinicians typically have one or two available treatment hours after youth return from school, which do not meet Mental Health Remedial Plan minimum service requirements. Previous practice has been to interrupt the youths' school days to provide routine medical and mental health care. DJJ has attempted to solve the problem by disallowing youth to leave school for routine mental health counseling sessions. The policy adjustment has resulted in fewer interruptions during the youths' school day. Unfortunately, it has been reported that the inability to pull youth from class for mental health care has reduced the amount of mental health services youth receive.¹⁰⁶ Some mental health clinicians have voluntarily adjusted their schedules to provide required services in evenings and on weekends, but the majority remain unwilling or unable to adjust their schedules to accommodate youths' needs. Youth continue to be "pulled" from school for some routine medical and dental appointments as well. DJJ administration takes the ongoing problem seriously, is making

¹⁰⁴ Agreements reached at July 15th Special Master/Expert meeting.

¹⁰⁵ Education Report, p.8; and statements of DJJ education staff at the annual education training, August 25, 2010; and statements of facility staff, Ventura Youth Correctional Facility, June 13, 2010.

¹⁰⁶ Statement of central office mental health administrator to Cathleen Beltz, Bob Moore and Eric Umeda during June 14 Program Service Day audit; and Statements of SYCRCC mental health clinicians to Cathleen Beltz and Zack Schwartz during the April 27-28, 2010 OSM Mental Health Remedial Plan pre-audit.

concerted efforts to resolve it, but at this time fails to comply with the requirement that instructional time is not to be interrupted unless it is critical to the youths' health and safety or institutional security.

Youth in restricted custody, including regular and special education students, continue to receive fewer than 240 minutes of instruction per day and educational services provided in restricted custody remain inadequate. The reason for the inadequacy is a combination of insufficient custody, education and support staffing on restricted housing units and lack of proper instructional space.¹⁰⁷

The experts' recommendation for improving youths' access and attendance requires the consistent use of School Consultation Team procedures, including referral of poorly performing youth to the School Consultation Team and use of the standardized School Consultation Team documentation.¹⁰⁸ Lastly, DJJ must improve students' access to vocational programming. The fewer vocational opportunities afforded DJJ youth, the fewer employment skills with which youth parole into the community.

This academic year, DJJ successfully scheduled and implemented quarterly teacher observations at all school sites, including classroom observations to ensure that teachers are "responsive to the needs of their student populations."¹⁰⁹ Education staff continues to document that the Special Education Policy Manual (revised September 5, 2010) is available to all education staff. They are also consistently documenting ongoing education staff training in revised assessment procedures and that special education

¹⁰⁷ Education Report, p.9; and statements of Dr. Tom O'Rourke to Cathleen Beltz, October 27, 2010; and statements of DJJ education staff at the annual education training, August 25, 2010.

¹⁰⁸ Education Report, p 9.

¹⁰⁹ *Id.* at p.10

eligibility is determined prior to youths' "Individual Education Program" (IEP) meetings.¹¹⁰ DJJ has substantially improved in the areas of IEP development as well as self-monitoring of IEP implementation. The experts attribute these successes to efforts of the Regional Program Specialists who conduct at least quarterly and often more frequent site reviews.

While IEP development has improved, the experts emphasize DJJ's failure to provide the full continuum of services detailed in the IEPs. Special education teachers and other special education service providers fail to document the provision of IEP mandated service hours. The experts recommend education and custody staff training in IEP review and assessment to ensure that all education services are provided. Also, DJJ Central Office and facility administrators must begin immediately to monitor and track the provision of services and to develop "proactive interventions designed to remedy this pressing instructional deficit."

DJJ is successfully providing appropriate accommodations for youth taking state mandated examinations and all facilities continue to adhere to the statewide examination schedule. Youth access to General Equivalency Diplomas (GED) has expanded as a result of successful policy updates.

As the DJJ Education Services Branch continues on its path toward substantial compliance with all remedial plan requirements, it must remain focused on providing all youth, general, special education and restricted custody youth, the required 240-minute

¹¹⁰ *Id.* at p.11. The remainder of the paragraph is based on the same source as well on statements of Drs. Tom O'Rourke and Bob Gordon to Cathleen Beltz at the annual education training, August 25, 2010.

school day and access to vocational, GED and special educational services where appropriate.

In addition to the multiple recommendations for necessary change that have been highlighted in this summary, the OSM would like also to emphasize the outstanding progress made by DJJ's Education staff since the Farrell reform was initiated. This progress was particularly acknowledged during the Education Experts' annual training on August 25, 2010. Having achieved substantial compliance ratings for two consecutive monitoring rounds for most Education Plan audit items, Education Services was one of the first remedial areas selected for DJJ to begin self-monitoring. This year's education staff training in August included detailed instruction on self-monitoring for *Farrell* compliance. This initiative is addressed in more detail in the section VI. If DJJ continues to progress, is successful in monitoring its own achievements and in recognizing areas for improvement, the Education Experts and the OSM believe that Education Services may also be the first remedial area that is altogether removed from *Farrell* monitoring.

VI. OSM INITIATIVES

Transfer of Monitoring

The monitoring function is assigned to the Court appointed experts and the Special Master in the Consent Decree.¹¹¹ In January of this year, the Defendant moved for relief from the Court in some areas of monitoring in the Education, Safety and Welfare and Disabilities remedial plans. The relief was denied. The Court stated, however, that while the DJJ's definition of an issue was too narrow, DJJ did not have to

¹¹¹ See Farrell Consent Decree.

reach substantial compliance in an entire remedial plan before some relief from monitoring might be acceptable.¹¹²

Transferring compliance monitoring serves many functions. It is a reward for work well done, provides an opportunity for DJJ staff to learn to monitor properly and for the experts to support DJJ if it encounters challenges with compliance. The transfer provides DJJ an opportunity to identify the best strategies for building organizational capacity in both monitoring and quality assurance functions.

Recognizing the differences in remedial plan content, the number of audits completed and level of progress to date, the Special Master believes that each remedial plan must be assessed individually to determine if and when transfer of monitoring is appropriate. The appropriateness is based on the belief that the level of compliance is sufficient for DJJ to be able to maintain compliance. The Special Master has worked with the experts to identify those audit items that they believe are reasonable to have DJJ staff begin to monitor. Collectively the experts and Special Master created a process for the transfer of monitoring functions. This agreement has been critiqued and approved by the parties and is attached to this report as Appendix C.

The Monitoring Plan Agreement uses the guidelines established in the *Farrell* Consent Decree as its foundation. The 24 month period of compliance is the trigger for reviewing the option for transferring monitoring. The plan provides discretion for experts to work with DJJ staff to determine what audit items logically can be turned over to DJJ for monitoring at any given time.¹¹³ It also provides an opportunity for training DJJ staff

¹¹² See February 9, 2010 Order.

¹¹³ Discretion is needed here because sometimes audit items are related to other audit items in the remedial plan or in other remedial plans.

and providing “spot checks” and feedback for a period of 12 months. It establishes requirements that DJJ must meet, such as a preliminary audit, prior to the expert’s audit and identifies the process for achieving the ability to independently audit items without expert oversight. In short, the agreement provides an opportunity for the experts to provide coaching and feedback while they turn over the monitoring “reins.” Each expert has the flexibility to do this in the way that works best for their remedial area.

The Special Master will be training DJJ staff to monitor those items the Special Master is responsible for in the Safety and Welfare and the Mental Health remedial plans. The Special Master will provide training followed by 12 months of observation and support to DJJ staff. If substantial compliance is maintained in those items monitored by DJJ, the Special Master will remove herself from the monitoring function for these items.

The Education and WDP Experts are the leaders in the transfer of monitoring functions. They are the first experts to begin the transfer process and no doubt all experts and the Special Master will learn from their experience. Their leadership has proven invaluable in the formulation of the monitoring agreement.

As a result of the leadership of the WDP Expert and DJJ’s hard work, the WDP Expert will transfer the monitoring of 71 of 121 items identified in the audit tool during his next round of audits for FY 2010-11. In addition, DJJ staff has developed and will engage in a self-monitoring program to facilitate the work to be performed by the WDP Expert and to build internal capability for DJJ to eventually assume all monitoring responsibilities for this program.

The Education Services Experts found that DJJ has demonstrated the ability to begin the implementation of a system of internal education audits to proactively monitor

the full implementation of all remedial plan requirements. For the next round of audits in FY 2010-11, DJJ staff will conduct reviews of each school site using the Education Remedial Plan audit tool prior to the Education Services Experts site visits. DJJ staff will accompany the Education Services Experts to provide documentation of continued compliance and to observe the experts as they conduct audits.

The Education Experts have led the way in providing training for DJJ staff regarding how to achieve compliance with remedial plan requirements. In August of 2010 they began to train staff on how to monitor compliance. They are to be commended not just for excellent outcomes but for the way in which they support and strengthen the capacity of staff in the DJJ schools.

The Special Master will continue to work with the experts and DJJ to identify when issues are ripe for transfer and to refine and improve the transfer process. The Special Master will also support DJJ's efforts to decentralize the monitoring process from a primarily Central Office monitoring function to an institution-led quality assurance process. Quality assurance measures will be part of the implementation of the Integrated Behavioral Treatment Model pilot.¹¹⁴

Supporting Expert Coordination and Collaboration

As noted in Section V, many of the more straight-forward and objective elements of the remedial plans are achieving substantial compliance. The issues that are not in substantial compliance are largely those that are more qualitative in nature and/or are

¹¹⁴ See page 10 of the IBTM Plan 9 29 10 Final.doc

inter-dependent upon issues in other plans.¹¹⁵ In the early years of the case, experts could work relatively independently and achieve great progress in their respective areas. For many of the remaining issues, coordination between experts and remedial plans is essential.

The Special Master has met with the experts and developed a list of priority issues that cut across remedial plans that require coordination among experts. These issues include but are not limited to:

- The Program Service Day: How can the day be designed to benefit youth by ensuring adequate activity that provides a full school or work day, access to treatment and ensures that all activities support desired treatment and behavioral goals.
- Use of Force: The Mental Health, Safety and Welfare and Wards with Disabilities Experts investigated the use of force with mentally ill youth. This investigation is ongoing and will be reported on in the next report of the Special Master.
- Integrated Behavioral Treatment Program: A consultant has been hired to lead the development of two pilot sites. In addition, two pilots of the cognitive behavioral program, Dialectical Behavior Therapy are scheduled for training and implementation. The Mental Health, Safety and Welfare, Sexual Behavior Treatment Program and the Wards with Disabilities Experts will all be involved in the development of the IBTM.

The Special Master will continue to communicate regularly with the experts and to facilitate coordination among experts on those issues that involve several remedial plans.

The Special Master communicates agreements reached and proposals made by the

¹¹⁵ For example, MH and Medical audit items 3.1-3.3 (MH Plan) and “Questions 1-3,” (p.6, MED Plan) relate to the organizational structure of the Central Office mental health and medical management positions and the reporting relationship between them and with the staff located in the institutions. There are many ways to organize staffing to meet the objectives of the medical and mental health remedial plans. A successful result will require agreement among the Medical, Dental and Mental Health Experts as well as with DJJ staff. In addition this issue has a subjective element. While there are many ways to organize the experts have experience and knowledge that informs their professional opinion of the best way to do this.

experts to the parties in regularly scheduled meetings and conference calls. This more structured process is a change from the more independent functioning of the experts and will understandably require some adjustment. The Special Master believes it is essential to have a more coordinated effort between the experts, Special Master and the parties to address the highly complex and interdependent issues that remain in this case.

VII. CONCLUSION

The Special Master respectfully submits this report.

Dated:

Nancy M. Campbell
Special Master