

and days ("Structured Programming"). The State shall develop and implement Structured Programming at each facility from the end of the school day until youth go to bed, and on weekends. For youth housed in closed-cell environments, Structured Programming shall be designed to ensure that youth are not confined in locked cells except: (1) from after Structured Programming to wake-up; (b) as necessary where the youth poses an immediate risk of harm to self or others; or (c) following an adequate disciplinary hearing, pursuant to an appropriate disciplinary sanction. The Structured Programming shall be designed to modify behaviors, provide rehabilitation to the types of youth committed to each facility, address general health and mental health needs, and be coordinated with youth's individual behavioral and treatment plans. The State shall use teachers, school administrators, correctional officers, caseworkers, school counselors, cottage staff, and any other qualified assistance to develop and implement the Structured Programming. The State shall provide youth with access to programming activities that are required for parole eligibility.

4. By letter dated September 26, 2012, the United States notified the State of its determination that the State is not in substantial compliance with Sections III.A.3 and III.F.1 of the Amended Stipulation and that, therefore, pursuant to Section VII.D and E of the Amended Stipulation, the United States was initiating the dispute resolution process set forth in paragraph 256 of the Stipulation for Injunctive Relief in *S.H. v. Reed* (No. 2:04-cv-1206) (the "*S.H. Stipulation*"). Specifically, the Plaintiffs contend that the State continues to subject youth housed on Scioto's special management unit, currently referred to as the "PROGRESS Unit" and currently consisting of three "phases" (Phase I, Phase II, and Transition), to excessive seclusion, and fails to provide these youth with adequate structured programming.
5. On October 15 -19, 2012, the monitor team conducted a site visit at Scioto, to assess the State's implementation of the Amended Stipulation and prepare the semi-annual compliance report required under Section V.H. of the Amended Stipulation. Based on the Monitor's

Third Draft Report, the United States contends that these practices violate the constitutional rights of youth housed on the PROGRESS Units.

6. On October 17, 2012, representatives of the parties in this action met with the Monitor, Kelly Dedel, and the *S.H.* Monitor, Will Harrell, pursuant to Paragraph 256.b. of the *S.H.* Stipulation, in an attempt to resolve this dispute. The parties have conferred numerous times thereafter, and have agreed that this Consent Order complies in all respects with the requirements of 18 U.S.C. § 3626(a)(1)(A), and that the record in this case may serve as the factual and legal basis for a Court order issued pursuant those requirements.
7. Based on the record before it, the Court finds that the prospective relief provided by this Consent Order is narrowly drawn, extends no further than necessary to correct the constitutional violations in the PROGRESS Units' operation, and is the least intrusive means of doing so. The Court shall retain jurisdiction to enforce this Consent Order's terms and shall have the power to enforce the Consent Order through specific performance and all other remedies permitted by law.
8. This Consent Order shall terminate when the State has substantially complied with each of the Consent Order's provisions and has maintained substantial compliance for six months. The burden shall be on the State to demonstrate this level of compliance. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained noncompliance shall not constitute substantial compliance.

II. SUBSTANTIVE REMEDIAL MEASURES

To ensure that youths on the PROGRESS Unit, and any special management unit at Scioto that the State may subsequently create to replace the PROGRESS Unit, are not subjected to excessive seclusion and receive adequate structured programming, particularly programming reasonably calculated to facilitate youths' prompt and successful re-entry into the general population, consistent with the Amended Stipulation and the Constitution, the State shall implement the following remedial measures on the PROGRESS Unit:

9. Admissions Screen: The State shall develop and implement an assessment and screening process designed to ensure that the youth behaviors that led to referral to the PROGRESS Unit are not the symptoms of mental illness, including undiagnosed and/or untreated mental illness.
 - a. Youths with the following diagnoses (as defined in the Diagnostic and Statistical Manual of Mental Disorders-IV ("DSM-IV") or most current version of this document) shall not be placed on the PROGRESS Unit:
 - i. Thought Disorders (e.g., Schizophrenia, Schizophreniform Disorder, Schizoaffective Disorder, Delusion Disorder, Brief Psychotic Disorder, Psychosis for any underlying reason);
 - ii. Mood Disorders (e.g., Major Depressive Disorder, any Bipolar Disorder) unless the disorder is in full remission as defined by the DSM-IV; and
 - iii. Developmental Disorder (e.g., Mental Retardation, Pervasive Developmental Disorder, Autism Spectrum Disorders).
 - b. Youths with any recurring display of self-injurious behavior or suicidal ideation shall not be placed on the PROGRESS Unit.

- c. Youths with attention deficit hyperactivity disorder (ADHD) who are placed on the PROGRESS Unit shall be offered at least one hour of recreation per day, in the gym or outside, without restraints.
- d. On the fifteenth day of each month, the State shall submit to the Monitor and the United States a list identifying all youth referred to the PROGRESS Unit in the previous month, whether each youth was admitted, the DSM-IV diagnoses assigned to that youth, and the basis for the decision to admit or not admit the youth.
- e. The State shall provide a youth's referral packet to the Monitor and/or the United States within five business days of a request for the packet by the Monitor or the United States.

10. **Daily Schedule:** The State shall develop and implement a daily schedule for youths on the PROGRESS Unit that includes as much out-of-room time as youths on the general population (except for a thirty-minute earlier bedtime on the PROGRESS Unit), and that ensures youths have access to the rehabilitative treatment necessary to return to the general population, provided that the State shall not cite the lack of daytime hours as a basis to fail to provide treatment.

- a. All youth on the PROGRESS Unit shall be permitted out of their rooms at all times, except for the following:
 - i. Sleeping hours from 7:00 p.m. to 7:00 a.m. (except that the State shall ensure that youths have access to showers after bedtime);
 - ii. Shift Change (no more than 40 minutes daily);
 - iii. Medication Pass (no more than 30 minutes daily);

- iv. Treatment Team (no more than three hours per week when school is in session, for non-graduates, and no more than four hours per week when school is not in session or for graduates); and
 - v. Seclusion time that results from a disciplinary issue.
- b. While out of their rooms, youths must be offered the following activities:
- i. meals;
 - ii. 330 minutes of education offered per day for non-graduates, except for weekends or intersession;
 - iii. one hour of large muscle activity, during which no youth shall be restrained. For a period commencing 30 days from the effective date hereof, at least 60 days of monitoring shall demonstrate that youth generally are availing themselves of the offered recreation, failing which the Parties shall confer on any necessary modification to that recreation;
 - iv. a combination of individual treatment, group treatment, and structured programming led by youth specialists and/or volunteers; and
 - v. unstructured leisure time which shall be offered on no more than one hour per day on school days and two hours per day on non-school days. For the first 60 days from the effective date hereof, youth who have graduated from high school or obtained a GED are exempt from this requirement so that DYS can develop additional structured activities for these youth. Thereafter, all youth shall be offered limited unstructured leisure time, as described in this section.

- c. For each youth on the PROGRESS Unit, the State shall create a weekly tracking sheet that identifies the number of hours the youth spends out of his room, engaged in the specific activities identified in Sections II.9.b.i-v, above.
 - i. For any activity in which the youth's actual weekly engagement is less than required by the PROGRESS Unit schedule, as set forth in Section II.9.b, above, the State shall provide an explanation for the deviation from the schedule as set forth in Section II.9d. below.
 - ii. On a weekly basis, the State shall provide to the Monitor and the United States the weekly tracking sheets for the prior week.
- d. On a monthly basis, the State shall track and identify patterns in the causes of deviations from the schedule, and develop written corrective action plans to address identified patterns. On the fifteenth of each month, the State shall submit to the Monitor and the United States a written summary of any implementation problems identified for the prior month.

11. **Staffing:** The State shall ensure that a sufficient number of direct care staff is available to implement the PROGRESS Unit program as scheduled. The State shall ensure adequate staffing on the PROGRESS Unit without compromising the safety, security or programming on the general population units at Scioto.

- a. Absent minor, incidental deviations, a unit manager shall work on the PROGRESS Unit during all waking hours (7:00 a.m. – 7:00 p.m.), seven days per week.
- b. All direct care staff (*i.e.*, nonclinical staff) assigned to work on the PROGRESS Unit must have completed training specifically relating to working with youths on the PROGRESS Unit and implementing the PROGRESS Unit program as designed. If a

direct care staff is assigned to the PROGRESS Unit he or she must complete the PROGRESS Unit training within three months of being assigned to the PROGRESS Unit. Every three months, the State shall provide the Monitor and the United States with a current roster of all direct care staff who have been assigned to the PROGRESS Unit and the dates on which they attended the PROGRESS Unit training or are scheduled to do so.

- c. All direct care staff working on the PROGRESS Unit, whether posted or relief, shall read and initial the Post Orders that govern the PROGRESS Unit posts.
- d. The State shall track data and create monthly staffing reports that identify the number and identity of youth specialists who report to work on all shifts for each day of the month and, for each day of the month, the unit manager schedule and list of unit managers on extended leave.
- e. The State shall track performance measures related to youth and staff safety by collecting data on all acts of violence committed by PROGRESS Unit youth identifying the date, the type of violence and the involved youth.
- f. The State shall provide each staffing report and youth violence report to the Monitor (and the United States) on the fifteenth day of the month immediately following the month addressed in the report, beginning on the fifteenth day of the month from the effective date of this agreement.

12. **Treatment Planning**: Treatment plans will be individualized and include concrete, realistic, measurable goals that are designed to address the specific behaviors that led to the youth's placement on the PROGRESS Unit, and that will guide the youth's promotion through the program's phases and ultimately back to the general population.

- a. Phase I will focus on youth acquiring the skills and meeting the behavioral expectations needed for them to move about safely on the PROGRESS Unit, without the use of restraints once they are promoted to Phase II. Youths shall be provided adequate opportunity to demonstrate acquisition of these skills and meeting behavioral expectations during their stay on Phase I so that progress can be tracked.
- b. Phase II goals and objectives will focus on acquiring the additional skills needed to refrain from aggressive behavior once returned to the general population.
- c. Success in meeting these goals and objectives or behavioral expectations shall be measured on a weekly basis. However, behaviors unrelated to the following shall not be a basis to withhold promotion on the PROGRESS Unit:
 - i. Any act of violence to include fights or assaults;
 - ii. Any possession of STG material that promotes or directs an individual to carry out an act of violence;
 - iii. Any possession of major contraband that poses a threat to the safety and security of others, i.e. weapons, illegal drugs, lighters, etc.;
 - iv. Repeated verbal threats to cause serious physical harm to staff and/or peers.
- d. IDTs shall develop weekly tracking sheets for each youth on Phase I which clearly identify each behavioral expectation, along with specific data related to the youth's performance on each behavioral expectation for that week. The youth's ITP shall focus on skill acquisition that will assist him in successfully meeting the behavioral expectations. However, a lack of progress relating to the attainment of these goals and objectives shall not impede promotion to Phase II so long as the behavioral expectations have been met. The goals and objectives, along with specific data related

to the youth's performance on each goal and objective for that week, will be documented in the IDT minutes and clearly articulated in the Progress Notes.

- e. The most recent Treatment Plan for each youth on the PROGRESS Unit will be submitted to the Monitor and the United States within one week following the effective date of this agreement. When new youth are admitted to the PROGRESS Unit, the State will submit their treatment plans to the Monitor and the United States within one week of initiation of the Treatment Plan. The Monitor will provide feedback and technical assistance as necessary to ensure that the substance of the Treatment Plans meets generally accepted practices.
- f. The IDT shall review each youth on a weekly basis, whether or not the youth appears before the Team in person. The IDT review will involve a structured discussion of each youth's goals and objectives and/or behavioral expectations and the progress he has demonstrated toward meeting them. The IDT shall identify areas of needed improvement so that the youth knows what, specifically, is required to progress to the next phase of the program.
- g. Each youth shall attend an IDT review no less than bi-weekly.
 - i. During non-appearance weeks, the youth's IDT shall review the youth's progress on all goals and objectives and/or behavioral expectations for the week, make a decision about promoting, a recommendation about demoting, or a decision about maintaining the youth's current Phase, and complete the weekly tracking form, for Phase I, and the Progress Note, all of which shall be documented in the IDT minutes. The youth's social worker shall then review the tracking form or the Progress Note with the youth, discussing each of his

goals and objectives and/or behavioral expectations, the progress he has demonstrated toward meeting them, and the areas of needed improvement so that the youth knows what, specifically, is required to progress to the next phase of the program.

- ii. For each youth who does not meet identified goals and objectives or behavioral expectations within the treatment plan's specified time frames, the IDT shall determine the reasons why the youth continues to engage in unwanted behaviors and shall revise the treatment plan or its implementation, in order to better address these underlying causes.
- h. On a weekly basis, the State shall provide the Monitor and the United States with the minutes from the IDT meetings held the previous week. These minutes shall provide a detailed discussion of general unit issues along with a description of the clinical formulation for each youth and its relationship to their progress in meeting each treatment goal. A list of Phase changes shall also be incorporated (*i.e.*, which youth were promoted or demoted).
- i. For each youth on the PROGRESS Unit, the State shall create a "Length of Stay" ("LOS") record that identifies: (1) the date the youth was placed on Phase I; (2) the date the youth was placed on Phase II; (3) the date the youth was placed on the Transition Unit; and (4) the date the youth was moved to the general population. For any youth who is demoted from one phase to a lower phase, this record shall also identify the date of, and reason for, this demotion. This record shall be updated immediately upon a change in status, whether promoted or demoted. An initial LOS record shall be submitted to the Monitor and the United States within 45 days of the

effective date hereof, and updated LOS records shall be submitted to the Monitor and the United States weekly thereafter.

- j. **Central Office Review Board:** The State shall convene a "Central Office Review Board" to provide an external review of any youth who has been on any phase of the PROGRESS Unit (i.e., Phase I, Phase II, or Transition) for more than 28 days. Either the social worker or the primary clinician for the youth being reviewed shall be immediately available to the Board during their deliberations regarding that youth. The Board shall consist of, at a minimum, individuals holding the following positions within DYS' Central Office: an Administrative Psychiatrist, the Bureau Chief of Facility Programs, and Behavioral Health Service Administrators. For at least the first six months of the Central Office Review Board's existence, the State shall notify the Monitor of any upcoming external reviews, and the Monitor or the appointed subject-matter expert shall be invited to observe the Central Office Review Board's deliberations and provide feedback, as warranted.
- k. For the first 45 days following the effective date of this Agreement, any youth who has not progressed to the next phase by the 28th day of his stay on his current phase shall be assessed by the Review Board by the 42nd day in order to provide adequate time for the referral packet to be prepared and for the Review Board to convene. Thereafter, any youth who has not progressed to the next phase by the 28th day of his stay on his current phase shall be assessed by the Review Board by the 35th day.
- l. Prior to the Review Board meeting, either the IDT or the youth's primary clinician shall meet with the youth to inform him of the upcoming consultation and solicit his

input as to why he is not progressing through the program and what would assist him *in doing so*.

- m. The youth's primary clinician will prepare a summary of the youth's clinical formulation, treatment, progress, and challenges to date. The summary shall include the youth's history, mental health diagnoses and past treatment (including medication), psychiatric progress notes, results of any psychological testing, case formulation, treatment goals, attempted interventions and responses to those interventions while on the PROGRESS Unit, whether any needed treatment has not been delivered and why, and the IDT's conclusions regarding the reasons the youth is not progressing. The summary shall be disseminated to the Review Board and the Monitor in advance of its meeting to discuss the case. The Review Board shall review the summary and then consider any factors that the IDT may have missed with regard to the youth's treatment. The Review Board shall then make recommendations with regard to re-focusing the youth's treatment, and set a timeline for subsequent review if the youth has not progressed to the next phase. All team decisions shall be submitted to the Monitor within one week of the Review Board's recommendations.
- n. The youth's IDT shall meet with the youth at the next scheduled IDT of the youth's unit following the Review Board's assessment to discuss the Board's recommendations and any new treatment plan or goals.

13. **Phase Demotion:** The State shall implement objective criteria setting forth specific, limited reasons that a youth may be demoted from one phase to a lower phase consistent with this section.

- a. Phase demotion shall only be considered after either a deliberative process by the IDT or the Intervention Hearing Officer concludes that the youth has committed:
 - i. Any act of violence, to include fights or assaults;
 - ii. Any possession of STG material that promotes or directs an individual to carry out an act of violence;
 - iii. Any possession of major contraband that poses a threat to the safety and security of others, i.e. weapons, illegal drugs, lighters, etc.; or
 - iv. Repeated verbal threats to cause serious physical harm to staff and/or peers.
- b. Scioto's superintendent must approve all phase demotions prior to implementation.
- c. On a weekly basis, the State shall provide the Monitor and parties with the names of youth who have been demoted and a report of the incident(s) leading to the demotion.

14. Policies, Procedures and Youth Handbook: The substantive remedial measures set forth herein shall be memorialized in DYS standard operating policies and procedures, and the DYS Youth Handbook within 60 days of the effective date hereof.

15. Effective Date: The effective date of this Consent Order shall be the date it is signed by this Court.

IT IS SO STIPULATED AND AGREED.

FOR THE UNITED STATES:

DATE: 12/19/12

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IT IS SO STIPULATED AND AGREED.

FOR THE STATE:

DATE:


12/19/12

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WHEREFORE, for good cause shown,

it is SO ORDERED this ~~18~~ day of January 2013.



ALGENON L. MARBLEY
United States District Court Judge