

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF ALAMEDA

MARGARET FARRELL,)
) CASE NO. RG03079344
Plaintiff,)
)
vs.)
)
JAMES TILTON,)
)
Defendant.)
_____)

FIFTH REPORT OF SPECIAL MASTER

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I. INTRODUCTION

This report first addresses what have been identified as potential systemic obstacles to compliance with the remedial plans in this case. It also presents monitor and expert reports in the areas of youth safety and welfare, health services, sexual behavior treatment, and physical and programmatic access for youth with disabilities. The reports are appended. Pursuant to the procedures that the parties, experts and special master developed to guide the monitoring and reporting, the special master provided a draft of this report and the appended monitor's and experts' reports for the parties' comments. The special master, monitor and experts submit these final reports after consideration of the parties' comments.

II. SYSTEMIC OBSTACLES TO COMPLIANCE WITH THE REMEDIAL PLANS

As the court has observed, DJJ's leadership repeatedly affirms its commitment to comply with the consent decree and remedial plans in this case. At the same time, as the special master's reports and experts' reports document, DJJ's progress is halting and well behind the schedule set forth in the remedial plans. The special master has reported on several systemic problems that appear to be obstacles to progress, in the areas of policy development and implementation, staff vacancies and hiring delays, contracting and information technology support. At the August 6, 2007 case management conference, the court ordered that the parties meet and confer over the source and nature of these obstacles to compliance and propose what, if any, further judicial relief would be an appropriate response to them.

As a result of the Court's order and the OSM's responsibility to continue to report on DJJ's progress, the special master requested that DJJ provide information and evidence relevant to the identified obstacles. DJJ provided most of the documentary information

requested, and made four key managers available to respond to the special master's questions. The special master asked the managers about the apparent systemic obstacles in their areas and pressed them to explain their strategies for overcoming the obstacles and the basis for their belief that their strategies would be successful. The special master also has reviewed DJJ's case management conference statement, which is generally consistent with what DJJ's management staff reported to the special master.

A. Policy Development and Promulgation

One of the basic tenets of the safety and welfare plan is that DJJ's central office must guide the implementation of the remedial plans and govern conditions and practices throughout DJJ facilities by promulgating and enforcing written system wide policies.¹ In any institutional setting, written policies are the primary mechanism for establishing the duties and responsibilities of employees and thereby regulating employee practices. DJJ will need to develop many new policies, and revise many existing ones, if it is to change troubled custodial facilities into juvenile correctional facilities that meet the requirements of the remedial plans.²

To date, almost three years after entry of the consent decree, DJJ has not demonstrated the capacity to develop and promulgate adequate written policy within a reasonable time. DJJ, for example, has yet to promulgate most of the initial policies required by the mental health and safety and welfare plans, which are long overdue.³ DJJ has not

¹ See, Safety and Welfare Remedial Plan, p. 8.

² See, Appendix A, Krisberg, *DJJ Progress on the Standards and Criteria of the Safety and Welfare Remedial Plan*, pp. 16-18. According to its counsel, DJJ estimates that "over 800 policies remain to be developed." Defendant's Amended Case Management Conference Statement, p. 15.

³ See, Appendix A (Krisberg report), pp. 12, 13, and 16-18; Appendix B, Beltz, *Monitor's Report: Selected Safety and Welfare and Mental Health Plan Audit Items: Report of Findings*, pp. 13, 16, and 20. See also, *Fourth Report of the Special Master*, p. 10-11, and 15-18. In August 2007, the mental health experts and the special master requested drafts of mental health policies that were due to be completed by then; DJJ has not yet provided any of them. Subject areas of delinquent policies include suicide observation and watch, mental health

finalized the policy intended to operationalize the Ward With Disabilities Program Remedial Plan, thereby impeding the implementation of that program.⁴ Since late 2005, the sexual behavior treatment expert has stressed the importance of standardized written policies for the sexual behavior treatment program but none have been written.⁵ The medical experts report also expresses concern about the slow pace of development and implementation of necessary health services policies.⁶ DJJ still has not finalized the policies related to database modifications that are necessary for compliance with remedial plans in this case; and, until those policies are finalized, the overdue database modifications cannot be implemented.⁷ It reports that it needs to develop and implement over 800 new policies, and that it promulgated just over twenty policies last fiscal year.⁸

There are at least two stages where policies are delayed for prolonged periods: (1) in the development and writing and (2) between formal adoption by DJJ's central office and its promulgation of them as official policies. The sexual behavior treatment program and several of the mental health policies noted in the previous paragraph, for example, are stalled at the writing stage. But, for a different kind of example, 26 of the 29 medical policies that DJJ reports it has just distributed to DJJ's facilities as official policy were formally adopted as temporary departmental orders a full year ago.⁹

levels of care, transfers of youth for long-term inpatient psychiatric care, and discipline and time-adds. The policy to operationalize the safety and welfare plan provisions concerning grievances was distributed to facilities as official policy on October 10, 2007. Those plan provisions were due to be implemented March 31, 2007. Safety and Welfare Remedial Plan, Standards/Criteria, Master Audit Checklist, 8.5.

⁴ See Section VII, below.

⁵ See Section VI, below.

⁶ See Section V., below.

⁷ See Section II.D, below.

⁸ Defendant's Amended Case Management Conference Statement, pp. 15 and 18. (145% divided into 31 policies just distributed would be 21 policies distributed in fiscal 2006-2007.)

⁹ See, Amended Case Management Conference Statement, p. 18 (distribution of 29 policies in September 2007), TDOs 06-40 through 06-69, and *Third Report of the Special Master*, p. 13 (26 of them formally adopted by September 2006 and three more by November 2006). The disabilities TDO that has not been finalized, TDO # 06-71, also was signed in September 2006.

DJJ has identified two sources of delay between development and promulgation of policies: (1) evaluation of labor impact and any necessary labor negotiations and (2) the actual transmission of the policies to facilities.¹⁰ It reports it has solved the transmission problem with a new electronic distribution system.¹¹ DJJ has not elucidated the steps for identifying and resolving collective bargaining issues. Since this is done by a CDCR group, it may be that there have been dysfunctions at CDCR or in the matrix between CDCR and DJJ to delay official promulgation of policy. DJJ has not yet explained the yearlong delays in official promulgation of numerous signed TDOs.¹² Thus, it is not possible to determine whether improved management may locate and eliminate most of the sources of these delays.¹³

DJJ has not had a sufficient system for planning and tracking its development and promulgation of policy. DJJ has not, for example, prepared the table of contents for its manual of policies that is long overdue under the safety and welfare plan.¹⁴ Nor does it have an adequate list of policies that it has scheduled for development or modification.¹⁵ It has not prepared the table of contents for mental health policies that was due by March 1, 2007 under the mental health plan.¹⁶ This is all part and parcel of DJJ's failure to develop and

¹⁰ DJJ reports that there also has been a delay between official promulgation and implementation at facilities because training curricula were not distributed with the policies. Defendant's Case Management Conference Statement, p. 17.

¹¹ Defendant's Amended Case Management Conference Statement, p. 18.

¹² See, e.g., n. 9, above.

¹³ In their case management statements, DJJ contends that the labor process takes up to 90 days and plaintiff contends it need take no more than 30 days. DJJ management has told the special master that it has a good relationship with labor, in which case it should be able to work with labor to ensure that its collective bargaining processes do not unduly delay implementation of policy.

¹⁴ See, Safety and Welfare Remedial Plan, Master Schedule/Audit Checklist Item 2.1.4a. The table of contents was due by January 15, 2007, with a master schedule.

¹⁵ It provided the special master with a list but the list did not include several policies related to the WIN medications discussed in Section II.D below. The list did not show the steps in policy development or the status of any of the policies vis a vis the necessary steps.

¹⁶ Statements of staff in meeting of mental health experts, special master, DJJ mental health staff and CDCR counsel, August 30, 2007. The list of 22 policies mental health policies to which DJJ refers in its case

promulgate policy. DJJ reports that it is addressing planning and tracking now, which might improve its ability to develop and promulgate policy.¹⁷

Pursuant to the Safety and Welfare Remedial Plan, by November 21, 2007, DJJ is required to have “sufficient and appropriate dedicated staffing for developing and maintaining policies for juvenile corrections based on contemporary standards of care and practice.”¹⁸ Towards this end, DJJ has employed five or six dedicated policy developers for some time.¹⁹ It does not intend to increase this number.²⁰ It contends that the management capabilities of the new director of administration and operations, plus the reorganization of central office staff into three new work groups (assessment/classification, program, and re-entry) with one policy writer embedded in each, will make it possible for DJJ to develop and promulgate necessary policies within a time frame that supports the timely implementation of the remedial plans in this case.²¹ It will rely on its leadership and management to ensure that all policies are based on contemporary standards of care and practice.²² Further, under the new administration and operations director, DJJ has again empowered various DJJ

management conference statement (p. 17) apparently is to the list of 22 subject areas for policy at pp. 62-63 of the mental health remedial plan.

¹⁷ See, Defendant’s Amended Case Management Conference Statement, p. 16, 17 and 19. DJJ confronted a similar problem beginning in late 2006 with respect to staff vacancies and hiring delays, when it did not maintain an accurate list of authorized, filled and vacant positions. Over a period of six months, it was able to reconcile staff against budgeted positions and to develop an accurate and trackable list/database. As a result, DJJ now is able to identify the reasons for staff vacancies and hiring delays and take steps to address them. See Section II.B, below.

¹⁸ Safety and Welfare Remedial Plan, pp. 12, 21 and Action Item 2.1.4a.

¹⁹ Susan Sonoyama Jenkins, then the manager responsible for policy development, described this staffing to Monitor Cathleen Beltz during the latter’s central office site visit May 30, 2007. Brigid Hanson, Director of Administration and Operations for Juvenile Justice described the same staffing to the special master during a central office site visit on September 26, 2007. As DJJ staff have explained generally, the policy developers draft policy based on input from subject area staff, ensuring consistency with other policy and with formal requirements. They shepherd policy drafts through the process of review and approval and labor clearance.

²⁰ Statement of staff and counsel during meeting with the special master on September 26, 2007. There is not any evidence at this time that an increase in the number of policy writers is necessary.

²¹ Statements of DJJ staff and counsel during October 3, 2007 monthly meeting and “meet and confer” session. When the special master has pressed DJJ staff and counsel to disclose the facts and analysis that convinces them that the improved management and realignment of central office staff will solve the problems that have been blocking policy development, they say that they are not authorized to say more.

²² Statements of DJJ staff and counsel during September 26, 2007 conference with the special master.

programmatic units to draft proposed policies and procedures that they think are necessary for their programs. The drafts will ultimately be completed and processed by policy unit staff (either the embedded policy writers or the two or three other policy writers), but program groups with staff who have policy drafting skills will be able to push their key policies forward by putting them in writing.²³ The director of administration and operations is developing a tool to track policies through development and formal promulgation.²⁴

Given the degree of DJJ's failure to develop and promulgate written policy for more than a year, its rather general representations about management, realignments of staff and streamlining of processes are insufficient to demonstrate that it has a grasp of all of the relevant facts and a realistic strategy for developing and implementing necessary policy within a reasonable time. The special master is impressed by the drive and apparent competence of DJJ's new Director of Administration and Operations, Brigid Hanson. DJJ fairly observes that Hanson, who has been in her position for approximately two months, has not had enough time to fully assess and address this very complex problem. Still, in the two months since her appointment, DJJ apparently has disseminated more official policy than it disseminated in all of fiscal year 2006-2007.²⁵ Enough DJJ central office staff speak positively of the new approach using interdisciplinary teams that the special master is hopeful that it will help enable DJJ to develop and promulgate policy. If DJJ develops a good tool for tracking policy development and promulgation, it will reveal the stages and

²³ This might improve DJJ's ability to get policies into writing. Key medical policies were written by medical department staff, in consultation and with substantial help from the *Farrell* medical experts. Statements of Madeleine LaMarre 2006. Sexual behavior treatment and mental health staff were working on policy until July 2006 when they were directed to stop and leave initiation of policies and procedures to the policy unit. *See*, sections V. and VI, below. As the experience with DJJ's first medical policies proves, getting policies into written form is only the first major step towards promulgation and implementation of new or revised policies. *See*, n. 9, above.

²⁴ Defendant's Amended Case Management Conference Statement, p. 19.

²⁵ Defendant's Amended Case Management Conference Statement, p. 18.

delays in the process and supply a basis for evaluating DJJ's actions and strategies. But, DJJ has not yet revealed enough to show that it knows why it has been unable to develop and promulgate a reasonable amount of policy over the course of the past two years and that it is addressing all the significant problems.

Unless and until the Court directs an alternate course, the special master intends to document DJJ's progress in planning, tracking, developing and promulgating policy in the immediate future. The special master additionally intends to press DJJ to determine and disclose any and all impediments to timely development and promulgation of policy and a realistic strategy to confront them.

B. Central Office Vacancies, Other Vacancies and Related Personnel Issues

Plaintiff's counsel raised the issue of high staff vacancy rates and impediments to hiring in late 2006.²⁶ One major problem was that the compensation for a number of DJJ positions was lower than the compensation that was being offered for the same positions with the adult prison system. Beyond that, the CDCR and DJJ central offices did not seem to be identifying and addressing the causes of the persistent vacancies. Since late 2006, "pay parity" has been achieved²⁷ and CDCR and DJJ have identified and have begun to address some crucial systems issues.

With the 2005 reorganization, DJJ became a part of CDCR and largely dependent on the CDCR "matrix" for many business processes, including personnel processes.²⁸ DJJ lost dedicated central office personnel positions because it lost responsibility for most personnel

²⁶ As a result, in January 2007, the Court ordered that DJJ begin tracking its vacancies so that the issue could be considered more fully. Case Management Conference Order, January 24, 2007.

²⁷ See, Appendix C (LaMarre/Goldenson report), p. 7; *Fourth Report of the Special Master*, p. 19.

²⁸ The special master's fourth report discusses DJJ's dependence on the CDCR matrix for contracting and information technology support, at pp. 4-9. DJJ's operations support office personnel specialist, Gregory O'Brien, described the CDCR/DJJ relationship and system for personnel processes during conversations with the special master on September 26 and October 5, 2007. DJJ depends on CDCR for legal review of its policies.

functions. DJJ now acknowledges that, from 2005 through the first half of 2007, the CDCR matrix did not work very well for DJJ. DJJ was largely disabled from taking effective actions to address impediments to and delays in hiring. It could only make requests to CDCR's personnel unit. Those requests did not result in effective action.²⁹

In May 2007, under the pressure of the Court's scrutiny, CDCR detailed a team to DJJ to address DJJ systems issues and its place in the CDCR matrix. That team included CDCR business office personnel staff. As a result of the work of that team, DJJ reduced the number of DJJ staff responsible for central office hiring and related recruitment activities and located them DJJ's newly created operations support unit. These personnel staff also are responsible for monitoring facility vacancies, the actions facilities take to fill them and whether the CDCR personnel unit is appropriately responsive to facilities' requests. DJJ's operations support unit staff member who is primarily responsible for personnel matters credibly claims to have a good working relationship with the CDCR "matrix" personnel staff. He says that they came to know each other and understand each other's institutional needs when the CDCR staff were detailed to DJJ on the Spring 2007 matrix team.³⁰

As DJJ attempted to address the questions raised by plaintiff's counsel about vacancies and hiring, it quickly became apparent that DJJ did not have an accurate electronic system for tracking authorized, filled and vacant positions and related information. As of the special master's last report in June 2007, DJJ had only just created an accurate electronic staffing database.³¹ The operations support staff member who is responsible for personnel

²⁹ Statements of Gregory O'Brien, DJJ Operations Support, September 26 and October 5, 2007.

³⁰ Statements of Gregory O'Brien, Operations Support during October 5, 2007 telephone conference with DJJ counsel and the special master.

³¹ Statements of Gregory O'Brien, Operations Support, to the special master, during meeting with Director of Operations Support Brigid Hanson and CDCR counsel on September 26, 2007. The "vacancy report" attached to the *Fourth Report of the Special Master* as Appendix E was derived from that database. The database

matters says that DJJ is beginning to use the database to shape efforts to fill positions.³² The database shows that facility vacancy rates have declined significantly since the special master's last report. Now, six facilities have five percent or lower vacancy rates, two have seven percent rates, and two have fourteen percent rates. The vacancy rate for DJJ's central office has increased slightly, however, to twenty percent.³³

The central office vacancies include the program director position that has been vacant since DJJ's inception more than 2 years ago. Since February 2007, DJJ has not had the plan-required designated project coordinator for the development of operational and facilities master plans.³⁴ On the other hand, the *Farrell* project manager position has been filled, as has the position of director of administration and operations for juvenile justice. The latter position is at the same level as the director of programs position and was recently created. The filling of these two positions with two apparently able and motivated individuals is a significant positive development. Additionally, the director of juvenile facilities who joined DJJ in late 2006 has substantial program expertise. Nonetheless, the twenty percent vacancy rate in DJJ's central office is very troublesome. Whether or not

produces more useful reports, by individual position, how long positions have been vacant and employees have been in positions. *Ibid.*

³² During the September 26 meeting with the special master, Gregory O'Brien of DJJ central office Operations Support impressively described analyses of vacancies against lists, plans to administer exams when lists were insufficient, and plans for job fairs at each facility with recruiting directed at the positions vacant at the particular facility. We did not discuss central office vacancies.

³³ Based on the June and September vacancy reports, using the "total authorized positions line" (which counts temporary as well as permanent employees), the special master calculates that there are lower vacancy rates at all locations except Pine Grove and DJJ's central office: the vacancy rate decreased from 12 to 7 percent at SYRCC, 23 to 14 percent at NCYCC, 7 to -2 percent at OHC, 8 to 3 percent at DWN, 14 to 3 percent at NAC, 17 to 5 percent at Paso, 12 to 3 percent at Preston, 23 to 7 percent at HGS, and 17 to 14 percent at Ventura. The rate held steady at 4 percent at Pine Grove, and increased from 17 percent to 20 percent at central office. That increase appears to be due to new positions reported as if they came on line as of July 1, well before the state budget was approved.

³⁴ See, Appendix A (Krisberg report) p. 6 and Appendix B (Beltz report), p. 21. Another central office vacancy, Clinical Records Administrator for health care services, is discussed in Section V., below.

every central office employee is productive or every position is vital, DJJ clearly needs a strong central office to plan, track and manage the reform to which it has committed.

DJJ has not had a system in place to track the hiring process. It is implementing one this month, involving monthly reports on the status of all positions and actions taken to fill vacancies. The operations support staff member who is responsible for personnel issues says that he will review the reports monthly and take action with respect to any vacancies where the recruitment and hiring processes is not proceeding appropriately. He has been involved in devising the tracking report and seems to be eager to put it to use.³⁵

Without the benefit of tracking information, the “live scan” process has previously been identified as a major cause of delay and loss of candidates. New hires must be fingerprinted and cleared by the Department of Justice and the FBI before they are permitted to start work.³⁶ The process has been taking two to three months for candidates whose fingerprints clear without question. The operations support staff member who is responsible for personnel issues credibly represents that DJJ has analyzed and resolved the “live scan” problems and that the two or three months delay will soon be reduced to no more than two weeks for most candidates (*i.e.*, those who are cleared without questions).³⁷

The actions DJJ taken has taken – centralizing its personnel function, tracking vacancies and the efforts to fill them, and addressing delays in the live scan process -- should continue to reduce vacancy rates and enable DJJ to identify additional impediments to hiring

³⁵ Statements of Gregory O’Brien September 26 and October 5, 2007 during a meeting and a teleconference with the special master and DJJ counsel.

³⁶ Per CDCR counsel, adult system new hires can work after their fingerprints are taken, pending clearance, and they are dismissed if they cannot get clearance. DJJ is subject to special rules intended to protect school children from pedophiles, the “Montoya” law. New hires cannot work until they are cleared.

³⁷ During the September 26, 2007 meeting, Gregory O’Brien, Operations Support, and Brigid Hanson, Director of Operations Support, were impressive in their description of the steps taken to determine and solve problems at individual facility sites, including miscoding of forms and machine malfunction. See also Defendant’s Amended Case Management Statement, pp. 10-11.

that will then need to be addressed. DJJ has not yet responded to the special master's request for detailed information on central office and facility vacancies, including the length of time that positions remain vacant, reasons for prolonged vacancies and the impact of each vacancy on DJJ's efforts to implement the remedial plans. DJJ has not demonstrated that it has analyzed its central office vacancies and that it has developed a strategy to fill necessary positions. Unless and until the Court directs an alternate course, the special master intends to pursue this information from DJJ and to report further.

Finally, DJJ notes that it cannot fill certain positions until it knows which of its facilities will be closed in the wake of the law that took effect September 1, 2007 that is anticipated to reduce its population by 40%.³⁸ It does not disclose any facts relevant to how and when that decision will be made or who will make it. On September 11, 2007, DJJ represented that the decision would be made before the end of September.³⁹ The continuing uncertainty is crippling to DJJ.

C. Contracting

As a part of the reorganization effective July 1, 2005, CDCR absorbed DJJ's central office contracts staff and took responsibility for DJJ's contracts. By the summer of 2006, the medical experts observed that DJJ was not able to secure necessary contracts for medical services due to the non-responsiveness of the CDCR contracts unit.⁴⁰ The parties and the special master brought this to the attention of defendant CDCR Secretary Tilton in October

³⁸ Defendant's Amended Case Management Conference Statement, pp. 12, 14.

³⁹ Statements DJJ management at monthly meeting of Farrell parties and the special master, September 11, 2007.

⁴⁰ See, *Third Report of the Special Master*, pp. 14-15. Before the reorganization, DJJ was relatively successful in contracting for necessary goods and services though there were a number of issues that would have required attention and adjustments. *Ibid.* DJJ's system was largely automated. Statements of Joseph Watkins, current manager of the CDCR contracts group responsible for DJJ contracts and a DJJ contracts analyst before the reorganization.

2006 and he promised to take appropriate action.⁴¹ In April 2007, the parties and the special master met with CDCR Undersecretary Kingston Prunty concerning DJJ vacancies and delays in the CDCR hiring process; the special master also raised DJJ's continuing problems with respect to contracting. He promised that CDCR and DJJ would determine the reasons for the vacancies and delays and develop a strategy to address them.⁴² Apparently as a result, in May 2007, CDCR detailed the team mentioned above to review DJJ systems issues and its interface with the CDCR matrix. This CDCR team included a very experienced and apparently capable contracts manager who has remained at DJJ in its new operations support unit. Among other things, he is developing a system for tracking DJJ's contract requests and their progress as they are processed.⁴³ He seems well suited to serve as DJJ's interface with CDCR for purposes of contracts. He has a contract analyst working under his direction.⁴⁴

The problems that DJJ has encountered in relation to its contracts requests, however, which are described in the last report of the special master,⁴⁵ are not simply the result of an inadequate interface with CDCR. According to numerous experienced CDCR and DJJ contracts managers and staff, CDCR's contracting process is not working well and it has not worked well for many, many years.⁴⁶ In their view, both the adult prison system and DJJ suffer the same lack of communication, delays and uneven success in securing needed

⁴¹ Secretary Tilton met with counsel for both parties and the special master on October 20, 2006.

⁴² See, *Fourth Report of the Special Master*, p. 10.

⁴³ The special master has seen at least two drafts of the document in the course of medical contracts meetings and interviews of the manager, David Hale. See also, Defendant's Amended Case Management Conference Statement, p. 8.

⁴⁴ Statements of David Hale, October 3, 2007.

⁴⁵ *Fourth Report of the Special Master*, pp. 4-6, 20-21.

⁴⁶ On October 3 and 9, 2007, the special master spoke to numerous credible managers and staff responsible for the processing of contract requests, including: Joseph Watkins, supervisor of the CDCR juvenile services contracts unit and formerly contracts analyst for DJJ; David Hale, DJJ operations support contracts manager; Debra Jones, CDCR institution service contracts section manager; and Steve Alston, CDCR Deputy Director, Office of Business Services. The special master observed and listened staff in medical contracts meetings in June and August 2007. The staff were close to unanimous in their observations and opinions on the points reported here.

contracts. CDCR contracts unit staff do a tremendous amount of unnecessary, tedious, labor-intensive clerical work.⁴⁷ Generally, there is a backlog of work and individual contracts projects are not moved along until they are urgent. For example, the responsible CDCR manager informed the special master, approximately 23 of 68 current DJJ contract requests have been pending for 120 days or longer. As a result, so many of the requests are urgent that the urgent matters will monopolize staff attention. That means that everything else will languish unless and until it is considered urgent. As long as the backlog is not resolved, the constant state of crisis and months-long delays in the processing of most requests will be perpetuated. Even the managers who should be identifying and solving system problems are swamped by the need to deal with immediate issues involving what are considered particularly urgent contracts. The obviously deficient systems and constant state of urgency makes for an unpleasant work environment and a high level of turnover and vacancies.⁴⁸

CDCR reports that it has taken and is taking action to address the problems that plague its contracting unit. This past summer, CDCR contracted with IBM and SAP for the development of an automated system for all of its business services, including contracting. According to CDCR's Deputy Director, Office of Business Services, Steven Alston, the system ("BIS") is scheduled to be operational for CDCR's fiscal functions by July 1, 2008, for contract and procurement functions in October 2008 and, for human resources functions after that.⁴⁹ In order to deal with the immediate crisis, CDCR is attempting to procure additional staff on a temporary basis to work through the backlog by inter-agency contract

⁴⁷ They prepare contracts manually; for example, they have to repeatedly enter the same information again and again throughout contract documents, such as the name of the contractor. They do the same things over and over again, for each contract they work on; none of the repetitive steps are automated. Unanimous statements of contracts managers and staff, October 3, 2007.

⁴⁸ Statements of Debra Jones and David Hale, October 3, 2007. According to Ms. Jones, twelve of sixty-two positions were vacant on October 3.

⁴⁹ Statements of Steven Alston, October 3, 2007

with the Department of General Services (“DGS”). It also has requested recruitment and retention bonuses for contracts analysts, in an attempt to lower turnover and vacancy rates.⁵⁰ It is rather intensively training staff in contracting procedures.⁵¹

The medical experts again have highlighted the importance of health services contracts to enable DJJ to provide necessary medical and mental health services.⁵² DJJ has experienced particular difficulties trying to secure health services contracts.⁵³ The CDCR and DJJ contracts managers explain that, until January 2005, CDCR and DJJ health services contracts were exempt from bid procedures, as is appropriate for health services contracts for a number of reasons.⁵⁴ As the result of irregularities documented by an audit of CDCR, the Department of General Services (“DGS”) substantially tightened up the rules for gaining exemptions from competitive bidding requirements. Unlike other state agencies, CDCR has not yet gotten an exemption from these more stringent rules for its health services contracts.⁵⁵ CDCR recently retained a consultant to evaluate DJJ’s medical contracting needs and to develop a credible strategy for meeting them by April 2008.⁵⁶

⁵⁰ Statements of Debra Jones, October 3, 2007.

⁵¹ Defendant’s Amended Case Management Conference Statement, p. 8-9; statements of Debra Jones and Steve Alston, October 3, 2007.

⁵² LaMarre/Goldenson, *First Report By Consent Decree Medical Experts*, p. 10. The report is attached as Appendix C.

⁵³ *Fourth Report of the Special Master*, p. 20-21.

⁵⁴ Contractors need to be near the individual facilities where services will be rendered; most hospital and individual providers will not bid in response to complicated state requests for proposals. Among other things, they do not are not willing to retain the lawyers and contracts experts that they would need to negotiate the process.

⁵⁵ The constant state of urgency pressures staff to use emergency rather than regular procedures. This contributes to tension with “control agencies” that enforce contract regulations. The new DGS rules are stated in “Management Memo 504.”

⁵⁶ Medical expert Madeleine LaMarre is supportive of the examination of DJJ’s medical contract needs. It does not appear to her that the current contracts are as effective and efficient as they might be. Statements of Ms. LaMarre to the special master during teleconference, September 2006. The special master talked to the consultant, Deborah Dietz, who appears to have the appropriate expertise to help DJJ with medical contracting issues.

The continuing difficulty with medical contracts is and illustrative of the enormity of the systemic contracting problems. Despite a great deal of effort, including specially assigned staff and monthly CDCR/DJJ medical contracts meetings, progress in actually resolving issues and executing contracts has been excruciatingly slow.⁵⁷

CDCR/DJJ have taken and are taking important steps towards addressing contracting systems issues and they seem to have motivated and capable managers and staff trying to improve DJJ's ability to enter into necessary contracts. Nonetheless, as in every area of apparent systemic deficiency, the agencies have not demonstrated that they have made a reasonable effort to identify all of the major reasons for the current dysfunction with respect to contracting and to address each of those reasons. Unless and until the Court directs an alternate course, the special master intends to require CDCR and DJJ to produce information until it appears that they have determined and disclosed all of the significant reasons for their inability to execute and consummate contracts in a timely fashion and they demonstrate that they have a realistic strategy to confront each of those problems.

D. Accounting

As the special master previously has reported, DJJ repeatedly fails to pay its contractors' bills within a reasonable time.⁵⁸ It is very likely that CDCR's accounting unit is every bit as dysfunctional as its contracts unit and that the dysfunctions reinforce each other. Again, successful automation would likely improve functionality, but its not clear that

⁵⁷ The DJJ staff member whose principal function is to make and track medical contract requests noted more than a year ago, for example, that some "boilerplate" CDCR contract document language was not legally appropriate for DJJ. He proposed modifications to CDCR, for example, language that would identify the correct office for appeals related to contract issues. The proposed modifications have been pending for more than a year. They currently are under review by CDCR's legal services unit. Statements CDCR and DJJ contracts staff, medical contracts meeting September 5, 2007. The special master's office has been tracking progress since June 2007 by attending the DJJ/CDCR medical contracts working meetings and receiving copies of a document that tracks individual contracts requests. For documentation of the facts as of June 2007, *see* Appendix C (LaMarre/Goldenson report), pp. 10, 17, 19 and *Fourth Report of the Special Master*, pp. 20-21.

⁵⁸ *See, Fourth Report of the Special Master*, p. 6.

automation by itself will be sufficient so that CDCR and DJJ will be able to conduct business well enough for DJJ to succeed in the implementation of its remedial plans in this case.

E. Information Technology

The special master's last report detailed the importance of the two-plus year old project to modify and improve DJJ's primary database, the Ward Information Network or WIN. The "WIN Exchange" will enable staff to compile and have access to complete DJJ records for every youth from every facility where he has lived. The modified and new WIN features are necessary for the implementation of new policies and procedures required by the *Farrell* remedial plans. The safety and welfare remedial plan requires that the WIN improvements to be operational by January 2007. Although DJJ has projected two or three completion dates between then and now,⁵⁹ the WIN improvements are still not operational.⁶⁰ The CDCR-EIS WIN senior programmer responsible for previous projections and for managing the project says that he now believes that this WIN project may be completed by the end of 2007.⁶¹

As the special master reported a few months ago, some of the delays in completing the WIN Exchange and Farrell-related WIN modifications are attributable to the time it took to hire and train new programmers and the inevitable vagaries of software development.⁶²

⁵⁹ See, *Fourth Report of the Special Master*, pp. 7-9.

⁶⁰ See Appendix A (Krisberg report) p. 8 and Appendix B (Beltz report) p. 2. Features such as use of force tracking may have been developed and even deployed at O.H. Close where DJJ is "beta-testing" WIN-Exchange, but they have not been deployed throughout DJJ. *Cf.*, Defendant's Amended Case Management Conference Statement, pp. 19-20.

⁶¹ Statements of Bob Eden, WIN senior programmer, to special master during conference September 26, 2007. The senior programmer responsible for many of the projections said the Safety and Welfare Plan's January 2007 deadline was unrealistic when the plan was filed in July 2006 and that he tends to be optimistic in projecting IT project completion dates. The estimate was based on his long experience with DJJ and facts that he felt he could not share with the special master. DJJ has so much invested in the WIN project that it does seem certain that it will be brought on line.

⁶² *Fourth Report of the Special Master*, p. 8. The WIN senior programmer says that he is about to fill the last vacant position in his group of five programmers and that several of his programmers have been with the group

Since then, the WIN senior programmer has been informed that the policies related to the modifications are still being finalized; he has informed the special master that the modifications cannot be implemented until the policies are finalized.⁶³ Also, the budget for this fiscal year that was finalized in August 2007 does not provide funding for contract programming for the WIN project, in contrast to the budgets for each of the last two years.⁶⁴ The senior programmer does not believe that CDCR/DJJ can implement WIN Exchange without contract programming assistance. To date, because of the lack of funding, DJJ has not submitted a contract request to secure that assistance. Asserting the governor's deliberative process privilege as to matters involving funding, DJJ will not disclose what, if any, attempt it is making to secure funding.⁶⁵ Once it has funding, there may be delays in the process of securing an appropriate contract.

Obviously, CDCR/DJJ need to complete the pending WIN Exchange project as quickly as it can be completed. Once that is done, the question is whether the EIS WIN support group will be sufficient to maintain WIN and develop more features that will be necessary to the implementation of *Farrell* remedial plans. The WIN senior programmer

long enough to be proficient in WIN. Apparently, there is a steep learning curve for new programmers entering the group, as they tend not to be familiar with 4D, the language in which WIN is written.

⁶³ The policies concern wards with disabilities, restricted and alternative program and HRO/suicide watch, according to the senior programmer. They are all signed TDOs (## 06-71 and 07-82 through 07-86), which means that DJJ's management formally adopted them. "Finalized" means cleared for official dissemination to DJJ facilities. The senior programmer believes that the policies will be finalized in a form that is consistent with the current version of the new WIN features; he does not believe that the draft policies will be changed in a way that requires further programming. Statements of Bob Eden October 5, 2007. DJJ touts that it has almost entirely resolved the policy issues that have delayed the WIN Exchange deployment. But, the WIN senior programmer only learned of those policy issues after June 2007. Statements of Bob Eden, October 5, 2007 (he had thought that the policies were finalized).

⁶⁴ DJJ says that it did not know until the budget was approved that the WIN contractor was not funded. Statements of Bob Eden and counsel October 5, 2007.

⁶⁵ The CDCR-EIS WIN senior programmer told that special master that "beta testing" shows that the WIN Exchange is technically sound. With the contract programming assistance, the WIN team will be able to work out the last inevitable "bugs" that appear during full implementation. Statements of Bob Eden during teleconference October 5, 2007. The special master could not fully the senior programmer's technical explanation, but his demeanor and the level of detail he provided were convincing.

credibly asserts that CDCR and DJJ are taking the right steps now, specifically in creating a management level IT steering committee to determine and specify DJJ's data needs. Once the needs are specified, then the WIN support team can determine its capability to meet those needs. The past experience with the WIN Exchange project is not necessarily predictive, especially because the "exchange" improvement to WIN is bigger and more complicated than designing new WIN features.

The safety and welfare expert has observed substantial discrepancies between WIN data and other records. His report highlights the need for an audit/quality process to ensure accurate data.⁶⁶

F. Uncertain Organizational Structure

Like some previous expert reports, the most recent reports of the safety and welfare, medical and sex behavior treatment experts refer to staff uncertainty about their place in DJJ's organizational structure and their reporting relationships.⁶⁷ The most recent report of the disability expert comments on the way that the DJJ organizational structure places various programs and activities under separate departments that are not necessarily coordinated.⁶⁸ The difficulty DJJ is having in finalizing its central office and facility organization charts fosters this uncertainty. After the reorganization more than two years ago, DJJ still could not produce a finalized organizational chart in early October 2007.⁶⁹ As the expert reports illustrate, the uncertainty diffuses responsibility for actions required by policies and the remedial plans and interferes with accountability. Some staff may not have

⁶⁶ See, Appendix A (Krisberg report), p. 9.

⁶⁷ See sections V. (medical) and VI. (sexual behavior treatment), below. See also, Appendix A (Krisberg report), pp. 6-7.

⁶⁸ See Appendix E (Hopper report), p. 2.

⁶⁹ The special master repeatedly asked for a copy of the charts and was told that it was not available. She last asked in early-October 2007. DJJ filed an unofficial central office organization chart with the joint case management conference statement in March 2007.

the organizational power to discharge what seem to be their responsibilities.⁷⁰ The Court ordered that DJJ file an organizational chart before the case management conference set for October 25, 2007 and DJJ has just now filed one. The special master has no information about whether the new organization chart has allayed uncertainty.

III. SAFETY AND WELFARE

The safety and welfare expert conferred with DJJ central office staff and made site visits to three facilities for his report on compliance with those requirements of the safety and welfare plan that were effective as of June 30, 2006. His report is attached as Appendix A.

Monitor Cathleen Beltz conferred with DJJ central office staff and made site visits to all eight DJJ facilities from May through August 2007. She also monitored compliance with the requirements of the safety and welfare plan that were effective by the end of fiscal year 2006-2007. She monitored only the issues that the safety and welfare plan designates for monitoring by the special master's office. Her report is attached as Appendix B.

The reports of the safety and welfare expert and the monitor show that DJJ is taking some steps forward along the course charted by the safety and welfare plan, but that it is greatly hampered by the systems deficiencies discussed above. Some of the specific areas reviewed in the reports are discussed below. Most of these areas have been subject of prior expert, monitor and special master reports, and some progress is noted.

A. Risk Classification

DJJ complied with the requirements of the safety and welfare plan for "interim classification" separating highest and lowest risk (to harm others) youth by January 2007. It has not complied with the permanent risk classification requirements, which became

⁷⁰ See, e.g., Appendix E (Hopper report), p. 2 (WDP coordinators) and Appendix D (Schwartz report), p. 3 and 9 (sexual behavior treatment program coordinator).

effective in June 2007. This is due, at least in part, to the fact that the necessary written policies and procedures have not been finalized and the WIN Exchange and modifications have not been implemented.⁷¹

B. Violence Reduction and Conversion of Facilities to the Rehabilitative Treatment Model

Under the Safety and Welfare Plan, beginning in April 2007, DJJ was due to convert the Chaderjian facility to a specialized treatment facility with mental health and other residential treatment programs. It was due to begin to convert the Stark facility to its new rehabilitative model – even while the model was being developed – beginning in January 2007.⁷² These conversions are on hold, in part due to systemic incapacities and in part due to legislation limiting DJJ’s population, requiring closure of one or more DJJ facilities.⁷³ Nonetheless, DJJ has reduced living unit populations at Chaderjian and Stark, meeting the safety and welfare plan’s population reduction requirements in a majority of living units.⁷⁴

Though Chaderjian has fewer residential treatment units than it was slated to have by this time, DJJ has transformed it from one of the system’s most violent to a relatively safe facility, largely by population reductions and improved staff to youth ratios.⁷⁵ However, the other two facilities that the safety and welfare expert visited, Stark and Preston, continue to be characterized by high levels of violence among youth.⁷⁶

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⁷¹ See, Appendix A (Krisberg report), pp. 11-16.

⁷² See, Safety and Welfare Remedial Plan, Standards and Criteria Item 6.1.b.

⁷³ Appendix A (Krisberg report), p. 31. The legislation that recently passed that reallocates responsibility for juvenile offenders between the state and the counties originally was proposed in January 2007. By late 2006, DJJ disclosed that it would not be able to meet the schedule for the conversions of the Chaderjian and Stark facilities, or even to set a schedule for the conversions. Statements of DJJ management staff to the special master December 2006.

⁷⁴ See, Appendix B (Beltz report), p. 2

⁷⁵ See, Appendix A (Krisberg report), p. 29.

⁷⁶ See, Appendix A (Krisberg report), pp. 24-27.

C. Implementation of PbS

Performance-based Standards (“PbS”) is a nationally recognized system for tracking data relevant to conditions and practices in juvenile correctional facilities. The data is reported and the numerous state systems that participate can compare themselves to each other. The safety and welfare plan requires DJJ to implement PbS, beginning in October 2006. DJJ has proceeded with implementation, according to the schedule set in the plan. One of the WIN system modifications that DJJ is poised to implement will produce comprehensive data on incidents of violence and use of force in DJJ, based on PbS criteria.⁷⁷

IV. MENTAL HEALTH CARE

DJJ has not provided the mental health experts with a significant amount of the information they requested in early August 2007 for purposes of preparing a report on issues under the mental health care plan with deadlines through the end of last fiscal year. DJJ has indicated that the information will be forthcoming by October 26, 2007. Monitor Beltz’s report covers mental health plan issues through the end of the last fiscal year that the plan designates to be monitored by the OSM.⁷⁸

In December 2007, the mental health and education experts will meet with DJJ mental health, other treatment and education staff to help them consider (1) how DJJ can provide required education (240 minutes/day) and treatment services by joint programming during the traditional school day at the school site and (2) DJJ’s options for consistent behavior management techniques to be applied throughout DJJ facilities and programs (including at school sites). The education plan requires a formal behavior management system at DJJ’s schools, and DJJ’s treatment programs will be directed in part at the

⁷⁷ See, Appendix A (Krisberg report), pp. 7-8; Appendix B (Beltz report), p. 2.

⁷⁸ See, Appendix B, pp. 22-32.

management of disruptive or destructive behavior. The education and mental health experts agree that education and treatment services must be harmonized in order for youth to receive the services required by the mental health, safety and welfare and education remedial plans.

V. MEDICAL CARE

The special master's previous reports have reflected the medical experts' work before they initiated their first round of monitoring last fall. These experts have devoted many hours to assisting DJJ with the development of the remedial plan, including the standards and criteria for measuring compliance, and 32 key medical policies.⁷⁹ The experts' report of their first round of monitoring is attached as Appendix C.⁸⁰ They have reviewed and approve this section of the special master's report.

DJJ has taken significant steps to address the most pressing health services issues identified by the medical experts' 2003 report that became the basis for the consent decree provisions concerning medical care. DJJ has greatly strengthened administrative and medical leadership and central office management,⁸¹ which the experts reported in 2003 were DJJ's most important task related to medical care.⁸² Dr. Morris has continued to serve as Medical Director and most of the necessary central office positions have been established and filled. The quarterly statewide health services meetings that Dr. Morris instituted are very

⁷⁹ See, *Third Report of the Special Master*, pp. 12-13 and *Fourth Report of the Special Master*, pp. 19-20. References to the medical experts are to Michael Puisis, M.D. and Madeline LaMarre, M.N., A.P.R.N., B.C. through June 30, 2006. After Dr. Puisis' resignation, in consultation with Ms. LaMarre, the parties retained Dr. Joe Goldenson to serve as physician expert.

⁸⁰ During this initial round they were "field-testing" their audit tool/standards/criteria for monitoring. They did not record and report as much information as they will in succeeding rounds. The report sets a new benchmark for measuring future progress.

⁸¹ See, *First Report of the Special Master*, p. 33-34; Appendix C (LaMarre/Goldenson report), pp. 5-10; statements of Madeleine LaMarre to special master during telephone conference September 24, 2007.

⁸² Puisis and LaMarre, *Review of Health Care Services in the California Youth Authority* (August 22, 2003), p. 6.

valuable.⁸³ Dr. Morris has medical autonomy over the health services program, i.e., final authority over clinical matters.⁸⁴ Twenty-nine of the 32 key medical policies had been developed and formally adopted as signed temporary departmental orders (“TDOs”) by November 2006⁸⁵ and they were disseminated as official policy in September 2007.⁸⁶ DJJ has initiated a chronic care program that is in the early stages of implementation at the facility level.⁸⁷ It has brought the pharmaceutical inventory and medication administration under appropriate control and management and is beginning to implement its new medication policies and procedures at the facility level.⁸⁸ It is very close to having a separate central health services budget with all non-health related expenditures excluded; generally, health service expenditures are tracked and controlled by health services’ management.⁸⁹ With the exception of quality assurance, peer review and nursing sick call, DJJ had, as of early 2007, addressed each area of the systemic deficiencies that the medical experts highlighted in their executive summary of their 2003 report.⁹⁰ DJJ reports that it has commenced peer review recently.⁹¹

Still, as the medical experts reviewed individual health care records documenting care provided to youth with potentially serious medical problems, they found poor medical care in

⁸³ Appendix C, (LaMarre/Goldenson report), pp.7-9.

⁸⁴ Appendix C (LaMarre/Goldenson report), pp. 7; LaMarre statements to the special master during telephone conference September 24, 2007.

⁸⁵ See, *Third Report of the Special Master*, p. 13; Appendix C, (LaMarre/Goldenson report), p. 7, 9; see also, DJJ quarterly report, October 2006, health care services section, p. 1. These key medical policies and procedures were developed in consultation with the medical experts before DJJ centralized the policy development process and located it in the policy unit.

⁸⁶ Defendant’s Amended Case Management Conference Statement, p. 18.

⁸⁷ Appendix C, (LaMarre/Goldenson report), p. 9, 24-25; LaMarre statements to the special master during telephone conference September 24, 2007.

⁸⁸ Appendix C (LaMarre/Goldenson report), p. 26-27; LaMarre statements to the special master during telephone conference September 24, 2007.

⁸⁹ Appendix C (LaMarre/Goldenson report), p. 8.

⁹⁰ Puisis and LaMarre, *Review of Health Care Services in the California Youth Authority* (August 22, 2003), p. 6.

⁹¹ Correspondence of Michelle Angus to the special master dated October 24, 2007.

a disturbing number of cases. Because of the potential consequences of poor care, it is urgent that DJJ address the issues that are slowing the implementation of the health services remedial plan. Youth in DJJ who require health care services for serious medical problems currently face an unacceptable risk of receiving substandard care.⁹²

Progress in implementation of the health services remedial plan has been hampered by DJJ's systemic problems discussed above in Section II. The lack of clarity concerning organizational relationships is evidenced by the divisions between facility custody and health services staff, and among health services (medical, mental health and dental) staff. These divisions impede the implementation of new policies and procedures and threaten medical autonomy.⁹³ Until last month, progress in the development and implementation of new policies halted almost a year ago, after DJJ's impressive accomplishment in formally adopting 29 of 32 key medical policies as TDOs. As noted above, DJJ disseminated the 29 TDOs to the facilities as official policy.⁹⁴ The last three of the key medical policies – on peer review, credentialing and organizational structure -- have been under review since July 2006.⁹⁵ Since July 2006, DJJ has repeatedly reported that the policies would be implemented through local operating procedures yet to be finalized. It has also repeatedly reported that it would identify and develop additional necessary policies and procedures, without following through and doing so. Although DJJ and CDCR staff have been meeting monthly to try to work through the problems that have interfered with DJJ's attempts to contract with health services providers for necessary services, progress has been limited and slow.⁹⁶ It appears

⁹² Appendix C (LaMarre/Goldenson report), pp. 21-25 and 29-31; statements of Ms. LaMarre to the Special Master during a teleconference on October 8, 2007.

⁹³ Appendix C (LaMarre/Goldenson report), pp. 6, 14-16, 18.

⁹⁴ See nn. 9 and 86, above.

⁹⁵ Appendix C, p. 9; DJJ quarterly reports, July 2006 – July 2007, health services section, pp. 1-3. The review is by CDCR's legal unit, which raises the question of a possible "matrix" issue.

⁹⁶ See n. 57 above and accompanying text.

that DJJ has achieved pay parity with the adult system for its health services positions, but delays in the hiring process have perpetuated vacancies.⁹⁷ The experts highlight these systems issues in their recommendations.⁹⁸

DJJ has been without a Clinical Records Administrator for more than a year now, since September 2006. DJJ repeatedly reports that this is a difficult position to fill statewide for all state agencies, that there is no list of eligible candidates and that it is attempting to fill the position by contract in the interim. DJJ/CDCR efforts to fill the position or cover it by contract have been inconsistent and ineffectual. The responsibility for securing the clinical records administrator is diffuse, between the several DJJ and CDCR staff involved in retaining contractors, and between the staff involved in recruiting permanent employees and the staff involved in getting contracts in place to cover vacant positions. It is not clear that DJJ knows what it likely would take to employ or contract with a qualified Clinical Records Administrator, or that it has a strategy to fill the position. However, a consultant with expertise in medical staffing and contracting is now focused on the issue, which is a hopeful development.⁹⁹

VI. SEXUAL BEHAVIOR TREATMENT PROGRAM

In May and July 2007, Dr. Barbara Schwartz, the *Farrell* sexual behavior treatment expert, completed her second round of compliance audits at the four DJJ institutions with residential sexual behavior treatment units. Her first round of compliance audits was completed in late 2005. In the interim, due to the slow pace of DJJ's progress in the area of sexual behavior treatment, she limited herself to telephone conferences with DJJ staff and

⁹⁷ Appendix C (LaMarre/Goldenson report), pp. 11, 17.

⁹⁸ Appendix C (LaMarre/Goldenson report), p. 34.

⁹⁹ The special consultant for health services contracts believes that the salary for the position may be non-competitive, but that there may be an alternate state classification that would be adequate for the position. Statements of Deborah Dietz October 3, 2007.

attending some of the meetings of the sexual behavior treatment task force. Dr. Schwartz's report is attached as Appendix D. She has reviewed and approved this section of the special master's report.

Dr. Schwartz's current report includes a number of positive observations, some of which the special master previously has reported. Since 2005, the Sexual Behavior Treatment Task Force has continued to meet on at least a quarterly basis.¹⁰⁰ In November 2006, DJJ hired Dr. Frederick Martin to fill the long vacant sexual behavior treatment program coordinator position.¹⁰¹ In May 2007, salaries for DJJ psychologists were increased when CDCR brought them into parity with the adult prison system's psychologist salaries.¹⁰² It is to be hoped that DJJ now will be able to fill the substantial number of psychologist vacancies that have dogged its sexual behavior treatment program.¹⁰³ Also in May 2007, DJJ sent approximately 60 sexual behavior treatment staff members to the statewide conference of the California Coalition on Sexual Offending, thereby demonstrating what Dr. Schwartz characterizes as "exceptional support for training."¹⁰⁴ Within the last few months, Dr. Robert Prentky trained staff on the use of the J-SOAP assessment tool. Finally, as she did in 2005,

¹⁰⁰ DJJ quarterly report, July 2007, sexual behavior treatment plan section; Dr. Schwartz September 8, 2007 email to special master.

¹⁰¹ See, DJJ quarterly report, January 2007, sexual behavior treatment plan section. Dr. Schwartz has frequently referred to her communications with Dr. Martin in her telephone and email communication with the special master's office.

¹⁰² There was a several month delay in achieving pay parity, which gave the adult system a competitive advantage for those months. Statements DJJ management staff; see also, Appendix C (LaMarre/Goldenson report) pp. 11 and 15. What had been DJJ's flagship residential sexual behavior treatment program at the O.H. Close facility was reduced to a marginal program as of May 2007, largely due to psychologist vacancies. See Appendix D (Schwartz report), p. 11.

¹⁰³ See, Appendix D (Schwartz report), pp. 5. At this point, there has been an influx of applicants and DJJ apparently has made a number of job offers. The special master will monitor whether DJJ is able to complete the hiring process and put new employees in place in a timely fashion.

¹⁰⁴ Appendix D (Schwartz report), p.2. DJJ sent only 1 staff member to the previous year's conference. DJJ Farrell Quarterly Report, July 2006, Sexual Behavior Treatment Remedial Plan section. Nonetheless, DJJ still does not have a written training plan for the initial and annual continuing in-service training required by the sexual behavior treatment remedial plan. Sending staff to national or statewide conferences cannot substitute for all training in a year. Appendix D, p. 9.

Dr. Schwartz observed numerous staff treat youth in a caring and professional manner again in 2007.¹⁰⁵

Still, DJJ has not made significant progress towards development of a standardized sexual behavior treatment program, the object of the sexual behavior treatment remedial plan that was filed more than two years ago.¹⁰⁶ One reason for the lack of progress is that responsibility and authority over DJJ's sexual behavior treatment program is diffuse. Since 2005, when DJJ began drafting its mental health and safety and welfare remedial plans, staff have expressed confusion and dissension over the relationship between the mental health and all other treatment programs, including the sex behavior treatment programs. DJJ's continuing failure to promulgate a definitive organizational chart has served to prolong this confusion and dissension.¹⁰⁷ Dr. Martin's role and authority as sexual behavior treatment program coordinator have yet to be clarified. He is a "senior psychologist" -- not a "chief psychologist" -- and he was not even consulted earlier this year when a number of psychologists from the sexual behavior treatment program were redirected to treatment programs for mentally ill youth under the supervision of chief psychologists. Until recently, he was not involved in the hiring of psychologists for the sexual behavior treatment program. His reporting relationships are unclear. As he began his tenure as sexual behavior treatment program coordinator, he had relatively limited experience in the field of sexual behavior

¹⁰⁵ See, Appendix D (Schwartz report), pp. 4, 5, 6 and 11. Dr. Schwartz continues to observe that the "post and bid" process results in turnover of correctional counselors without regard to their suitability and desire to provide sexual behavior treatment. Appendix D, p. 3.

¹⁰⁶ See, Appendix D generally and especially pp. 10-11.

¹⁰⁷ See, Appendix D (Schwartz report), p. 2. As DJJ staff have explained, DJJ has and will have mental health programs for mentally ill youth and treatment/rehabilitation programs for youth who are not mentally ill. It is clear that the mental health program management and clinical staff are responsible for the mental health programs for mentally ill youth. It has not been clear what role the mental health program management and clinical staff would play in the development and management of the other psychologically based treatment programs such as those involving the treatment of sexual behavior problems. Mental health clinicians will have to be involved in the other treatment programs. The question is whether mental health staff will be separated between different program "silos." DJJ staff have recently reported to the special master that the sexual behavior treatment program has been brought within the mental health department.

treatment so he did not have the power and authority of a great deal of subject matter expertise.¹⁰⁸

The sexual behavior treatment plan provides for comprehensive written policies and procedures and comprehensive curricula to describe the treatment program and guide the treatment.¹⁰⁹ DJJ cannot have a coherent, evidence-based program for sexual behavior treatment without written policies and procedures and curricula that standardize treatment.¹¹⁰ Yet, to date, there has been no discernible progress towards the preparation of these written policies and procedures and only modest progress towards the development of the needed curricula. This is a second reason that DJJ's sexual behavior treatment program is not yet coming together.

The sexual behavior treatment task force originally planned to complete the development of the needed program policies and procedures by mid-2006.¹¹¹ Task force members took responsibility for drafts, which were reviewed at regular task force meetings. Dr. Schwartz was supportive of the task force effort though she did not review their work product and cannot comment on its quality. In mid-2006, DJJ assigned a writer from its policy unit to take over production of the policies. The task force members were told that the policy unit would write all policies in order to ensure consistency among them. They were instructed to discontinue their efforts, to give their drafts to the policy writer and to wait for the policy writer to prepare policies in the proper form. For more than a year, the DJJ policy writer has attended task force meetings but has yet to report any progress on the policies.¹¹²

¹⁰⁸ See, Appendix D (Schwartz report), pp. 3,7 and 8; statements of Dr. Schwartz during telephone conferences with the special master.

¹⁰⁹ Remedial Plan, Sexual Behavior Treatment Program, p. 11.

¹¹⁰ See, Appendix D (Schwartz report), p. 11.

¹¹¹ See, *Second Report of the Special Master*, p. 14.

¹¹² Dr. Schwartz' statements to the special master during telephone conference September 18, 2007 and Appendix D (Schwartz report), p. 2; see also, DJJ *Farrell* Quarterly Reports, October 2006, January 2007, April

Now, as reported above, DJJ has withdrawn the injunction to program staff against policy writing and the task force may return to the task of writing policy.

As for the lack of curricula, the Special Master has previously reported that Dr. Cellini's curriculum development work was disrupted from April 2006 through April 2007 because the funds in his initial contract were exhausted and it took CDCR/DJJ a year to execute a successor contract.¹¹³ After he resumed work for DJJ in May 2007, CDCR failed to pay his bills in a timely fashion, which he says hampered his work by delaying his ability to replace the staff that he let go a few months after his initial contract lapsed.¹¹⁴ In the meantime, he has lost the confidence of some key DJJ staff by the length of time it is taking him to deliver the first of the three curricula he was retained to develop. The first curriculum, Healthy Living, supposedly was near completion when he was told to stop work in April 2006 because his contract was exhausted.¹¹⁵ He now expects to deliver it by mid-

2007 and July 2007, Sexual Behavior Treatment Remedial Plan sections. In the July 2007 report, DJJ reported that the policies were "at various stages of planning and development." In October 2006, DJJ staff responsible for the sexual behavior treatment programs were prioritizing development of a policy for tracking each youth's treatment progress. Towards this end, they sent a proposed a tracking form to DJJ's policy unit for review. DJJ *Farrell* Quarterly Report (October 2006), Sexual Behavior Treatment section. As of August 2007, DJJ had no standard form to track progress in sexual behavior treatment. Yet, such tracking is critical to individualizing treatment and determining a youth's readiness for safe return to his or her community. See, Appendix D, p. 2, 5, 10 and 11.

¹¹³ See, *Third Report of the Special Master*, p. 16; DJJ *Farrell* quarterly reports, October 2006, January 2007 and April 2007, Sexual Behavior Treatment Remedial Plan sections. It is difficult to parse out the factors in contract problems such as this one. Renewal of the consultants' contract raised issues of state law related to non-competitive bid or sole source contracts. Obviously, DJJ and CDCR need to follow state law. But nothing material changed during the 12 months it took for CDCR and DGS to permit DJJ to contract with its sexual behavior treatment consultant. The delay in renewing the contract reflects dysfunction in government that DJJ, CDCR and DGS need to solve.

¹¹⁴ Dr. Cellini told the Special Master that he hired those staff near the end of September 2007.

¹¹⁵ *Second Report of the Special Master*, p. 13. The Healthy Living program is conceived as the first step in sexual behavior treatment, administered on regular living units ("outpatient" treatment). The program will prepare youth for more intensive treatment and allow staff to continue to assess youth's treatment needs. Most of the youth who complete the Healthy Living program will then move into a residential sexual behavior treatment program. Dr. Barbara Schwartz' September 8, 2007 email to the Special Master. Dr. Schwartz informed the special master by email and telephone conference on October 9 that sections provided to Dr. Cellini by Task Force members still needed substantial work as of April 2006. When Dr. Cellini resumed work under a new contract in approximately May 2007, he had to update the curriculum due to the year delay in publication, and he had to complete and format the Task Force sections.

October 2007.¹¹⁶ He is under contract to develop the residential curriculum and additional outpatient curriculum materials before July 1, 2008.¹¹⁷

The current system for record-keeping is not conducive to a standardized sexual behavior treatment program. Clinicians and counselors still record their notes in different records. As a result, they have incomplete information as they provide treatment services and there is no coherent, complete treatment record for quality assurance review or any other purpose.¹¹⁸ Dr. Schwarz has been recommending a unified treatment record since 2005.¹¹⁹

Reflecting how little progress has been made in the last two years, Dr. Schwartz continues to press almost all of the same recommendations she has been making since 2005: promulgation of an organizational chart that clarifies reporting relationships for sexual behavior treatment program staff; completion of comprehensive program curricula and written policies; implementation of evidence based assessment;¹²⁰ a unified program treatment record used by all staff for charting treatment and progress; regular tracking of treatment progress based on clearly delineated criteria; systematic training that builds skills of clinician and counselor staff; and, assignment of counselor staff based on training, aptitude and program preference (instead of straight “post and bid”).¹²¹ She recommends also that

¹¹⁶ Dr. Cellini statements to the special master September 21, 2007.

¹¹⁷ Dr. Schwartz recommends that the residential curriculum be prepared next because residential treatment is the core of DJJ sexual behavior treatment program and is in “desperate need of standardization.” Appendix D, p. 10. Dr. Cellini agrees and feels confident that he will finish all the curricula before the end of this fiscal year. Dr. Cellini statements to the special master September 21, 2007.

¹¹⁸ See Appendix D, p. 3, 9 and 11.

¹¹⁹ See, *Second Report of the Special Master*, p. 12-16. The sexual behavior treatment, mental health and medical experts are scheduled to confer on this issue in November 2007, to ensure that they harmonize their views about DJJ health care and treatment records.

¹²⁰ As of March 2006, it decided to use an instrument known as the J-SOAP II instrument and was awaiting the completion of a systematic training-needs assessment before training funds could be released and the staff trained to use J-SOAP II. In August 2007, DJJ finally sent staff for the necessary J-SOAP II training and, presumably, J-SOAP II will be implemented in the near future.

¹²¹ See, Appendix D generally and especially pp. 10-11; cf. Appendix D to the *Second Report of the Special Master*.

DJJ take appropriate action to provide Dr. Martin with organizational authority over psychologists in the sexual behavior treatment program.

VI. EDUCATION

The special master filed an extensive report on education with her last report. The education experts have just begun their third round of monitoring and will be filing a comprehensive report next spring.

As discussed above in Section IV, the education and mental health experts are scheduling a meeting with DJJ education and mental health staff to consider (1) how DJJ can provide required education (240 minutes/day) and treatment services by joint programming during the traditional school day at the school site and (2) DJJ's options for consistent behavior management techniques to be applied throughout DJJ facilities and programs, including its schools.

VII. ACCESS FOR YOUTH WITH DISABILITIES

From October 2006 through June 2007, the *Farrell* expert in physical and programmatic access for youth with disabilities, Logan Hopper, conducted compliance audits at all DJJ facilities. His "Wards with Disabilities Program Remedial Plan Auditor's Report," completed two years after DJJ filed the Wards with Disabilities Remedial Plan ("disabilities remedial plan") and a year after his first audit is attached as Appendix E. The first four pages of Hopper's report constitute a comprehensive and concise summary of his findings, conclusions and recommendations. The rest of his report details central office and facility-by-facility findings.

Mr. Hopper's second annual report is very similar to his first annual report: it reflects continuing progress in certain areas and a continuing inertia in certain others.¹²² The central office and facility coordinators for the wards with disabilities program are, on a whole, extremely dedicated and effective and they have the support of many responsible central and facility administrators. As a result, all facilities are showing progress in the development of the wards with disabilities program. This reflected in the expert's central office and facility-by-facility audit findings this year compared to last year; DJJ's central office and each and every DJJ facility increased its proportion of "substantial compliance" audit items and decreased its proportion of "non-compliance" audit items.¹²³

On the other hand, DJJ has not made significant progress towards integrating the disabilities program fully into its operations.¹²⁴ This is at least partly due to the same systems deficiencies that have impeded progress in other areas. Specifically, the disabilities program policy is one of the written policies that DJJ has not been able to finalize and promulgate as official policy. Further, one of the WIN modifications that has been delayed will facilitate recording and tracking information related to youths with disabilities. Thus, while the disabilities program staff and facility management staff understand the proposed policy and are committed to its implementation, that understanding and commitment has not permeated to most of the line and other program staff.¹²⁵ Equally important and probably related, DJJ still has not conducted the system-wide disability sensitivity, awareness and

¹²² Cf., this section of the special master's report with the disabilities section of the *Second Report of the Special Master*.

¹²³ Cf., Appendix E (Hopper second annual report) with *Second Report of the Special Master*, Appendix E (Hopper first annual report). DJJ continues to remove architectural barriers generally on schedule, as set by the disabilities remedial plan. See, Appendix E (Hopper report), pp. 3 and 45-46.

¹²⁴ See, Appendix E (Hopper report), p. 2.

¹²⁵ *Ibid.*

harassment training for all staff that was due to be completed by June 2006.¹²⁶ In addition, DJJ has not made any progress since the expert's first annual report towards forming the special interdisciplinary, interdepartmental groups that are supposed to integrate consideration of disabilities issues in the context of other programs and services.¹²⁷ As a result, the disability program staff that are trying to implement the wards with disabilities remedial plan are unable to gain the cooperation they need from all the other staff that control facility operations and youth movements, programs and activities.¹²⁸

Until DJJ remedies these systemic problems, its progress in implementing the wards with disabilities program will remain limited.

VIII. CONCLUSION

The special master respectfully submits this report.

Dated: October 23, 2007

Donna Brorby
Special Master

¹²⁶ The disabilities expert considered the failure to conduct this training by June 2006 the most significant noncompliance issue more than a year ago. *See, Second Report of the Special Master*, p. 17. It is likely that the comprehensive training has been held up to be coordinated with training on the new policy and implementation of the related WIN disability feature, since policy and documentation will be the framework for staff actions with respect to youth with disabilities. Nonetheless, some staff training has occurred since the June 2006 report.

¹²⁷ *See, Wards With Disabilities Program Remedial Plan*, p. 15, 26, 34 and 58 and standards and criteria pp. 7,8, 11-12.

¹²⁸ *See, Appendix E (Hopper report)*, p. 2.