

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

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

Plaintiff)

vs.)

Civil Action
No. 7:08 cv 00038

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

COMPLIANCE REPORT

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

CHERIE TOWNSEND,)
Executive Director)
Texas Youth Commission)
4900 N. Lamar Blvd.)
Austin, TX 78765)
County of Residence:)
Travis;)

EDUARDO MARTINEZ,)
Superintendent)
3801 East Monte Cristo Road)
Edinburg, TX 78541)
County of Residence:)
Hidalgo,)

Defendants.)

UNITED STATES' SECOND COMPLIANCE REPORT

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

In reaching the conclusions detailed below, DOJ reviewed Texas Youth Commission (TYC) and Evins policies, investigation documents, reports, committee minutes, videos, staffing rosters, background checks, and other administrative documents from TYC and Evins. We also toured Evins and observed training at the Corsicana Residential Treatment Center on March 9-12, 2009.

While on-site, we interviewed numerous TYC officials, Evins management, direct care staff, medical care staff, and youth. We also reviewed additional documents on-site. At the conclusion of our tour, we requested and reviewed supplemental documents.

As detailed below, DOJ's assessment is that the State has achieved compliance with Paragraphs 5, 12, 21, 25 and 26 and partial compliance with Paragraphs 1-4, 6-11, 13-20, and 22-24. The term "partial compliance" is used to indicate that the State has made notable progress in achieving compliance with the key components of the paragraph, but that significant work remains. DOJ is pleased to report that there are no paragraphs with which the State was determined to be in non-compliance.

DOJ recognizes that achieving compliance with each paragraph of the Agreed Order will require TYC's continued time and effort to effectuate the necessary reform. We are pleased to find that TYC continues to make progress in achieving compliance with the Agreed Order as a whole. Further, DOJ wishes to acknowledge Evins' former Superintendent for his cooperation during our tour. We look forward to continued cooperation from the incoming Superintendent.

COMPLIANCE RATINGS

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

As noted in our first Compliance Report, this Paragraph provides the overarching standard and a compliance assessment is dependent upon the State's compliance with the remedial measures contained in all other Paragraphs, which are discussed in detail below.

We note, however, that we are particularly concerned that extortion and youth possession of contraband may be increasing at Evins. During our interviews with staff and youth, we were routinely told that extortion and contraband were on the increase on the campus.

Extortion tends to involve residents taking food, toiletries, clothing, telephone collect call credit or other items from younger, smaller or vulnerable residents. The residents refer to this as being "on Bo" or "being Bo'd." The term is derived from a popular movie. One youth described "being on Bo" as being essentially at the mercy of another youth or other youths. During our tour, Juvenile Corrections Officers (JCO's) and administrators confirmed that this has become more of a problem in recent months.

Almost every officer and resident we interviewed also mentioned that there has been a significant increase in the presence of contraband at Evins. Evins' February 2009 Internal Audit Report (Audit Report) suggests that: 1) contraband is over-reported, 2) contraband does not typically include weapons or drugs, and 3) individual instances may be reported as multiple incidents. While we appreciate the findings of the report, and the audit team's efforts, we remain concerned that contraband is a growing issue at Evins, due to the significant number of staff and youth who reported to us their personal observations and experiences with the increase of contraband at the facility.

Contraband typically includes money, drugs, and food. Many of those we interviewed, both staff and residents, believed contraband is being brought to the facility by visitors. Indeed, one officer stated that "There is a lot of weed here." Another staff person indicated he believed the facility's visitation procedures needed to be reviewed to help stop the flow of contraband. One youth reported that drugs are brought into the facility as frequently as every few days.

Staff must be constantly vigilant to prevent such occurrences. Proper staffing levels can help reduce the flow of contraband or the occurrence of extortion. Specifically, staffing levels should be elevated at certain time periods when

the potential for extortion or the entrance of contraband is highest. These periods include meal times and school hours, when large numbers of youth are gathered together in one place. We note that the Audit Report indicates that Incident Reports do not routinely document the items recovered. We recommend Evins strengthen its contraband documentation processes to ensure that contraband detection, frequency, and type are accurately reported.

Compliance Rating: Partial Compliance.

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

The State continues to operate under General Administrative Policy (GAP) 97.23 (Use of Force). GAP.97.23 is pending final approval, and is intended to place greater emphasis on the use of de-escalation and other non-physical intervention methods as a means to alleviate the need for uses of physical restraints, as noted in our first Compliance Report. TYC continues to update DOJ regarding its policy ratification process. While GAP.97.23 is not yet finalized, DOJ is encouraged by TYC's continued demonstration of improvement in its use of force practices at Evins. DOJ is also encouraged by the videodisks TYC submitted

regarding staff use of force training, which, along with written documentation, show improvement in use of force practices. TYC has confirmed that it will submit the final approved policy when appropriate.

Following policy finalization, we recommend that TYC ensure that it maintains the demonstrated improvement we have observed under this paragraph, and ensure that all existing staff and any new staff are trained on the finalized policy.

Compliance Rating: Partial Compliance.

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

injury that occurred as a result of the incident, and in a way that permits review.

TYC continues to operate under GAP.07.03 (Incident Reporting); GAP.93.33 (Alleged Abuse, Neglect, and Exploitation); Personnel Policy Manual (PRS) 01.03 (Work and Personal Conduct); Institutions Operations Manual (INS) 91.91 (Incident Reports); and GAP.93.37 (Security Intake). We are pleased that each of these policies, except INS 91.91, are finalized, and we look forward to reviewing INS 91.91 upon its final approval. During our tour, we found that staff routinely follow the above referenced policies.

For example, PRS 01.03 requires employees to report suspected mistreatment of youth, incidents of fraud, and other job-related illegal activities to their chief local administrator, TYC Central Office, or anyone in authority inside or outside of TYC to whom they feel comfortable reporting without fear of retaliation. While we were on-site, staff immediately reported to DOJ, Evins management, and TYC officials, an incident involving a JCO and youth being placed in security. The video of that incident and all available documents regarding the incident were immediately provided to DOJ for our review, and the incident was properly referred within the TYC framework. In addition, in one Office of Inspector General (OIG) report, a staff member reported the suspected misconduct of another staff member

regarding the possession of a cigarette lighter. The investigation into these allegations was appropriate, and TYC addressed the matter.

The toll-free hotline number TYC established for the reporting of incidents to the IRC continues to be utilized, and remains available 24 hours a day. We reviewed documents that indicated that from November 2008 through February 2009, over 200 calls to the hotline were made from Evins. We were pleased to see that IRC calls are followed up on, and that the requirements for employees to report abuse, misconduct, and serious incidents are being followed. For example, in one report we reviewed, an Evins staff member reported an allegation of neglect of a youth by another staff member by calling the IRC. An investigation commenced as a result of the call, and TYC took appropriate action. In addition, in another report from the OIG, the OIG investigated an allegation that a staff member prevented a youth from using the hotline. The documents we reviewed indicate that the OIG commenced its investigation in less than two working days after receiving the initial complaint.

We are pleased to see that Evins continues to document serious incidents on Use of Force Reports (CCF-225s) pursuant to INS 91.91. We have reviewed the CCF-225s submitted to us by Evins, and are encouraged to see that CCF-225s are being

supplemented by Continuation Sheets (CCF-500s) where multiple staff members are involved in a use of force incident. However, we encourage senior management and staff to continue to review each report for completeness and accuracy. Some reports we reviewed contained inaccuracies and omissions.

For example, on one CCF-225, two JCOs attached their summaries of a use of force incident in which a youth was physically restrained, sent to nursing, and then to security. The referring JCO checked "no" on the CCF-225 field, "Youth was injured or claimed to be injured in the incident." The second JCO, however, wrote a supplemental summary on a CCF-500 that noted, "youth had redness to right shoulder and redness over right eyebrow due to carpet." In addition, the field, "Staff implemented physical restraint during this incident" was not checked, and the appropriate Physical Restraint Report (CCF-260) was not attached. Notwithstanding these deficiencies, we are pleased to see that the youth was seen by the nursing staff within fifteen minutes of the incident, and that the CCF-225 and CCF-500 forms were submitted within 20 minutes of the incident.

GAP.93.37 is the TYC policy designed to comply with state law requiring the development of policies mandating zero tolerance for sexual abuse. During our tour, we did not uncover information that suggested sexual abuse was occurring at Evins.

In our review of the record of calls made to the IRC, TYC documents indicate that there were zero complaints of either sexual misconduct or inappropriate relationships between staff and youth between October 2008 and February 2009; however, we reviewed one investigation regarding an allegation of staff-on-youth inappropriate touching, and found that the matter was appropriately investigated.

In addition, we were pleased to find that Evins has begun implementing some of the technical assistance DOJ provided during our last tour regarding intake screening and housing placements for youth who may be at risk for sexual victimization. TYC documents confirm that there were two calls made to the IRC regarding youth-on-youth sexual misconduct. We reviewed one investigation of such a case and found that the matter was appropriately investigated, and that the youth alleged to have been the victim of the misconduct was properly and promptly sent for medical evaluation. The allegation was determined to not be sustained.

Evins continues to investigate inappropriate conduct through the OIG. Through Senate Bill 103 (SB 103), signed into law in June 2007 and codified at Human Resources Code § 61.0356, the Texas Legislature established OIG as an independent law enforcement division of TYC. OIG is tasked with investigating

allegations of criminal misconduct occurring at Texas Youth Commission facilities, and is an appropriate law enforcement entity to receive reports of possible criminal violations.

During our October 2008 tour, we were informed that TYC was in the process of hiring a second investigator to be stationed at Evins. However, when we visited Evins in March 2009 we learned that although a second investigator had been hired, the first investigator had been discharged. We were pleased to learn, following our March 2009 tour, that TYC has filled the second investigator position, and that the second investigator should begin working at Evins in May.

In addition, at the time of our tour, we learned that there was a "backlog" of approximately 85 administrative investigations that had been pending for more than 30 days. The delays in some investigations were much greater than 30 days. For example, an investigation was opened on November 14, 2007, after a youth reported that two staff members were bringing drugs into the facility. The investigation was not closed until January 2, 2009, over a year after it was opened, and only then in part because the youth who made the allegation, as well as one of the staff members alleged to be involved, was no longer at the facility or indeed at any TYC facility.

TYC administrators informed us that they were dispatching a team of four investigators to Evins to conduct the backlogged investigations. The team arrived, and began its work, the week following our tour. Per DOJ's request, TYC submitted a sample set of those investigations. We reviewed each of those investigations and find them to have been completed adequately. We commend TYC for devoting the necessary resources to eliminating this backlog.

In addition, while at Evins we received Evins' first draft of its Performance Based Standards (PbS) report. We commend Evins for undertaking this project, and look forward to future assessments of trends and activities on campus. As discussed in Paragraph 23 below, we were informed that some of the data collection practices were not yet formalized.

Compliance Rating: Partial Compliance.

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

Evins continues to implement INS.91.91, which requires the Accident/Physical Restraint Review Board (RARB) to review all incidents involving manual and mechanical restraints and uses of OC spray, and requires the minutes of the meetings to be ratified

by the Superintendent. Currently, the RARB is comprised of staff from training, security, administration, direct care, human resources, and other areas. The RARB continues to be a positive development at Evins; however, we encourage it to document in its minutes the recommendations it makes regarding the use of OC spray. The minutes include only the JCO's summary of the incident that led to the use of OC spray, but not the RARB's conclusions regarding the appropriateness of the JCO's actions.

We confirmed that the Superintendent continues to review all serious incidents at Evins. During our tour, when asked about numerous incidents we learned about from our interviews with the youth or staff and from documents we received on-site, the Superintendent demonstrated clear familiarity with the facts of each incident, and the actions that were taken by Evins to address the incidents. In addition, youth frequently approached and thanked the Superintendent for looking into, and following up on, their individual complaints about their allegations of incidents, whether serious or otherwise.

As noted above, for serious incidents or incidents involving an allegation of abuse, neglect, or exploitation, the on-site OIG investigator prepares a report on the findings of the investigations for review by TYC's Executive Officer and legislative oversight committees. Further development of this

process has been somewhat impeded by personnel problems; however, as noted in Paragraph 3, TYC has made a good faith effort to resolve this issue.

We recommend that TYC finalize INS.91.91. Policy finalization, coupled with the sustained improvements we observed under this provision, will likely lead to a finding of compliance.

Compliance Rating: Partial Compliance.

(5) Health Care Inquiries Regarding Injury *If, in the course of the youth's infirmary visit, a health care provider suspects staff-on-youth abuse, that health care provider shall:*

- (a) *report the suspected abuse to the appropriate officials, the Office of Inspector General, law enforcement and social service agencies;*
- (b) *adequately document the matter in the youth's medical record; and*
- (c) *complete an incident report.*

DOJ interviewed the head nurse at Evins during our tour, and observed the nursing operations. We are pleased to confirm that the requirements of this Paragraph continue to be the standard operating procedure at Evins. We are also encouraged that Evins has increased its on-site clinical staff to ensure increased coverage efforts to expand on-site clinical services at Evins, though Evins is currently seeking a replacement for its psychologist. We have been informed that until this position is filled, another TYC psychologist will temporarily serve the youth

at Evins, but will not be on-site full time. The planned 24/7 availability of medical services at Evins has not yet been implemented.

Compliance Rating: Compliance.

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

Evins continues to operate under GAP.97.23 (Use of Force) and PRS.01.09 (Staff/Youth Relationships). GAP.97.23 allows use of force, including restraints, only as a last resort. Pursuant to this policy, under no circumstances is it permissible to use force greater than necessary to achieve control. Only trained techniques are permissible when using physical restraint. PRS.01.09 also prohibits staff from using any force that is not permitted by GAP.97.23 and provides that a violation of this requirement constitutes grounds for termination of employment.

As noted in our first report, TYC policies are within generally accepted national standards of practice for secure juvenile correctional facilities. DOJ will continue to carefully monitor Evins' actual practice to assure that the practices at Evins are reflective of, and implement, the policies that TYC has enacted. DOJ is encouraged by Evins' progress under this provision.

We recommend that TYC finalize GAP.97.23. Policy finalization, coupled with continued effective implementation under this provision, will likely lead to a finding of compliance.

Compliance Rating: Partial Compliance.

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

Evins continues to operate under GAP.07.03 (Incident Reporting) and GAP.93.33 (Alleged Abuse, Neglect, and Exploitation).

We were pleased to find that the OIG is routinely documenting and tracking criminal and administrative investigations involving alleged abuse, neglect, and exploitation. We are also encouraged to find that the OIG's review continues to encompass incidents such as: use of force, allegations of improper uses of restraints, staff-on-youth assault, youth-on-youth assault, inappropriate staff relationships with youth, and sexual misconduct between youth. As noted in Paragraph 3, and recognizing the previously noted personnel problems TYC encountered that led to the resulting

backlog of investigations, DOJ is encouraged by TYC's recent replacement of an OIG investigator on site.

Compliance with this paragraph will require further evaluation to assure that the system will function with its new team, as well as a continued commitment to assure that all allegations are timely logged, tracked, and investigated appropriately.

Compliance Rating: Partial Compliance.

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

As noted in Paragraph 3, the OIG is responsible for conducting administrative and criminal investigations involving allegations of abuse, neglect, and exploitation, incidents of use of force, staff-on-youth assault, youth-on-youth assault, inappropriate staff relationships with youth, and sexual misconduct between youth.

TYC has taken important steps in implementing policies and procedures to assure the safety and well-being of the youth at Evins. For example, the OIG tracks the number of calls from Evins to the IRC, and classifies them by type of allegation. Our review of OIG investigations indicates that OIG is moving towards more timely resolution of its investigations, notwithstanding the

backlog noted in Paragraph 3. Investigations appear to be comprehensive, and resources, such as review of videos, are used effectively to supplement investigations. The continued presence of two full time investigative officers on campus should help assure the integrity of the process.

DOJ will continue to carefully monitor the investigation practices at Evins to assure that the system that is being set in place is functioning and adequate to assure the safety of the youth.

Compliance Rating: Partial Compliance.

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

As noted above, TYC has encountered unexpected problems in staffing the OIG function on the campus. It appears the agency has made a good faith effort to resolve these issues. At the time of the DOJ site visit in March 2009, there was one OIG investigator on-site. A second investigator should be at Evins by May 2009. During our tour, we confirmed that OIG staff have free access to all areas of the campus, all documents, and all staff and youth at Evins.

DOJ will continue to monitor the workload of the officers assigned to Evins over time to accurately assess compliance with

this Paragraph. We encourage TYC to continue to commit as many recourses as necessary to ensure the adequate staffing of the investigation unit at Evins.

Compliance Rating: Partial Compliance.

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

TYC is currently in the process of revising its policies and procedures relating to its behavioral programs for youth. Evins uses a newly developed program for addressing youth behavior. The new program is an effort to de-emphasize the use of the facility's security unit and move the focus back to the general living units. The new program requires mental health and treatment staff to consult daily to address programming and behavior. All educational services are to be provided while the youth are in the program, and program expectations are to be met even when a youth is attending class.

We are concerned with TYC's effort to provide positive reinforcements to youth on the campus as a whole. This effort appears to be lagging behind the effort to de-emphasize the use

of the security unit. It is important that all youth have the opportunity to participate in behavior management programs that emphasize rewards for desired positive and constructive behaviors. Rewards need to be quick, tangible, and of some practical value to the youth. For example, youth routinely told us that one reward they may receive for compliant behavior is deodorant. The youth indicated that this was not an adequate reward, however, as deodorant is provided to all youth regardless of compliant behavior. Our review of Evins' privilege grid confirms that basic toiletries are being offered as rewards for compliant behavior. While we found no evidence that Evins denies youth hygiene products due to non-compliant behavior, we find that the overall positive reinforcement practices are not yet fully adequate.

The staff and administration have taken important first steps in constructing a daily living program at the facility. However, this work will need to be expanded and reinforced with both staff and youth. In our interviews with direct care staff during our tour, we found a significant amount of ambivalence among staff regarding the overall changes in behavioral programming. Some officers were supportive of the changes while others believed the new program did not hold youths accountable. In addition, during our interviews with staff and youth, we

routinely heard that many of the positive reinforcements offered under the new program are not effective in increasing positive youth behavior. Several staff, for example, mentioned that if they could offer youth pizza and other snacks, or a movie night—incentives that would feel like true rewards, they would better be able to truly increase positive youth behavior.

At the conclusion of our tour, we raised these issues with TYC senior staff. We were informed that TYC was aware of the issue, that it is being carefully considered, and that improvements will be made. We look forward to seeing future developments under this provision.

Compliance Rating: Partial Compliance.

(11) Staffing Within 60 days of the effective date of this Agreed Order, the State shall provide sufficient numbers of adequately trained direct care and supervisory staff to (a) supervise youth safely, (b) protect youth from harm, (c) allow youth reasonable access to medical and mental health services, and (d) provide youth with adequate time spent in out-of-cell activities. The State shall establish mandatory minimum staffing requirements, including a determination of all direct supervision posts that must be filled on each shift. In establishing mandatory post coverage, the State shall include provisions for coverage for all required staff training as well as authorized leave time.

SB 103 requires that TYC maintain a staff-to youth ratio of not less than 1:12. Evins maintains a staffing ratio better than 1:12.

As noted in our previous Compliance Report, the existence of open bay dormitories continues to provide challenges for adequate

staffing. We were pleased to find that the retrofitting of Dorms Three A and B have been completed, and that Dorms Three C and D are scheduled for completion by May. Dorm Four is scheduled for completion by Fall 2009. During our interviews with staff and youth, we found that, overall, the individual room dorms were generally well received. We note, however, that some staff expressed concern that monitoring individual room dorms requires a commitment to "walk the dorm" and perform routine and regularly scheduled room checks to observe youth actions inside the rooms as opposed to "passively scanning" an open bay dorm. We encourage Evins to appropriately train staff to monitor individual room dorms and to develop procedures to adequately document its monitoring practices.

We also note that TYC has continued to increase the number of security cameras at Evins, which will soon have more than 900 such cameras. While cameras cannot replace direct care staff, they are an excellent tool for helping prevent undesired activities, and for providing a record of what has occurred on campus. We were pleased to see this increase, and commend TYC for supplying Evins with these additional resources.

Compliance Rating: Partial Compliance.

(12) Employment Practices Within 60 days of the effective date of this Agreed Order, the State shall continue to conduct a criminal record check for all current employees at Evins, taking appropriate actions where new information is

obtained. At least as often as every year thereafter, the State shall update such criminal record checks for all employees who come into contact with youth. The Evins administration shall develop and implement policies and procedures to require that applicants and all current staff immediately report to it any arrest other than a minor traffic violation and also report the issuance of a restraining order entered against the staff member due to alleged abusive behavior.

SB 103 requires that TYC perform background and criminal history checks annually on all employees at Evins. Policies governing this requirement are provided in PRS.01.08 (Criminal Records of Current Employees), 05.11 (Selection and Hiring Process), 05.13 (Background Checks), and 05.14 (Texas and National Crime Information Center System). According to these policies, no individual is permitted to be employed in a direct care position without having successfully completed a background and criminal history check.

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

Evins has sustained its compliance under this provision. We reviewed Evins' new hire log and reviewed new hires' HR-028b forms. The HR-028b's confirmed that TYC continues to perform

criminal background, warrant, driving, and sexual offender checks on all staff before they are allowed to work with youth. We are pleased to find 100% compliance with this provision.

Compliance Rating: Compliance.

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

During our October 2008 tour, we found that previously, the security unit had been used as a behavioral control device. As noted in our last Compliance Report, youth confined beyond 24 hours receive adequate due process and the opportunity to be heard or otherwise contest their confinement.

During the DOJ site visit of March 2009, we learned that there were eight residents being held in the security unit who were refusing to leave that unit and return to the general population. The reasons given by the residents for not wanting to leave varied. One youth was expecting to be released from the facility and did not "want to have anything happen" during his last few days. Others spoke of being frightened or victims of extortion or simply preferring the relative quiet of the security unit. While we are concerned that these youth remain in

security, we were pleased to find that each youth receives adequate opportunity to explain himself, that none of the youth felt unfairly confined to security, and that each is counseled every day by a case worker who attempts to re-integrate the youth into general population.

We are encouraged that the Superintendent has continued to emphasize that youth housed in the security unit are typically taken to and from school, and given reasonable opportunities to reintegrate into the general population. As a result of such efforts, youth generally are not confined in their rooms for extended periods of time.

Notwithstanding these efforts, Evins must continue to seek ways to re-integrate youth who simply refuse to leave security and return to general population. This kind of behavior is not unprecedented in juvenile facilities. We appreciate that this is a significant challenge for staff, and are pleased to see the good faith efforts by Evins staff to address this issue. We recommend that staff continue working to identify potential problems on the general units and resolve issues that cause some youth to want to remain in the security unit.

Notably, Evins also uses an inter-disciplinary board to review security referrals and due process. During our tour, we observed that the review meeting was well-attended and

productive. During the meeting, staff expressed some concern over the adequate processing of security referrals. Some staff indicated that paperwork was being misplaced, and that JCO referrals of youth to security were not being adequately considered by security staff. While on the dorms, we also heard similar concerns from JCO's. The Internal Audit indicates that some security unit referrals are not adequately submitted. We are pleased that staff are engaged in the appropriate dialogue with each other to find workable solutions for these problems. It appears that Evins is on an upward trajectory in remediating these issues. As the use of the security unit, referral writing, and the handling of documentation, is changing, it will be necessary to continue to monitor its use and the corresponding provision of due process.

Compliance Rating: Partial Compliance.

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

GAP.93.31 provides the policies and procedures for the youth complaint/grievance system. Responses to youth grievances must be completed within 15 business days.

The grievance system at Evins appears to be generally functional. The Audit Report indicates that while grievances are

responsive, they are not always timely under GAP.93.31. The grievance system still does not contain a function to assure that resolutions or accommodations that are to occur as a result of a grievance having been filed are actually implemented. At present, this final component of the grievance system does not seem to be in place.

We recommend that Evins implement a procedure to track the timely resolutions of its grievances. This, along with continued improvement under this provision, will likely lead to a finding of compliance.

Compliance Rating: Partial Compliance.

(15) Admissions Intake and Orientation Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to establish a consistent, orderly admissions intake system conducive to gathering necessary information about youth, disseminating information to staff providing services and care for youth, and maintaining youth safety. Each youth entering Evins shall receive an effective orientation that shall include simple directions for reporting abuse, and assure youth of their right to be protected from harm and from retaliation for reporting allegations of abuse. Orientation shall also clearly set forth the rules youth must follow at the facility, explain how to access medical and mental health care and the grievance system, and provide other information pertinent to the youth's participation in facility programs.

TYC has revised its intake, assessment, and classification systems. The new classification system better ensures the safe and secure placement of youth within agency facilities and programs. For example, TYC is implementing a policy designed to

be closely modeled after the Prison Rape Elimination Act's (PREA) essential requirements. The policy mandates that a screening is completed for every youth on all dorms. Revisions to the current assessment system are ongoing.

Our review of a sampling of juvenile records at Evins indicates that the basic information that is collected through community resources in the juveniles' home communities and the information obtained at TYC intake facilities is consistent with generally accepted professional practices.

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

Compliance Rating: Partial Compliance.

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

Evins has begun to designate certain open bay dormitories to serve particular populations. Still, the design of the buildings

means that youth have easy access to one another in the day room, the bathroom, and the shower areas. This is especially troubling due to the presence of sex offenders at the facility. During our tour, we were informed that Evins currently houses many sexual offenders in single room dorms; however, a few remain in the open bay dorms. When asked how Evins monitors these youth, we were informed these youth are bunked in beds closest to JCO offices so that the youth can be more closely monitored than on the far side of the dorm.

We encourage Evins to continue to seek adequate housing assignments for sexual offenders. As a general practice, youth who have committed sexual offenses should be typically housed away from a facility's general population. They are also usually housed in living units that allow for assignment to single person sleeping rooms. This is meant to reduce the opportunity for sexual assaults and sexual acting out.

It is commendable that the administration of TYC and at Evins has recognized the problems they face with making dormitory assignments. It is important that Evins has begun to work to assign particular groups of compatible youths to particular units. However, this is clearly a new effort on the staff's part. During the DOJ's site visit of March 2009, we noted the TYC has begun to better use the information gathered at intake in

making housing assignments at Evins. However, the limitations of the current physical plant make this a difficult task and demonstrate the need for the staff to be particularly diligent at all times in the supervision of the residents. We recommend that TYC continue the retrofitting of the single room dorms to address this issue.

Compliance Rating: Partial Compliance.

(17) *Training* Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to provide staff, volunteers and contractual employees of Evins with training regarding their responsibilities. These policies, practices, and procedures shall include:

- (a) *a comprehensive training plan for all Evins employees, reviewed and updated annually;*
- (b) *requirements by job category;*
- (c) *standards for qualification of trainers;*
- (d) *processes for approval of the training curriculum;*
- (e) *schedules for staff training;*
- (f) *criteria for determining whether Evins staff, volunteers, and contractual employees have mastered the instructional materials and methods being taught; and*
- (g) *specific requirements by professional discipline for any continuing education credits established by licensure, certification, or recognized professional academies and organizations.*

TYC's continued commitment to staff development and training is impressive and commendable. The requirement for 300 hours of training for newly hired direct care staff exceeds generally

accepted national standards. We were pleased to see standardized logs that tracked Evins' staff training completion dates for each of the trainings offered by TYC. Those trainings include, but are not limited to: Verbal Intervention & De-escalation, Behavior Management, Incident Report Writing, Interpersonal Communication Skills for Staff, Use of Force, Mechanical Restraints, and Youth Rights. As of the date of our tour, it appears from the training logs that Evins has a 100% staff training rate for new hires.

As a part of the DOJ's March 2009 site visit, DOJ staff and its expert attended an afternoon portion of a training session held for new JCO staff at the TYC's training facility in Corsicana, Texas. The afternoon session focused upon verbal de-escalation techniques staff can use to address and control residents who are experiencing problems. The training was appropriate and consistent with generally accepted professional standards.

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

Compliance Rating: Partial Compliance.

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

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

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

TYC has determined that it will use a passive restraint/personal protection system that is also used in a

number of juvenile facilities around the United States. The certification of new employees and re-certification of existing employees is an on-going process. The training observed by DOJ staff and its expert in March 2009 at Corsicana was a part of this training effort. This Paragraph will require careful monitoring to assure that staff are trained as required.

Compliance Rating: Partial Compliance.

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

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

TYC is currently working to re-emphasize with staff the concepts of de-escalation and crisis intervention as a part of its overall programming on campus. It is recognized this is closely related to the development of the behavioral management program and the de-emphasis on the use of the security unit. At the time of the October 2008 site visit, it was found that the new programming effort had not been fully implemented. This was not unexpected, as these changes represent a major philosophical shift for the campus, which will take time to successfully

implement. While on campus during March 2009, the DOJ and its expert found progress had been made. During interviews with residents it appeared most understood the new program. Some staff were enthusiastic while others lamented the change, generally citing a sense that the new program did not hold residents as "accountable" for their actions. Some staff felt that the new program also does not allow for the imposition of needed discipline on residents. We recommend that efforts are put in place to ensure that youth see the consequences of their actions.

Compliance Rating: Partial Compliance.

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

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

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

procedures and guidelines are in place and training is completed, a finding of compliance will be possible.

Compliance Rating: Partial Compliance.

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

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

Compliance Rating: Compliance.

(22) Policy Review and Training Within 45 days of the effective date of this Agreed Order, the State shall submit all policies and procedures regarding the following topics to DOJ for review and comment: use of restraints and confinement to the Security Unit, use of force, youth grievance system, investigations of alleged staff misconduct, behavior management program, and reporting and review of staff misconduct and other incidents. Within 120 days of the effective date of this Agreed Order, the State shall commence initial and refresher training to all Evins staff with respect to any newly-implemented or revised policies and procedures. Such training shall be completed within 180 days of the effective date of this Agreed Order. The State shall document employee training.

See comments for Paragraph 21.

TYC has indicated that it will provide all finalized policies after they have become ratified; training on those policies should follow immediately after ratification. We are pleased to find that staff have received all refresher training courses on finalized policies, and recommend TYC finalize all outstanding policies. Once this step is accomplished, a finding of compliance will likely follow.

Compliance Rating: Partial Compliance.

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

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

One of the greatest potential benefits of participating in the PbS project is the formalization and standardization of data gathering in critical areas of facility operations, many of which

are key requirements of this order. Examples include: the gathering of data on assaults, fights, allegations of abuse, and staffing levels. Over time, this participation should result in TYC administrators having an increased ability to incorporate actual hard data into management decisions.

While on site in March 2009, the DOJ staff and its expert were given the first report of the PbS project at Evins. The first report is the result of Evins' participation in Pbs' October data gathering cycle. In general, a facility's first reporting cycle typically reveals data gathering and other process problems which are not known until the data is analyzed. Such was the case with Evins' data. This is not unexpected and many of the problems encountered should be resolved in the facility's second cycle, which is scheduled for April 2009. The DOJ and its expert continue to encourage TYC's participation in the PbS project, and look forward to seeing the initial problems resolved.

Compliance Rating: Partial Compliance.

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

Established pursuant to GAP.05.01, TYC's internal audit department is tasked with reviewing and improving performance-based accountability activities at Evins. Currently, the audit team is reportedly taking actions to improve the services provided to youth at Evins; however, a formal corrective action plan has not yet been developed for each Paragraph of the Agreed Order.

The Audit Report constitutes an internal quality assurance report on the operations at Evins. The report appears to be well-crafted and represents a positive step in self-monitoring for the TYC. The report makes a variety of findings and recommendations that require a response from the management at Evins. The presence of a strong quality assurance effort indicates an openness to self-examination and potential improvement within an agency. Once a formal corrective action plan is developed for each Paragraph of the Agreed Order, a finding of compliance will likely follow.

Compliance Rating: Partial Compliance.

(25) The DOJ shall monitor the State's compliance with this Agreed Order. The DOJ's monitoring shall include, on-site inspections of Evins, interviews with Evins youth, staff, and administrators, and a review of relevant documents. The DOJ shall retain a juvenile justice consultant with expertise in protection of youth from harm within the context of the operation of a secure juvenile justice facility to assist the DOJ in its monitoring activities. DOJ shall routinely report its assessment of the State's compliance with the paragraphs of this Agreed Order to the

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

The State has been helpful and cooperative in the monitoring of this agreement. DOJ has complete access to the facility, staff, and youth. TYC has endeavored to provide all requested documents in a timely and convenient manner.

DOJ staff and its expert were on-site at Evins from March 10-12, 2009, and at the Corsicana training facility on March 9, 2009. Additional tours will be conducted pursuant to this agreement.

Compliance Rating: Compliance.

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

TYC requires all new employees to attend an orientation session, during which they are provided a copy of the Agreed Order and the terms of the Agreed Order are explained to them, including the consequences for not complying with conditions and remedies of the Agreed Order. We find that information is adequately disseminated to employees. The Compliance Officer has copies of the Agreed Order on display in plain view in the administration office, and displays laminated posters that highlight each provision of the Agreed Order.

Compliance Rating: Compliance.

Respectfully Submitted,

FOR THE UNITED STATES:

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2009, a true and correct copy of the foregoing COMPLIANCE REPORT was served on counsel for Defendants as identified below via the ECF system.

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/s/ Sheridan L. England
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