IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

S.H., a minor child and all others similarly situated, et al.,	:	
	:	**Case No. 2:04-CV-1206**
Plaintiffs,	:	
v.	:	
	:	**JUDGE ALGENON L. MARBLEY**
TOM STICKRATH, et al.,	:	
Defendant.	:	

ORDER

I. INTRODUCTION

This matter is before the Court on the Parties' cross-motions to enforce the educational terms of the Stipulation for Injunctive Relief (Docs. 208 & 215). Following the filing of these motions, the Court ordered that Monitor Fred Cohen[1] conduct an investigation into the issues raised by the motions and submit a report on his findings (Doc. 218). Monitor Cohen submitted his report on October 6, 2010 (Doc. 220), and the Parties have each submitted their objections to this report, as well as replies to each other's objections (Docs. 227, 234, 237, & 239). The matter is now ripe for decision by this Court.

I. BACKGROUND

At the heart of this dispute is the effect that the policies that the Department of Youth Services ("DYS") uses to confront youth violence within its facilities has on the provision of

[1]Mr. Cohen has since resigned from the position of Monitor, effective October 21, 2010 (Doc. 231). The current monitor in this case is Will Harrell (Doc. 243).

education. DYS and the Monitoring Team developed a program called Consistent Response to Acts of Violence ("CRAV") that took effect on June 6, 2009. Under CRAV, if a youth committed one of six enumerated acts of violence[2] on or off school grounds,[3] that youth would be secluded pending a disciplinary hearing. CRAV is a zero-tolerance policy; commission of one of the enumerated acts automatically resulted in seclusion. Youth convicted of a CRAV-act at the disciplinary hearing could be sentenced to further seclusion. CRAV seclusion automatically triggered suspension from school.

DYS developed a replacement program titled Individualized Response to Acts of Violence ("IRAV") beginning in March 2010. DYS first implemented IRAV as a pilot project at Indian River Juvenile Correctional Facility and Scioto Juvenile Correctional Facility on April 1, 2010. Because DYS saw an immediate reduction in seclusion hours, it expanded IRAV to all facilities on June 1, 2010. Under IRAV, the commission of one of four acts of violence triggers an assessment by DYS staff, after which the youth may be placed in seclusion. Unlike CRAV, IRAV is not a zero-tolerance policy, and staff may consider some amount of contextual information in deciding whether to seclude a youth. If seclusion is warranted, the youth is secluded from four to twenty-four hours. DYS staff then assess the youth using pre-established guidelines to determine whether he or she can be safely released into the general population. As under CRAV, secluded youth do not receive educational services. Beginning in June 2010,

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[2]These six acts were as follows: assault on staff, assault on youth, fighting, obstructing/interfering with responsibilities of staff, inciting and/or engaging in a riot or disturbance, and sexual contact with staff.

[3]Youth committed to DYS are educated in schools within the juvenile facilities; these schools together comprise the Buckeye School District.

though, DYS began providing education services to all youth who had been out of school for more than 10 days.

On December 9, 2009, Plaintiffs submitted a letter invoking the dispute resolution process established in Part XVIII of the Stipulation. The Parties attempted to reach agreement on the six issues that the Plaintiffs identified and were successful on four. The remaining two issues are the following: (1) the educational services provided to youth on Special management Units ("SMUs") [at the Ohio River Valley Juvenile Correctional Facility], and (2) the meaning of a "full school day" in Stipulation Paragraph 189. Under Paragraph 258, the Plaintiffs may seek equitable relief from this Court to enforce the terms of the Stipulation if they have tried but failed to resolve the dispute extrajudicially in accordance with Part XVII. The Plaintiffs, invoking Paragraph 258, filed a motion with this Court on March 15, 2010 to obtain an order that the Defendant comply with the educational provisions of the Stipulation (Doc. 164); Plaintiffs withdrew that motion without prejudice on March 25 in order to continue negotiations with the Defendant (Doc. 169). Plaintiffs subsequently renewed that motion on August 3, 2010 (Doc. 208), and the Defendant filed its cross-motion on August 18, 2010 (Doc. 215).

The Plaintiff's position is, in essence, that the use of IRAV and the failure of DYS to provide educational services to youth in seclusion is in violation of several provisions of the Stipulation and, with respect to special education students, the IDEA. The Plaintiffs do not challenge DYS's right to suspend and expel students in some circumstances but argue that widespread use of these options – and the absence of educational services during suspension or expulsion – is not permitted by the Stipulation. The Plaintiffs ask the Court to find the following:"that the school suspension and expulsion policies and practices followed by DYS

violate the stipulation; that DYS is violating the Stipulation with respect to Special Education services; and that such additional measures as are necessary be taken to implement this Court's order, including, but not limited to, enjoining IRAV and ordering focused monitoring."

The Defendant's position is that IRAV is a necessary and successful tool in ensuring youth and staff safety, and that their suspension and expulsion policies are not in violation of any law or of the Stipulation.

There is one additional matter before the Court. Paragraph 256(b) of the Stipulation authorizes the Monitor to "render a final and binding decision" on disputes between the Parties. The Plaintiffs request a declaration that Paragraph 256(b) empowers them unilaterally to submit a dispute for binding arbitration to the Monitor. The Defendant argues that the Court refrain from such a declaration as the issue is moot or, in the alternative, that the Court declare that the Parties must both agree to submit a dispute to the Monitor.

II. MONITOR COHEN'S REPORT

Monitor Cohen submitted his Report & Recommendations on Dispute Resolution: Education on October 6, 2010 (Doc. 220). The Report issued thirteen specific recommendations for resolving the disputes between the Parties in a manner consistent with the Stipulation. Monitor Cohen drew from his experience as Monitor, from the pleadings before this Court, from the views of the Monitoring Team's education experts, and from submissions from both Parties in formulating his recommendations. The Monitor circulated a draft of his Report with the Parties before submitting it to this Court and states that the Defendant agreed to Recommendations 1-2 and 4-9 as written.

The Parties each object to a number of the Report's recommendations; the Court will turn

to these objections below. As for the recommendations to which neither Party objects – numbers 4, 5, 6, and 9 – the Court concurs with the Monitor's assessment and adopts the recommendations in full. An Appendix with the recommendations (both objected-to and unobjected-to) as adopted is attached to this order.

A. IRAV

Monitor Cohen recommends that the Court deny the Plaintiffs' request to enjoin the use of IRAV and the Plaintiffs' request for a declaration that DYS's seclusion policies are not in compliance with the Stipulation. According to the Report, the use of IRAV reduced the total number of seclusion hours across all facilities by 55% from January 2010 to August 2010. Monitor Cohen encourages the Court to take note of this success and to find the Defendant's efforts and the continuing monitoring of this issue to be consistent with the Stipulation. The Court agrees. While it shares many of the Plaintiff's concerns about IRAV and the use of seclusion, the evidence now before the Court reveals a positive downward trend, and the Court believes that remaining concerns about the policy are best addressed through the cooperative monitoring process. Plaintiffs' objection to the use of IRAV and to those Recommendations based on the continuing use of IRAV (Nos. 2, 3, 7, & 11) are hereby **DENIED**.[4]

B. Recommendation 1

Monitor Cohen, with the Defendant's agreement, recommends that DYS no longer expel or suspend students from any school. As a safeguard, the Monitor proposes that the Facility

[4]The Court wishes to note that the Defendant has amended IRAV to ensure compliance with Stipulation Paragraph 76(b), which requires that the Superintendent or his designee authorize any isolation beyond three hours (Doc. 239, p.14). This moots the Plaintiffs' objection that IRAV is facially incompatible with Paragraph 76.

Superintendent approve any emergency delays in educational opportunities and that such approvals be reviewed by the Monitor. Plaintiffs contend that the exception will subsume the rule and request that the Superintendent's approvals also be shared immediately with Class Counsel. Defendant responds that sharing with the Monitor is sufficient. The Court agrees with the Plaintiffs that sharing this information with both the Monitor and Class Counsel will best facilitate close supervision of this issue. The Court therefore **GRANTS** the Plaintiffs' objection. The last sentence of Recommendation 1 shall be revised to read as follows: "All such approvals will be reviewed by the Monitor and shared immediately with Class Counsel."

C. Recommendation 3

1. Recommendation 3(b)

The Plaintiffs object to Recommendation 3(b), which requires that the Alternative Educational Opportunities for youth in seclusion under IRAV "be initiated within 48 hours of any seclusion." The Plaintiffs argue that Stipulation Paragraph 197 mandates that "education services . . . follow the youth without interruption;" the Monitor's proposal, therefore, is not in line with the Stipulation. The Court agrees in part. Paragraph 197 does support the Plaintiffs' contention that services be provided immediately. In practice, however, "immediately" may be difficult (or even impossible) to achieve. If 48 hours becomes the typical length of time before educational services are resumed, then it is indeed too long. If, however, 48 hours serves merely as an outside bound, it is appropriate. The Court shall therefore **GRANT** in part and **DENY** in part the Plaintiffs' objection. Recommendation 3(b) shall be modified to read as follows: "Indicate that the AEO is temporary only but must be initiated as soon as possible but no more than 48 hours after any seclusion."

2. Recommendation 3(c)

Recommendation 3(c) reads as follows:

> The Defendants shall develop and adopt Policy & Procedures consistent with numbers 1 and 2, supra, which will include the following: . . . Indicate that youth may receive education opportunities outside the designated seclusion area at the earliest opportunity consistent with an individual finding of dangerousness and reviewed in compliance with the seclusion policy.

The Plaintiffs request that "may" be changed to "shall" and that the following sentence be added: "The presumption shall be that students will be educated outside of their cells unless there is an individualized determination that providing educational services outside the cells is too dangerous." Although the Defendant states that it objects generally to all of the Plaintiffs' objections, it raises no specific arguments against this proposal. The Court finds the Plaintiffs' edits to be in accord with the Stipulation and **GRANTS** the Plaintiff's objection.

3. Recommendation 3(e)

The Plaintiffs object to Recommendation 3(e). The Plaintiffs' proposal reads as follows, with changes indicated in bold:

> The Defendants shall develop and adopt Policy & Procedures consistent with numbers 1 and 2, supra, which will include the following: . . .Provide for teachers to be present and available to secluded students throughout the **full** school day. The duties and responsibilities of such teachers shall be specified and provide that such AEO students will be recorded as present, receive graduation credits in accordance with completed assignments and, in addition: (1) Ensure that ICPs are

delivered to students; (2) Provide **direct and** ongoing **individualized** instructional assistance to students **in a manner which actively engages them in the learning process**; (3) Coordinate, deliver, and return student assignments from the ICP to designated personnel; (4) Serve as a liaison between the school and the unit management for the delivery of instructional services to general education, and/or special education instruction; and (5) Ensure that students **receive 5.5 hours of instruction every day with ongoing teacher contact consistent with finding #5.**

The Defendant objects that providing a full school day of teacher-led instruction is not safe, practical, or logistically possible. It points out that Monitor Cohen's plan, which includes four visits per day from teachers and ICPs on the computerized learning programs identical to what students in the classroom use, appropriately balances DYS's interests in maintaining the safety of youth and staff and in educating secluded youth. The Defendant additionally objects to the use of the word "ongoing" in clause (2), which they find too vague. They suggest instead that Paragraph 3(e)(2) reads: "Provide ongoing instructional assistance to students such that youth are visited at least 4 times a day."

Stipulation Paragraph 189 requires that DYS provide "at least 5.5. hours of scheduled classes, supervised activities, or approved educational options" to "all youth." The Stipulation also discourages an over-reliance on "high-tech worksheets unlikely to improve student achievement or behavior" and contemplates student-teacher interaction as necessary to a successful educational program. Stip. Para. 217. In accordance with these provisions, the Court finds that the Plaintiffs' addition of the word "full" and their modification of clause (2) are better

aligned with the terms of the Stipulation than Monitor Cohen's proposal. These portions of the Plaintiffs' objections are **GRANTED**.

The Plaintiffs' alterations to clause (5), however, exceed what the Stipulation requires. The Stipulation does not mandate a particular mode of instruction for students in seclusion so long as they receive a full school day of academic work. It does, as all Parties recognize, mandate minimizing the reliance on seclusion. *See* Stip. Para. 76. The Court believes that as DYS, in conjunction with the Monitoring Team, continues to work towards a seclusion policy that isolates as few students as necessary for the shortest duration necessary, Monitor Cohen's proposal that "students are visited at least 4 times a day" is adequate to balance the competing interests at stake. The Court also finds that the Defendant's suggestion for Recommendation 3(e)(2) is redundant in light of Recommendation 3(e)(5). The Plaintiffs' objections to clause (5) of Recommendation 3(e) and the Defendant's objection to clause (2) are therefore **DENIED.**

4. Additional Sentence

Finally, the Plaintiffs request that the following sentence be added to Recommendation 3: "Indicate that staff shall follow the terms of any applicable IEP if the student is a special education student." The Defendant poses no specific objections to this statement, which does no more than reaffirm DYS's obligations under the Stipulation. The Plaintiffs' request is hereby **GRANTED**.

C. Recommendation 7

Recommendation 7 provides as follows:

> The Monitor recommends and the Defendants agree that seclusion of DYS youth should be minimized as to the number of youth and the duration of seclusion and

> under conditions that are the least restrictive in light of the youth's conduct and staff assessment of risk. The Monitor shall report, at least annually, on progress in this area specifying the evaluative criteria used in such reporting.

The Plaintiffs object to this recommendation because they disagree with Monitor Cohen and DYS on the appropriate level of seclusion. They therefore ask that the following addition be made: "Benchmarks shall be set by the Monitor for reducing seclusion of DYS based on relevant performance based statistics from other jurisdictions, in consultation with DYS and Class Counsel." With the change of Monitor, the basis for the Plaintiffs' objection has dissipated. The Court declines to intervene in the Monitor's performance of his responsibility without grounds for doing so, and the Plaintiffs' objection to Recommendation 7 is **DENIED**.

D. Recommendation 8

1. Recommendation 8(b)(i)

Recommendation 8(b)(i) governs services for youth at the ORV Special Management Units and the Transitional Unit. It provides that the Interdisciplinary Team ("IDT") shall determine the educational setting for these students. The Plaintiffs request that the IDT only make that determination for general education students, and that the IEP Team make the determination for special education students. The Defendant counters that Recommendation 8(g) ensures that special education students will receive education in accordance with their IEPs, and that the IDT, which includes education staff, is the appropriate group to make the determination of the educational setting. The Court defers to the Monitor's expertise and **DENIES** the Plaintiffs' objection.

2. Recommendation 8(g)

The Plaintiffs also object to Recommendation 8(g), which reads in full as follows:

> Special education students will receive education opportunities in accordance with the IEP. Each special education student who manifests violent behavior will be reviewed in accordance with the requirements of Special Education Law, and the IEP.

The Plaintiffs contend that this statement is too vague. They request the addition of the following language to the end of 8(g):

> Manifestation reviews must be conducted prior to a change in educational placement and must not be pre-determined to justify IRAV decision making. Positive manifestation reviews may not result in a change of physical placement which is disciplinary in nature, including seclusion under IRAV, SMU placement or STG designation. Manifestation reviews must be conducted with appropriate notice to the parents who should be included whenever possible. "Trigger language" may not be used in an IEP to designate placement changes (including the above seclusion options) in an IEP. Gang behavior must be individually assessed in any behavior assessment or intervention in the same manner in which other problem behaviors are addressed.

The Plaintiffs' objection is grounded in Ava Crow's spring 2010 reports, attached as exhibits to the Plaintiffs' Motion (Doc. 208, Exs. 1-4). The Court finds the evidentiary basis for the Plaintiffs' request to be sound but outdated. For example, at the time Ms. Crow issued those reports nearly one year ago, DYS still used CRAV. Additionally, in Ms. Crow's report from May 18, 2010, she indicated that the problems surrounding "trigger language" had mostly abated (Doc. 208, Ex. 3, p.3). Monitor Cohen's language reinforces DYS's obligations towards special

education youth in seclusion without enjoining or prescribing behavior which may or may not be warranted by current practices. The Court therefore **DENIES** the Plaintiffs' objection to Recommendation 8(g).

E. Recommendation 10

This Recommendation allows for the temporary suspension of educational services in a limited number of circumstances. The Plaintiffs request the addition of the following:

> Any temporary suspension of services pursuant to this rule shall continue only for the remainder of the school day. If services are temporarily suspended for any student twice or more per week, a record of the suspension including the reasons therefor shall be created and transmitted immediately to the Facility Superintendent, the Monitor and Class Counsel.

As with Recommendation 1, the Court believes that sharing this information with Class Counsel will facilitate close supervision of this issue. The Court otherwise finds the Plaintiffs' additions to be reasonable and in accordance with the Stipulation. The Court therefore **GRANTS** the Plaintiffs' objection, and the Plaintiffs' proposed addition shall be adopted in full.

The Plaintiffs additionally request clarification that Scioto youth be educated, asking for the following addition to Par. 10: "All students at Scioto Juvenile Correctional Facility will be educated consistent with these findings." The Defendant's response to this objection is that (1) "[a] number of youth at Scioto JCF are on intake status and are undergoing assessments"; (2) Ohio Rev. Code § 5319.07(A)(1)(b) exempts children "in an assessment program or treatment intervention program" from the requirement that DYS provide educational services to its youth; and (3) DYS is therefore not required to provide educational services to youth at Scioto (Doc.

239). They note that, despite this exemption, they provide at least some educational services to Scioto youth. The Monitor's Report does not directly address DYS's contention that Scioto youth need not be educated because they are in an assessment status.

Although not argued by the Parties, Stipulation Paragraph 189 supports the Defendant's position. It provides that "DYS shall establish a plan to adapt any education that is provided to reception center youth in a manner that is appropriate under federal and state law." The Stipulation therefore recognizes that, although youth at Scioto must be educated, the educational program necessarily differs from that of other institutions because of the transitional status of many of its youth. Furthermore, it appears based on the information now before the Court that DYS already provides educational services appropriate under state law.[5] The Plaintiffs' proposal would contradict Paragraph 189, and the Court accordingly **DENIES** the Plaintiff's objection.

III. DISPUTE RESOLUTION

The final matter before the Court is the proper interpretation of Stipulation Paragraph 256. That paragraph provides that, "[i]n the event a dispute arises as to whether Defendants have failed to substantially comply with any term of [the] Stipulation," Plaintiffs' counsel initiates the dispute resolution procedures by notifying Defendant's counsel in writing of the alleged noncompliance. Stip. Para. 256(a). Within thirty days of that notice, counsel for the Parties must meet; either Party may request the Monitor's involvement at that meeting. Stip. Para 256(b). If the Parties have failed to resolve the matter within twenty days of the meeting, then Plaintiffs' counsel must inform Defendant's counsel of the continuing dispute in writing, "and Plaintiffs

[5]The Parties have not heavily briefed this issue, however, and the Court withholds judgment as to whether the educational services at Scioto are in full compliance with the educational portions of the Stipulation.

may then have due recourse to any appropriate legal proceeding or agree that the Monitor may render a final and binding decision." *Id.*

The Plaintiffs argue that paragraph 256(b) grants them the authority to submit a dispute to the Monitor for final and binding resolution without the Defendant's consent.[6] The Defendant argues that Paragraph 256(b) requires that both the Plaintiffs and the Defendant must agree to submit a dispute for binding resolution by the Monitor. The Defendant also argues that, because the educational dispute is before this Court, the question whether the Plaintiffs have the power to unilaterally submit a dispute to the Monitor for binding resolution is moot. *Ailor v. City of Maynardville*, 368 F.3d 587, 596 (6th Cir. 2004) ("A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.") (citations and quotations omitted).

The Court has the authority to issue declaratory judgments only so long as the matter is not moot, meaning there is "a dispute which 'calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts.'" *Ashcroft v. Mattis*, 431 U.S. 171, 172 (U.S. 1977) (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 242 (1937)). There must be "'a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *City of Parma v. Cingular Wireless, LLC*, 278 Fed. Appx. 636, 641 (6th Cir. 2008) (quoting *Maryland Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)). In the matter *sub judice*,

[6]In the educational dispute, in fact, the Plaintiffs attempted to invoke their unilateral right to have the Monitor issue a binding ruling. When the Defendant responded that it would not agree that the Monitor's ruling would be binding, Monitor Cohen chose not to act as the arbitrator. The Plaintiffs then submitted the educational dispute to this Court.

the controversy over the interpretation of Paragraph 256 lacks immediacy. Because the Plaintiffs chose an alternate route for resolution of their dispute, their rights under Paragraph 256 are not presently at issue. The resolution of the meaning of Paragraph 256 would have no effect on the outcome of the educational dispute, the only dispute currently in the midst of the formal grievance process. The Plaintiffs are correct that there is the potential for the issue to arise again, but that may not happen anytime soon, if ever. A ruling at this juncture would be an abstract decision not tied to any particular controversy. As such, it would be an impermissible declaration of "principles or rules of law which cannot affect the matter in issue in the case before it." *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992).

The Plaintiffs attempt to avoid this result by invoking the exception to the mootness doctrine for matters "'capable of repetition, yet evading review.'" *Murphy v. Hunt*, 455 U.S. 478, 482 (U.S. 1982) (per curiam) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (per curiam)). The Plaintiffs overlook one essential element of that doctrine: that "'the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration.'" *Id.* (quoting *Weinstein*, 423 U.S. at 149). The deadlines in the Stipulation's grievance procedures do not prevent the Plaintiffs from initiating the process, seeking a declaration from this Court on their rights under Paragraph 256, and then continuing to a resolution of the dispute with the Monitor or this Court. It is true that the Plaintiffs would be forced to suffer some delay while the Paragraph 256 question is litigated, but the Court believes that the delay would not be unduly long, particularly as the Parties have now already briefed the issue. Regardless, the possibility of some slight prejudice to the Plaintiffs does not change the fact that this Court only has the power to adjudicate this question if or when the Plaintiffs again attempt to invoke a unilateral right to

seek a binding resolution from the Monitor.

For the reasons stated, the Court **DENIES AS MOOT** the Plaintiff's motion[7] for a declaration of the meaning of Paragraph 256(b).

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** the Plaintiffs' objections to Recommendations 2, 7, 8, and 11; **GRANTS IN PART** the Plaintiffs' objections to Recommendations 3 and 10; and **GRANTS** the Plaintiffs' objections to Recommendation 1. The Court **DENIES** the Defendant's objection to Recommendation 3(e). The Court **DENIES AS MOOT** the Plaintiffs' motion for a declaration of the meaning of Paragraph 256(b). The Court **ADOPTS** the Recommendations as modified and embodied in the Appendix to this Order.[8]

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATE: March 28, 2011

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[7]In its original Cross-Motion, the Defendant also asked for an declaration of the meaning of Paragraph 256(b). (Doc. 215, p.31). It withdrew that motion in its Objections to the Monitor's Report, in which the Defendant argued that the dispute over the meaning of Paragraph 256 was moot. (Doc. 234, p.3). Thus only the Plaintiffs' motion for a declaratory judgment remains pending.

[8]Monitor Cohen's Report includes thirteen recommendations. Recommendation 11 contains the Monitor's position that IRAV is consistent with the Stipulation; Recommendation 12 is an overview of the DYS policies that the Monitor believes are responsive to the Plaintiffs' concerns about an overly punitive approach to regulating youth conduct; and Recommendation 13 contains the Monitor's position on the meaning of Paragraph 256(b). These recommendations were not drafted as prescriptions for future behavior, and the Court has not included them in the Appendix.

APPENDIX

1. The Monitor recommends that DYS no longer expel or suspend youth from any BUSD school. In the most extreme, life-threatening situations, DYS may delay offering involved youth educational opportunities subject to approval by the Facility Superintendent and only for the period of time so approved. All such approvals will be reviewed by the Monitor and shared immediately with Class Counsel.

2. Any youth who is secluded either before or after an Individualized Response to Acts of Violence ("IRAV") hearing shall receive individualized educational opportunities.

    a. Those education opportunities will be offered in the least restrictive setting and means consistent with the need to provide a safe environment for the youth and staff.

3. The Defendants shall develop and adopt Policy & Procedures consistent with numbers 1 and 2, supra, which will include the following:

    a. Describe generally a program of temporary Alternative Educational Opportunities ("AEO") for youth identified by IRAV as posing a threat to others.

    b. Indicate that the AEO is temporary only but must be initiated as soon as possible but no more than 48 hours of any seclusion.

    c. Indicate that youth shall receive education opportunities outside the designated seclusion area at the earliest opportunity consistent with an individual finding of dangerousness and reviewed in compliance with the seclusion policy. The presumption shall be that students will be educated

outside of their cells unless there is an individualized determination that providing educational services outside the cells is too dangerous.

d. Indicate that the appropriate school administrator will schedule education staff to deliver and collect individually appropriate ICP packets and enter this data in the CSLS.

e. Provide for teachers to be present and available to secluded students throughout the full school day. The duties and responsibilities of such teachers shall be specified and provide that such AEO students will be recorded as present, receive graduation credits in accordance with completed assignments and, in addition: (1) Ensure that ICPs are delivered to students. (2) Provide direct and ongoing individualized instructional assistance to students in a manner which actively engages them in the learning process. (3) Coordinate, deliver, and return student assignments from the ICP to designated personnel. (4) Serve as a liaison between the school and the unit management for the delivery of instructional services to general education, and/or special education instruction. (5) Ensure that students are visited at least 4 times a day.

f. Indicate that staff shall follow the terms of any applicable IEP if the student is a special education student.

4. DYS youth will receive appropriate credit for school work regardless of where such work is done.

5. BUSD students shall be recorded as present when school work is provided in settings

other than the classroom.

6. 5.5 hours shall be considered the norm for a school day. When that norm cannot be achieved due to an act of nature, safety concerns, a student's inability to work for that amount of time, or similar reasons, a record of the shortfall and reasons therefore shall be created and regularly reviewed by the Monitor. Reductions in the duration of the school day for special education students shall be accomplished consistent with IDEA.

7. Seclusion of DYS youth should be minimized as to the number of youth and the duration of seclusion and under conditions that are the least restrictive in light of the youth's conduct and staff assessment of risk. The Monitor shall report, at least annually, on progress in this area specifying the evaluative criteria used in such reporting.

8. Students assigned to the ORV Special Management Units and the Transitional Unit (now referred to as Hayes) will receive full educational opportunities consistent with the requisite plans in place for the youth. The Defendants shall develop and adopt Policy and Procedure consistent with this general accord, which will include the following:

    a. Specify generally that youth confined to the Transitional Unit will continue to receive high school educational courses in a self-contained classroom located within the high school building.

    b. Describe the settings for the provision of such education as including a classroom on the unit, a classroom in close proximity to the unit, a classroom in close proximity to the unit or Individual Course Prescriptions in the youths' room.

        (i) Indicate that the IDT shall make this determination and describe

generally the criteria to be used in making this determination.

(ii) Students who are required to remain in their room for education services will be provided Individual Course Prescriptions and will have qualified teachers available on the unit to provide assistance.

(iii) The IDT or IEP Team, as appropriate, will be bound by the principles of providing such education opportunities in the setting that is least restrictive of liberty and of providing criteria, conveyed to the youth, which allows youth to progress from a "most restrictive" to a "least restrictive" setting.

c. Education services shall include at a minimum a period each of math, English, science, and social studies as well as two period of electives which may include a course in Wellness.

d. Youth will have ready access to their A+, computerized learning curriculum via computer stations in unit classrooms.

e. Core classes will be provided by teachers licensed in math, science, English, and social studies.

f. Students will be enabled to earn graduation credits by performing the required academic work.

g. Special education students will receive education opportunities in accordance with the IEP. Each special education student who manifests violent behavior will be reviewed in accordance with the requirements of Special Education Law, and the IEP.

9. DYS shall more fully integrate educational services and any plans for such services with the unified case plan and the re-entry plan.

10. Consistent with the students' IEPs and behavior intervention plan, DYS may provide for the temporary suspension or cancellation of individual AEO or SMU services where a student:

– Exposes staff or other youth to urine or fecal matter;

– Spits or attempts to spit on staff;

– Exposes themselves or masturbates;

– Creates a situation causing universal precautions, i.e., soaks school work in body fluids, poses a danger to self or others;

– Disrupts the instructional process by threatening, menacing, or verbally abusing staff;

– Any other similar disruptive conduct.

Any temporary suspension of services pursuant to this rule shall continue only for the remainder of the school day. If services are temporarily suspended for any student twice or more per week, a record of the suspension, including the reasons therefore, shall be created and transmitted immediately to the Facility Superintendent, the Monitor and Class Counsel.