

**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

This matter is before the Court on Monitor Fred Cohen’s Second Annual Report (Doc. 187) and the Parties’ objections to the Report (Docs. 203, 205, 209, & 213). The Court will consider the Parties’ objections in turn.

I. DEFENDANT’S OBJECTIONS

The Defendant specifically objects to four of the Monitor’s recommendations. First, the Defendant objects to Recommendation 5. This Recommendation calls for the provision of “a full school day to all students on specialized units, including the SMUs”¹ (Doc. 187, p.50). The Defendant objects that it does provide a full school day to youth who are not suspended or expelled. The Report, however, states that as of the writing of the report, students in the SMUs received no more than two full hours of education (Doc. 187, p.30). Stipulation Paragraph 189 requires that DYS provide “at least 5.5. hours of scheduled classes, supervised activities, or

¹“SMU” stands for “Special management Units.”

approved educational options” to “all youth,” so the Report’s conclusion that DYS is not providing a full school day to its students is adequately supported. The Court accordingly **DENIES** the Defendant’s objection.

Second, the Defendant objects to Recommendation 7, which reads as follows: “Education services for special education students on specialized units, including the SMUs, should be provided in the least restrictive environment and consistent with the students’ IEPs² that have been prepared to address the students’ needs” (Doc. 187, p.51). The Defendant counters that special education students living on the SMUs are receiving services according to their individualized IEPs. The Defendant’s assertion is unsupported, whereas Recommendation 7 arose from site visits that revealed that the provision of services on the SMUs had been based on the availability of staff rather than on student need as the IDEA requires (Doc. 187, pp. 29-30, 35-38). For this reason, the Court **DENIES** the Defendant’s objection.

Third, the Defendant objects to Recommendation 14 (Doc. 187, p.53). In his Recommendation, the Monitor urges the Defendant to eliminate its suspension and expulsion policy until it can execute the policy in conformity with Ohio law, the IDEA, and the United States Constitution. The Defendant contends that its policy is in compliance with all applicable laws. In contrast to the Defendant’s conclusory statement, the Monitor details the reasons for his determination that the suspension and expulsion policies were in violation of the law (Doc. 187, p.37).³ The Court therefore **DENIES** the Defendant’s objection.

²“IEP” stands for “Individual Education Plan.”

³The Court additionally notes that, since the close of the briefing on the Second Annual Report, the Defendant has agreed not to suspend or expel students (Doc. 220, p.27).

Fourth, the Defendant objects to the reference to the replacement of the Release Authority with a Case Management system (Doc. 187, pp.134-36). The Defendant points out that the Release Authority is the product of years of development and was, at the time of the Report, a relatively new program; in that light, the Defendant states that it will evaluate the Release Authority after one year. To the extent that the Defendant's objection suggests that it and the Monitoring Team do not have an ongoing obligation to assess and modify programs as weaknesses become clear, the objection is **DENIED**.

II. PLAINTIFF'S OBJECTIONS

First, the Plaintiffs move that the expert reports that are the basis for the Report be filed and made part of the record. In the interest of transparency, the Plaintiffs' request is **GRANTED**. Monitor Will Harrell⁴ shall file all expert reports relied upon in the Second Annual Report within sixty days of this order. If Monitor Harrell is unable to identify any such reports, he shall so indicate by filing a notice in the record within sixty days of this order.

Second, the Plaintiffs object to the Report's failure to address a number of provisions of the Stipulation; the Plaintiffs identified these failures in a chart appended to their filings. The Court agrees that these gaps should be filled in. Having reviewed the Plaintiffs' chart, the Court concludes that Monitor Harrell shall provide a status report on the following provisions of the Stipulation:

- Paragraph 13, regionalized service delivery system;
- Paragraph 25, access to attorneys;

⁴The Court accepted Monitor Cohen's resignation on October 21, 2010 (Doc. 231) and appointed Monitor Harrell on December 21, 2010 (Doc. 243).

- Paragraph 32, Release Authority;
- Paragraphs 43-47, intake and classification;⁵
- Paragraph 48, unit staffing;
- Paragraph 50, phones in units;
- Paragraph 51, records;
- Paragraphs 52-64, rehabilitation and programming;⁶
- Paragraph 73, video monitoring;
- Paragraph 111, chronic care clinics;
- Paragraph 114, development of medical policy;
- Paragraphs 116-118, 120-23, and 125-26, medical assessments;
- Paragraph 129, ordering of medications;
- Paragraphs 133-34, physical plant and equipment;
- Paragraphs 139-40, documentation;
- Paragraphs 143-44, health education;
- Paragraphs 149 and 153, health care staffing;
- Paragraphs 158-61, 163, 165, 167, 170-72, 177 and 179, dental care;
- Paragraph 187, furniture;
- Paragraph 190, scheduling flexibility;
- Paragraphs 196-97, facilities;

⁵The Plaintiffs note that the Report did discuss these provisions but only in the context of mental health and not with respect to the general population.

⁶The Report again only discussed these provisions with respect to the mentally ill population rather than the population as a whole.

- Paragraph 203, communications;
- Paragraphs 213-15, career tech programs;
- Paragraph 218, internet access;
- Paragraph 226, Intervention Assistance Teams;
- Paragraph 230, student transition goals;
- Paragraphs 233-34, grievances; and
- Paragraph 265, criminal charges based on conduct within DYS facilities.

Monitor Harrell has informed the Court that monitoring progress on the above provisions varies widely. The Court will therefore order that the supplemental report be filed in two parts. First, the Court **ORDERS** that Monitor Harrell report upon the status of Paragraphs 25, 48, 50-51, 73, 111, 158-161, 163, 165, 167, 170-72, 177, 179, 187, 190, 196-97, 203, 213-15, 218, 226, 230, and 233-34 on or before June 28, 2011. Second, the Court **ORDERS** that Monitor Harrell report upon the status of Paragraphs 13, 32, 43-47, 52-64, 114, 116-18, 120-23, 125-26, 129, 133-34, 139-40, 143-44, 149, 153, and 265 on or before September 27, 2011.

Historically, the Monitor has submitted the “annual comprehensive report on overall compliance” required by Stipulation Paragraph 251 around the one-year anniversary of the adoption of the Stipulation in May 2008. For 2011, however, the Court deems it a waste of resources for Monitor Harrell to be compiling data for an annual report in the summer while also working towards fulfilling this Court’s order for the two supplemental reports. In light of this, the Court **ORDERS** that the Monitor’s Third Annual Report (for the year 2011) be due on or before December 31, 2011.

III. CONCLUSION

For the reasons stated above, the Court **DENIES** the Defendant's objections to Monitor Cohen's Second Annual Report. The Court further **GRANTS** in part the Plaintiff's objections and **ORDERS** Monitor Harrell to file the supplemental reports on the timetable outlined above. The Court **ORDERS** Monitor Harrell to file the expert reports relied upon in the Second Annual Report, or to file a notice that such reports could not be located, within sixty days of this order. The Court **ADOPTS** the Second Annual Report as written, subject to amendment by the forthcoming supplemental reports. Finally, the Court **ORDERS** Monitor Harrell to file the Third Annual Report on or before December 31, 2011.

IT IS SO ORDERED.

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

DATE: March 29, 2011