

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

THE UNITED STATES OF AMERICA

Plaintiff,

v.

CIVIL ACTION NO. 94-2080 CC

COMMONWEALTH OF PUERTO RICO

Defendant,

**INFORMATIVE MOTION TO APPROVE MONITOR'S
SECOND QUARTERLY REPORT FOR 2019**

The Monitor hereby submits her Second Quarterly Report for 2019 covering the period of April 1 through June 30, 2019 regarding compliance on remaining issues in this case.

Submitted August 30, 2019 by:

/s/Kim Tandy

Kim Tandy, Federal Monitor
United States v. Commonwealth of Puerto Rico
SPEHCE, VIG Tower
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Certificate of Service

I HEREBY CERTIFY that this, I electronically filed the foregoing with the Clerk of the Court on August 30, 2019 using the CM/ECF system, which will simultaneously serve notice of such filing to counsel of record to their registered electronic mail addresses.

Respectfully Submitted,

/s Kim Tandy _____

Kim Tandy

Federal Monitor, United States v. Commonwealth of Puerto Rico

SPEHCE, VIG Tower

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Commonwealth of Puerto

Civil Action No: 3:94 –cv-02080 (ccc)

Monitor’s Second Quarterly Report

April 1 – June 30, 2019

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Monitoring Team:
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Javier Burgos, JD
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Curtiss Pulitzer, AIA

EXECUTIVE SUMMARY

This Second Quarterly report contains information about the remaining 30 provisions in the Settlement Agreement, original Consent Order, and a 2009 addendum regarding staffing. Two provisions have reached Substantial Compliance; Paragraph 73 regarding behavior modification and treatment plans, and Paragraph 72 regarding emergency psychotropic drugs. A Motion to Terminate pursuant to the PLRA was filed to terminate Paragraph 73, with no objection by the DOJ, and is pending. During this quarter, the Monitor found Substantial Compliance this quarter with paragraph 93 (Extended School Year for Special Education) and Substantial Compliance with one of four sub-sections of Paragraph 86.

Two quarters have passed since the closure of Humacao, when the Monitor and her team relayed multiple concerns about the timing and lack of preparedness for this closure, and the ability of the remaining two facilities to absorb the youth being held at Humacao, the island's only juvenile detention facility. Two interim report have been filed with the Court as a result, detailing these concerns, as well as the First Quarterly Report. A status conference with the Court in February resulted in an Order requiring the Commonwealth to provide a plan for the installation and operation of video cameras at Villalba, and to complete various needed repairs in both facilities to maximize available living units and other needed areas.

In spite of often valiant efforts by many staff, Villalba and Ponce lack sufficient staff to maintain a safe and secure environment for the youth these house, have inadequate resources to comply with the current classification system, and are seeing an uptick in serious incidents involving youth assaults, self-harm, the use of pepper spray, and youth in protective custody. Several youth have been hospitalized as a result of assaults involving knives and other sharp objects, self-mutilation, and sexual assault. Staff and classification provisions, for the most part, have been downgraded from Partial Compliance to Non Compliance.

To date, Villalba does not have video cameras in operation. The needed repairs, while completed at Villalba, have not yet been done at Ponce.

The Monitor and her team have identified five (5) areas of concern which are impacting safety and security issues, and which need immediate attention. They have been detailed in a memorandum to the parties for discussion and presented to the Court during the third quarter along with a plan of action. These issues include the critical shortage of staffing resulting in non-compliance, classification issues resulting in non-compliance, shortages in psychiatric staff, concerns regarding isolation, and the need for increased reporting of incidents in a timely manner to the Monitor's office. These issues are discussed in detail in the relevant sections of this report.

A list of all ratings in the remaining 30 paragraphs follows.

| Parag. No. | Compliance Provision | 4th 2018 | 1st 2019 | 2nd 2019 | 3rd 2019 | 4th 2019 |
|-------------------|-----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
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| Physical Plant | | | | | | |
|--|---|----|----|----|--|--|
| S.A. 31 | Facilities conforming to Building Codes | PC | PC | PC | | |
| Policies and Procedures, Training, and Resources | | | | | | |
| C.O. 43 | Sufficient funding for Implementation of C.O. | PC | PC | PC | | |
| S.A. 45 | Agency Policy and Procedure Manual for all operations | PC | PC | PC | | |
| S.A. 50 | Training for current and new direct care staff | PC | PC | PC | | |
| Protection from Harm | | | | | | |
| S.A. 48 | Sufficient Direct Care Staff | PC | PC | NC | | |
| Jan 2009 Para. 1 | Reasonable Safety of Youth through Adequate Supervision | PC | PC | NC | | |
| Parag 2 | Sufficient Staff to Implement Decree and adequate supervision | PC | PC | NC | | |
| Parag 3 | Training for social workers if direct care staff | na | na | na | | |
| Parag 4 | Persons Hired to be Sufficiently Trained before deployed | SC | SC | na | | |
| Parag 5 | Monthly submission of master roster | PC | PC | PC | | |
| S.A. 52 | Classification | PC | PC | NC | | |
| S.A. 77 | Use of Force | PC | PC | PC | | |
| S. A. 78 | Investigations into Alleged Abuse and Maltreatment of Youth | PC | PC | PC | | |
| S.A. 79 | Protection and Isolation | PC | PC | PC | | |
| S.A. 80 | Conditions for youth in Protective Custody | PC | PC | PC | | |
| Mental Health and Substance Abuse Treatment | | | | | | |

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|--|---|----|----|----|--|--|
| S.A. 59 | Treatment Plans for youth with Substance Abuse problems | PC | PC | PC | | |
| C.O. 29 | Residential Mental Health Treatment Program | PC | PC | PC | | |
| S.A. 36 | Continuous Psychiatric and Psychological services | PC | PC | PC | | |
| S.A. 63 | Reducing Risk of Suicide | PC | PC | PC | | |
| S.A. 72 | Emergency Psychotropic Medication | PC | SC | SC | | |
| S.A. 73 | Behavior Modification and Treatment Plans | SC | SC | SC | | |
| Education and Vocational Services | | | | | | |
| S.A. 81 | Provision of Academic and Voc. Education to All Youth | PC | PC | PC | | |
| S.A. 86a. | Compliance with IDEA Requirements and Timeframes | PC | PC | PC | | |
| S.A. 86b. | Screening for youth with Disabilities (Child Find Provisions) | PC | PC | SC | | |
| S.A. 87 | Obtaining IEPs of Eligible Youth | PC | PC | PC | | |
| S.A. 90 | Delivery of Specially Designed Instruction and Related Services | PC | PC | PC | | |
| S. A. 91 | Qualified educational professionals and voc. Ed | PC | PC | PC | | |
| S.A. 93 | Year Round Services for Youth with IEPs | PC | PC | SC | | |
| S.A. 94 | Services to youth in isolation or other disciplinary settings | PC | PC | PC | | |
| S.A. 95 | Modification of IEPs | PC | PC | PC | | |

Compliance Ratings, Analysis and Recommendations

The Settlement Agreement requires that the Court retain jurisdiction of remaining claims “until such time as the Commonwealth has fully and faithfully implemented all requirements of the agreement and such full compliance has been maintained for one year.” (S.A. 103). Each provision of the Settlement Agreement (S.A.) or Consent Order (C.O.) will have only one compliance rating using the measures described below. Compliance ratings will be tracked by quarter in order to show which provisions come into and remain in substantial compliance over a one year period, and achieve “full and faithful compliance.” The Monitor and Consultants use a three-tiered system in this report defined as follows:

Substantial Compliance shall mean a level of compliance that does not significantly deviate from the components of the provision, provided that any deviation poses no significant risk to detainee health or safety. Substantial Compliance indicates that there are approved relevant policies and procedures which, when implemented, are sufficient to achieve compliance; trained staff responsible for implementation; sufficient staff and resources to implement the required reform; and consistent implementation of the procedures during the majority of the monitoring period. Substantial compliance also requires that the procedures accomplish the outcome envisioned by the provision.

The substantial compliance rating is given only when the required reforms address all of the issues discussed in the provision and when solid implementation of the reforms has been consistently demonstrated, through reliable data, observations and reports from staff and youth, for a majority of the monitoring period.

Partial Compliance indicates that compliance has been achieved on some of the components of this provision, but significant work remains. It indicates that there are approved relevant policies and procedures which, when implemented, are sufficient to achieve compliance; trained staff responsible for implementation; and sufficient staff and resources to implement the requirements of the provision. Partial compliance indicates that while progress has been made toward implementing the procedures described by policy, performance has been inconsistent throughout the monitoring period and additional modifications are needed to ensure that procedures are sufficiently comprehensive to translate policy into practice, and to accomplish the outcome envisioned by the provision. Partial compliance is appropriate if policies may need minor revisions for compliance with the Settlement Agreement provided other requirements of this section are applicable.

Non-compliance indicates that most or all of the components of the provision have not yet been met. Examples include provisions where policies still need to be overhauled, the majority of staff may need to be trained, procedures may not have been developed, documentation may not be in place or consistently provided, and there has been no determination that the procedures accomplish the outcome envisioned by the provision.

PHYSICAL PLANT - Curtiss Pulitzer

| S.A. 31 Existing facilities expected to be occupied by juveniles beyond Fiscal Year 1996-1997 shall conform to applicable federal, state, and/or local building codes. | |
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| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | <p>The Monitor's office continues to review the documents being developed by DCR's consulting architect Javier Valentin relative to compliance with this provision. No new document has been received in this quarter.</p> <p>I made a site visit on May 15-16, 2019 to see the progress being made relative to the physical plant repairs at Ponce and Villalba. At Villalba, I found that the facility was in a very good state of repair. All the mold remediation within the living areas and roof repairs have been completed; the facility had been painted both on the exterior and interior, with the school scheduled to be completed prior to the new school term. The Gym had a new floor and there was only a small area of potential water penetration that needed repair. The air conditioning was in good repair and 22 out of 24 units in living areas were in working order. The remaining two air conditioning units were scheduled for completion in the next few weeks after my site visit. The air conditioning in the school area was all working. All plumbing and hot water in living areas were in good repair. I reviewed the fire safety officer's life safety inspection reports and fire drill reports and all were in order.</p> <p>Ponce on the other hand was still in need of the same type of physical plant improvements and repairs as had been completed at Villalaba. All plumbing and hot water in living areas were in good repair and I reviewed the fire safety officer's life safety inspection reports and fire drill reports and all were in order.</p> <p>I was informed that DCR had run out of capital funds for Ponce and would not have new funds available until the start of the new fiscal year in July. In a meeting with the financial leadership of DCR and the Court Monitor, I presented my findings about both facilities. We were assured that the repairs at Ponce would be forthcoming and that \$800,000 had been allocated for the work needed at that facility. An additional \$100,000 was budgeted to move the recently upgraded emergency generator at Humacao to Villalba.</p> <p>I also had a functional team meeting with Javier Valentin, Luis Ortiz and Pedro Santiago (Kelvin Merced attended for part of the meeting) and reviewed and shared my comments on my site visits and Mr. Valentin's last report that was submitted to the monitor's office at the end of January. We discussed future deliverables and he stated at that time that he hoped to have the final report with recommendations for mediation and compliance in October.</p> |

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| | <p>I have also been monitoring the progress being made to comply with suicide prevention measures (See below and Para 79) in juvenile rooms, and I continue to monitor fire safety conditions, plumbing and air conditioning to insure that all housing units are functional and safe for juveniles to occupy.</p> |
| <p>Findings and Analysis</p> | <p>Mr. Valentin, the architect performing the Code Analysis, last submitted a draft report on January 31st which was reviewed by the monitor's office and discussed during the functional team meeting. (See discussion below) Future reports will be delivered in the coming quarter.</p> <p>There has been some positive movement in creating a solution to providing a solution to preventing suicides from occurring by a juvenile potentially attaching a ligature to the hinges in juvenile room doors. One example was shown to me in May. Subsequently, a new solution was developed in late July that would in effect provide a protective shield over the hinges to prevent a potential suicide from occurring. The monitor's office will be viewing several installations at Ponce during the coming quarter to evaluate the efficacy of this proposed solution. Funding for this "fix" was being budgeted for the new fiscal year.</p> <p>On a positive note, the replacement of air vent grills with suicide resistant versions on the lower levels of the housing units and in the admissions area at Ponce and Villalba were observed by the monitor and have all been completed.</p> |
| <p>What is needed for full compliance? What steps are required and/or recommended?</p> | <p>At the present time, Mr. Valentin is working on the various documents that will be part of the full report. The monitor's office received a partial draft of the second report on NFPA code compliance for Chapters 7 and 23 of the Life Safety Code dealing with egress requirements. As stated above this draft document was received on January 31st. This report is incomplete and Mr. Valentin is aware of this. According to his updated schedule that was recently received, a draft IBC and Puerto Rico building codes compliance report was to be delivered to the Monitor's office for review in late August.</p> <p>The primary document which serves as the basis of the building code analysis is the 2009 International Building Code (IBC) cross referenced with Amendments per Division II of the 2011 Puerto Rico Building Code. The codes also incorporate the relevant sections of the NFPA Life Safety Codes. In my meetings with Mr. Valentin and the Functional Team we discussed my edits to the last document, which Mr. Valentin will incorporate into a Final Draft.</p> <p>The next steps in the analysis will be for Mr. Valentin to document the ADA violations at the two existing facilities followed by recommendations as to what capital improvements will be needed to achieve full compliance, and projected costs for each recommend remedy. A revised schedule appears in the next steps section below. When the magnitude of compliance issues are fleshed out, a prioritization schedule will be developed along with potential timelines for compliance. Violations that affect Life</p> |

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| | Safety, and cannot be initially mitigated operationally, will have the highest priority for implementation. The financial resources available to DCR will become a key factor affecting a schedule for compliance at this juncture in the process. |
| Priority Next Steps | <p>The schedule for deliverables are as follows:</p> <ul style="list-style-type: none"> • Analysis of Chapter 7 of Life Safety Code Compliance - Draft Received • 2009 IBC/Puerto Rico Building Code Report- 8/19/19 • Analysis of ADA Compliance – 9/2/19 • Report Findings and Recommendations - 10/14/19 • Final Report Comments and Revisions – 11/12/19 • Final Report Submittal - 12/5/19 <p>DCR to develop a solution for resolving the suicide issues relating to door hinges.</p> |
| Quality Assurance Measures | The quality assurance measures are for the monitor’s office to keep reviewing the documents developed by Mr. Valentin and touring the facilities with Mr. Valentin to view first hand where the code and ADA violations may exist. This will occur once any violations are fully defined and documented. In addition, the monitor’s office are reviewing the spread sheets being developed by DCR to track facility repair issues including suicide mitigation efforts followed up by tours to determine compliance.. |

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| Sources of Information upon which Consultant report and compliance ratings are based. | <p>The documentation being developed by Mr. Valentin will be the primary source to determine the levels of compliance with the codes and regulations. The financial resources to rectify violations and achieve compliance will need to involve discussions with the Secretary of DCR as well as senior officials within DCR and the Commonwealth hierarchy responsible for funding the agency.</p> <p>The spread sheets and photographs being submitted periodically by DCR will help the monitor’s office to track facility repair issues.</p> |
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POLICIES AND PROCEDURES, TRAINING AND RESOURCES – Kim Tandy

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| S.A. 43 Until this order is fully implemented, Defendants shall submit to the Legislature of the Commonwealth each fiscal year a report wherein the required sums of money will be established so as to implement this Consent Order. | |
| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | The Monitor requested a copy of the budget proposal sent to the legislature for 2019-2020 when completed, as well as projections of any cost reductions being presented to the PR Financial Oversight and Management Board (FOMB) for NIJ facilities and administration. On May 16 th , she met with Ulrich Jimenez Lopez, Secretario Auxiliar for the Department of Corrections and Rehabilitations, Julio Ortiz, Director of Purchasing, Edwin Perez, Special Assistant to the Secretary, Raul Cepeda, Director of NIJ, and |

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| | <p>Guillermo Samosa. The purpose of the meeting was to achieve a better understanding of the DCR/NIJ budget and fiscal constraints, and to begin discussions regarding compliance issues which have been hampered by the lack of financial or other resources. The meeting was a very positive step in working toward a plan for find the necessary resources within DCR or elsewhere.</p> <p>The Monitor focused in on 3 issues requiring additional resources, each of which was discussed during the May 16th meeting. First, a report prepared for DCR by Karla Vega Rosario, Safety Coordinator of Youth Institutions on April 8, 2019 documents the need to assign additional personnel to the two remaining institutions. Second, approval of funding and manpower to complete necessary physical plant repairs at Ponce is needed. Third, funding is needed to replace the hinges on some doors to make them suicide resistant and compliant with the Consent Decree. Curtiss Pulitzer of the Monitoring Team was also present and noted additional resources would be necessary for the facilities to comply with Paragraph 31 relative to code violations.</p> <p>The Monitor met extensively with key facility staff at Ponce and Villalba during her visit in mid-May regarding resource issues such as staffing, the adequacy of facilities, and any other concerns or impact resulting from the closure of Humacao. She also met with and obtained the above referenced staffing report from Karla Vega Rosario and visited the Division of Assessment and Classification (DAC).</p> |
| <p>Findings and Analysis</p> | <p>While the DCR budget has been significantly reduced as a requirement of FOMB, it does not necessarily mean that there are insufficient resources to achieve compliance with the Consent Decree. DCR is expected to cut its budget an additional 44 million during FY 2019-2020 and an additional 93 million in FY 2020-2021. DRC is using a consulting firm to assist them with their FOMB requirements, and also to explore maximizing funding sources such as Title IV-E. It was suggested that the Monitor might arrange a meeting with these consultants from CPM in the near future. Ensuring that NIJ facilities are resourced appropriately is critical for compliance, but such resources will necessarily be taken from the overall DCR budget, which must necessarily sustain significant reductions for FOMB.</p> <p>The Vega Rosario report indicates the need for an additional 29 youth service officers at Ponce, as well as 4 supervisors, and 29 youth services officers and 4 supervisors at Villalba. The closure of Humacao and movement of youth to the remaining facilities has added transportation responsibilities, medical appointments, and other needs. At Villalba, where new video cameras are being installed, an additional allocation of 7 staff is needed for this function. Staffing shortages are creating significant percentages of double shifts and overtime pay and cannot continue. Some training events have reportedly been cancelled or scheduled at night or on weekends in order to accommodate staffing issues. Programming at times has been postponed or cancelled. Transporting youth to court and other appointments has meant that officers aren't available for youth activities and other services.</p> |

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| | <p>DCR must reallocate some of the 127 positions from the closure of Humacao back into the remaining two facilities, or must recruit a new class of officers to fill the void.</p> <p>The closure of Humacao has necessitated that the remaining two facilities address needed repairs to maximize the available space for housing youth and programming. Such work is being reported to the Court, with a next status conference occurring August 13th. DCR has done a commendable job of allocating and completing needed resources for repair and/or replacement of air conditioning units, eradication of mold and repainting ceilings and walls, and repairing leaky roofs at Villalba. Curtiss Pulitzer of the Monitoring Team has indicated he has never seen the facility in such good shape. The same work needs to be complete at Ponce, however, and as of the time of this report, funding has not yet been approved through the DCR budget. This is anticipated in the new fiscal year, and work should begin immediately in these areas. More information on this issue can be found in the narrative regarding Paragraph 31.</p> <p>The third priority is to secure the resources for revisions to the door hinges in some bedrooms to make them suicide resistant. Some good progress was made on this during the course of this site visit with Curtiss Pulitzer working with NIJ maintenance staff. It is hoped that a plan can be agreed upon very soon and cost projections submitted. More discussion on this issue can be found in the narrative for Paragraph 79.</p> <p>The May 9th, 2019 report of the PR Fiscal Oversight and Management Board indicates a plan to “rightsize Puerto Rico’s correctional facilities and footprint” and achieve incremental cost reductions over the next five years from 44 million in FY 19 to 144 million in FY 2024. The Department of Corrections and Rehabilitation spends \$42 million in services offered to youth in the three existing NIJ facilities in Humacao, Villalba and Ponce. The Fiscal Plan indicates a plan to study the construction or rehabilitation and operation of a consolidated facility “through the modality of a private-public partnership,” noting an annual cost savings of \$19.4 million to be achieved beginning in FY 2022. Meanwhile, the report states that DCR is presently considering “externalizing “ services sooner, and is preparing a request for proposal intended for distribution in mid FY 2019, thereby realizing a cost savings by FY 2020. The plan notes that further cost savings from consolidations could occur to reduce the number of youth as appropriate, including early releases.</p> <p>The Monitor has requested a copy of the finalized budget for the 2019-2020 year to the legislature as certified by the FOMB once it is available. Reducing the budget by nearly half in the next few years may be possible, but the nature of these reductions and the impact on services to youth in the care of NIJ remains uncertain. That uncertainty continues to be cause for much concern. Budget cuts such as these could dramatically increase dangerous conditions which can place both youth and staff at risk and move the Commonwealth into further non-compliance status.</p> |
| <p>What is needed for full compliance?</p> | <p>DCR must ensure that its budget addresses adequate staffing, training, resources and physical plant requirements to fully comply with the provisions of the Consent Order</p> |

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| <p>What steps are required and/or recommended?</p> | <p>and Settlement Agreement. A plan with detailed time frames for addressing the three critical needs above should be a next step.</p> <p>While the staffing issue is addressed more thorough in Paragraph 48, the reliance upon double shifts in order to reach staffing compliance rates cannot continue at the current rate. Sixty seven (67) new staff are needed according to the staffing analysis completed. DCR must provide a plan for how staff will be reallocated to meet this need, or a plan for hiring and training new staff. This is a critical step which must be resolved with a concrete plan and timeframe by the Third Quarter.</p> <p>Approval of resources for repairs and replacement items at Ponce for air conditioning units, mold eradication, and roofing should be done as soon as possible, but no later than the start of the new fiscal year. Work should be completed before the August 13th hearing.</p> <p>The Office of the Monitor stands ready and available to assist the Commonwealth to ensure adequate financial resources are available to bring this case into full compliance.</p> |
| <p>Priority Next Steps</p> | <p>Continued meetings on financial issues and resources with the Secretary's office can help to ensure needed resources are found and utilized within DCR to comply with the Consent Decree. A list of necessary expenditures and resources should be agreed upon at these meetings with a plan and timetable for implementation. This should begin with the three items discussed in May: staffing increases, repair/replacement at Ponce, and hinge replacements.</p> <p>First, as discussed in the May meeting, Raul Cepeda must request approval of the additional staffing needed from the Secretary. It is then incumbent upon DCR management to either reallocate staffing previously at Humacao where possible, or approve recruitment and hiring of a new training class. Reallocating Humacao staff is complicated by the location of the remaining two facilities, union requirements, and pay differentials that some staff now receive after relocation to other positions. DCR/NIJ will to determine the best way to meet the staffing requirements without the high level of double shifts.</p> <p>Review any plans for the privatization of facilities or any additional closures with the Monitor, as well as other long-term plans for cost reductions, and other DCR cost savings measures which can impact compliance.</p> <p>Identify any other areas where additional funding is needed in order to comply with the Consent Order and Settlement Agreement which has not been identified in this report.</p> <p>Provide the requested documentation regarding budget, and other plans for cost reduction or NIJ operations impacting compliance, including the 2019-2020 budget detail for DCR when approved by the FOMB.</p> |
| <p>Sources of Information upon which Consultant</p> | <p>Fiscal Plan for Puerto Rico as submitted to the Fiscal Oversight and Management Board of Puerto Rico, September 7, 2018, found at http://www.aafaf.pr.gov/assets/pr-fiscal-plan-090718.pdf</p> |

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| <p>report and compliance ratings</p> | <p>The New Fiscal Plan for Puerto Rico: Restoring Growth and Prosperity, as certified by the Financial Oversight and Management Board for Puerto Rico on October 23, 2018.</p> <p>Restoring Growth and Prosperity, 2019 Fiscal Plan for Puerto Rico (May 9, 2019)</p> <p>Documentation relative to physical plant repairs and replacement of air conditioners, mold eradication, painting and roof repair.</p> <p>Phone calls and emails with staff and consultants.</p> | | | | | | | | | | | | | | |
| <p>S.A. 45 Within one year of the approval of the agreement by the Court, Defendants agree to provide an agency policy and procedure manual governing all operational aspects of the institutions. Within eighteen months of the approval of this agreement, Defendants shall further insure that the facilities are strictly operated within these policies and procedures and that all staff have been trained accordingly.</p> | | | | | | | | | | | | | | | |
| <p>Compliance Rating</p> | <p>Partial Compliance</p> | | | | | | | | | | | | | | |
| <p>Description of Monitoring process during this period of time</p> | <p>The Monitor has copies of existing policies and procedures in most of the remaining areas of the Settlement Agreement and Consent Order. The four remaining policies which must still be approved are for S.A. 43, S.A. 52, and several provisions related to education covered in Policies 20.1 and 20.2.</p> | | | | | | | | | | | | | | |
| <p>Findings and Analysis</p> | <p>The following policies and procedures have not been finalized and approved through the Office of the Monitor:</p> <table border="1" data-bbox="462 1050 1515 1837"> <tr> <td data-bbox="462 1050 727 1297"> <p>S.A. 52 Classification</p> </td> <td data-bbox="727 1050 917 1297"> <p>Not complete</p> </td> <td data-bbox="917 1050 1515 1297"> <p>Bob Dugan provided recommendations on July 18, 2018 to bring the existing policies into compliance. Necessary changes must include annual review of the validation of objective methods of classification instruments and processes.</p> </td> </tr> <tr> <td data-bbox="462 1297 727 1583"> <p>S. A. 79 and 80 Isolation and Protective Custody</p> </td> <td data-bbox="727 1297 917 1583"> <p>Not complete</p> </td> <td data-bbox="917 1297 1515 1583"> <p>A draft policy for TM and PC was provided to the Monitor on February 6, 2018 and comments provided by the Monitor’s Consultant on February 28. The Monitor has requested that DCR wait until the results of the QA process are available and can inform the content of revisions.</p> </td> </tr> <tr> <td data-bbox="462 1583 727 1717"> <p>S. A. 81 General and Vocational Education</p> </td> <td data-bbox="727 1583 917 1717"> <p>Completed not signed</p> </td> <td data-bbox="917 1583 1515 1717"> <p>Policy 20.1 has been amended to indicate that youth still enrolled in school and who are in TM/PC status receive a full school day.</p> </td> </tr> <tr> <td data-bbox="462 1717 727 1837"> <p>S.A 86, 91, 94</p> </td> <td data-bbox="727 1717 917 1837"> <p>Not complete</p> </td> <td data-bbox="917 1717 1515 1837"> <p>Changes are needed to Policy 20.2 to ensure procedural safeguards are included consistent with IDEIA</p> </td> </tr> </table> | | | <p>S.A. 52 Classification</p> | <p>Not complete</p> | <p>Bob Dugan provided recommendations on July 18, 2018 to bring the existing policies into compliance. Necessary changes must include annual review of the validation of objective methods of classification instruments and processes.</p> | <p>S. A. 79 and 80 Isolation and Protective Custody</p> | <p>Not complete</p> | <p>A draft policy for TM and PC was provided to the Monitor on February 6, 2018 and comments provided by the Monitor’s Consultant on February 28. The Monitor has requested that DCR wait until the results of the QA process are available and can inform the content of revisions.</p> | <p>S. A. 81 General and Vocational Education</p> | <p>Completed not signed</p> | <p>Policy 20.1 has been amended to indicate that youth still enrolled in school and who are in TM/PC status receive a full school day.</p> | <p>S.A 86, 91, 94</p> | <p>Not complete</p> | <p>Changes are needed to Policy 20.2 to ensure procedural safeguards are included consistent with IDEIA</p> |
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| <p>S. A. 81 General and Vocational Education</p> | <p>Completed not signed</p> | <p>Policy 20.1 has been amended to indicate that youth still enrolled in school and who are in TM/PC status receive a full school day.</p> | | | | | | | | | | | | | |
| <p>S.A 86, 91, 94</p> | <p>Not complete</p> | <p>Changes are needed to Policy 20.2 to ensure procedural safeguards are included consistent with IDEIA</p> | | | | | | | | | | | | | |

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| | Further discussion about policies and procedures are noted in other sections of this report as relevant in the sections noted above. |
| What is needed for full compliance? What steps are required and/or recommended? | <p>Approved policies and procedures should remain a priority in any area where the Monitor’s office has not yet approved of changes, and where policies do not adequately reflect the requirements of the Settlement Agreement and/or Consent Order.</p> <p>The Secretary’s office must sign off on Policy 20.1 as amended. Policy 20.2 must be amended to include procedural safeguards required under the IDEIA.</p> <p>Changes to the Classification Policy must be made according to recommendations by Bob Dugan. The third quarter site visit must address the outstanding policy issues and a timeframe should be established for completion of needed changes. This is included in the Monitor’s priorities regarding improving safety measures.</p> <p>The parties must include a definition of isolation in the policies on transitional measures and determine what does and does not trigger the provisions of Paragraph 79.</p> |
| Quality Assurance Measures | NIJ staff, under the leadership of Kelvin Merced, have been working on a set of policies regarding Quality Assurance which are under review by Bob Dugan. There has been discussion about piloting these QA measures starting in July. |
| <p>S.A. 50. Defendants shall ensure that current and new facility direct care staff are sufficiently well-trained to implement the terms of this agreement. Each direct care staff, whether current or new, shall receive at least forty (40) hours of training per year by qualified personnel to include, but not be limited to, the following areas: CPR (cardiopulmonary resuscitation); recognition of and interaction with suicidal and/or self-mutilating juveniles; recognition of the symptoms of drug withdrawal; administering medicine; recognizing the side-effects of medications commonly administered at the facility; HIV related issues; use-of-force regulations; strategies to manage juveniles' inappropriate conduct; counseling techniques and communication skills; use of positive reinforcement and praise; and fire prevention and emergency procedures, including the fire evacuation plan, the use of keys, and the use of fire extinguishers.</p> | |
| Compliance Rating | Partial Compliance |
| Methodology for Monitoring this Quarter | <p>A site visit was conducted during the week of May 13-16, 2019 and a meeting with Aida Burgos, Human Resource Director and Kelvin Merced was held to discuss training compliance and documentation.</p> <p>The Monitor reviewed the Annual Report prepared by NIJ staff for the period of July 1, 2017 – December 31, 2018, and an excel spreadsheet of completed training during that period by employees, and training schedules for January – June of 2019 .</p> <p>The Monitor and Compliance staff reaffirmed the required metrics for compliance with paragraph 50. It was agreed that five areas would be tracked for compliance, and that these provisions should also be part of quality assurance measures:</p> |

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| | <p>1) Required topics for training are scheduled and available with such frequency that all staff can attend as required.</p> <p>2) Training must be completed by qualified trainers with relevant, accurate and helpful materials and content as indicated by pre/post tests and evaluation of training sessions.</p> <p>3) Training completion by topic will meet targeted goals by topic (as noted below).</p> <p>4) Ongoing training needs will be assessed on an annual basis or more frequently if appropriate.</p> <p>5) Necessary revisions to training based on changes in policies and procedures will be made within a targeted time, with full implementation within 12 months.</p> <p>It is the intention of the Monitor to move this paragraph into self-monitoring mode for a specific period of time, allowing NIJ to self-report compliance on the agreed upon metrics for compliance. The process for this was discussed as well as the timeframe for beginning this process.</p> |
| <p>Findings and Analysis regarding compliance.</p> | <p>NIJ Policy 4 on training was approved previously. On March 11, IDECARH was provided with a support staff who has been able to afford much needed clerical and administrative support. This is an improvement in resources which should greatly benefit ongoing compliance with record keeping and documentation of training activities and participation.</p> <p>The 18 month report ending December 31, 2018 highlights the number of officers trained and the percentages of required training completion by topic. The data collected by IDECARH was based upon the 408 officers who were fully available for training purposes. Fifteen additional officers were inactive meaning they were on extended leave, abandonment of post, or reassigned to another facility that does not serve youth.</p> <p>The IDECARH report and indicates a total of 15,882 hours of training was provided during the 18 month period being reported upon. The prior Monitor determined that an 18 month period was sufficient based upon disruption in the training schedule in the second and third quarters of 2017 due to the hurricanes. Taking into account sick leave and relief factors, the 18 month time frame has been continued as a reasonable time measurement for compliance.</p> <p>Of the OSJs available for training, 55% completed the required 40 hours or more (100%+ completion rate) and an additional 18% completed between 36-39 hours, representing a 90% + completion rate. Slightly under 4% of OSJs at Villalba, Ponce and Humacao completed less than 30 hours of training during the period.</p> <p>The report details the percentage of staff which have completed training by topic by facility, ranging from a low of 28% for training on chemical restraints, and a high of 93% for training on suicide prevention measures.</p> |

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| | <p>The Monitor has received documentation from July 2017 – December of 2017 of training calendars, evaluation of training events, attendance logs and summaries of completion, and pre and post-tests. Evaluations include assessment by participants of trainer preparedness, adequate duration of time spent on the topic, presentation of materials in a clear and organized manner, adequacy of time on topics, adequacy of materials, facilities, and whether topics promoted greater efficiencies in meeting responsibilities. Pre/post tests generally showed good improvement in understanding materials, ranking most commonly in the 90-100th percentile range in post testing. Evaluations also suggest that topics are generally well rated overall with content, presentation, materials, and relevancy to work.</p> <p>Staff were unable to provide evaluations of training events, or pre and post tests for 2018. In the first quarter, they lost 4 years of data on their computer, and are still trying to locate the external hard drive which has the material backed up.</p> <p>The next 18 month report will be completed at the end of June, and should include reporting on all of the metrics identified for compliance with this paragraph.</p> |
| <p>What is needed to reach full and faithful compliance?</p> | <p>Agreed upon metrics for reaching compliance are as follows:</p> <ol style="list-style-type: none"> 1) Training sessions in all SA 50 categories must be planned and provided throughout the coming year with sufficient frequency to allow for ready access by participants in the remaining two facilities. A training calendar must be prepared in advance. 2) Training completion by active direct care staff must reach the targeted benchmarks by topic over an 18 month period, and corrective action plans for facilities not achieving those benchmarks must ensure that the remaining staff complete training within 180 days. This includes: <ul style="list-style-type: none"> • Training on the use of chemical agents must be completed at the 100% rate, but only for those who are authorized and certified to use OC spray. • CPR training and certifications must be completed every 2 years at the 90% level for those direct care staff. • Training on suicide prevention must be completed at the 90% rate for all direct care staff. • Facility directors must ensure that all other required trainings for this provision meet at least 85% completion rate within the 18 months. 3) Pre and post must be used to evaluate participants’ increase in knowledge and skills achieved by the training. Staff must pass such tests with a 70% or higher grade. 4) Evaluation of training modules and delivery must be sought by participants and through QA to ensure trainers are knowledgeable and skilled both in content and delivery to adult learners, materials are understandable and adequately cover the topic, and that content is relevant, current and accurate. 5) Ongoing training needs will be assessed at least on an annual basis or more frequently if needed to determine if modifications are necessary. Written documentation is required |

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| | <p>to show that such reviews have taken place and what changes if any have been made as a result.</p> <p>6) Necessary revisions to training based on changes in policies and procedures will be made within a targeted time, with full implementation within 12 months. Written documentation is required to show that such changes have been made and implementation scheduled and completed. It is important that such changes be coordinated with UEMNI and OISC and include recommendations based upon investigation findings and results.</p> <p>Appropriate clerical support must continue to assist the IDECAHR director to facilitate report preparation and compliance evidence.</p> |
| <p>Priority Next Steps</p> | <p>Documentation from IDECARH which supports compliance with the above metrics will determine if compliance has been achieved, and the point at which compliance was or will be achieved in order to show full and faithful implementation of this provision over an 18 month period.</p> <p>The next 18 month report should cover the period of January 1, 2018 – June 30, 2019 and provide detailed information on compliance with the 6 metrics listed above. This report should be reviewed with the Monitor during the site visit the week of August 12th, with a final draft completed no later than September 30th so that it can be included in the Third Quarterly Report.</p> <p>If the missing files from 2018 relative to training evaluations and pre and post testing can be retrieved, a summarized report can be provided for this metric, but back up files should be provided so they can be spot checked.</p> |
| <p>Basis for findings and recommendations</p> | <p>The findings and recommendations are based upon the annual report submitted, and discussion with the Human Resource Specialist., as well as documentation provided of monthly training.</p> <p>A review was also conducted of the Quality Assurance measures for training as part of Policy 22. The Monitor believes these can better align the QA measures with the metrics as indicated above.</p> |

PROTECTION FROM HARM – STAFFING (Bob Dugan)

S.A. 48. Defendants shall ensure that the facilities have sufficient direct care staff to implement all terms of this agreement. Direct care staff supervise and participate in recreational, leisure and treatment activities with the juveniles. Compliance can be demonstrated in either of two ways.

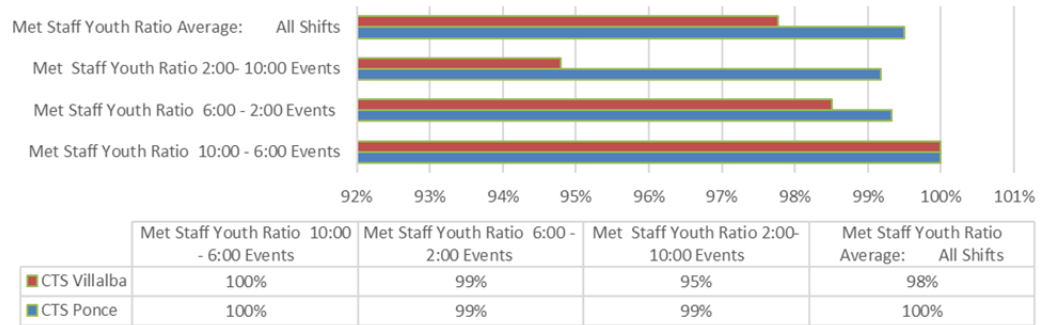
48.a Method one: Defendants may provide documentation of consistent supervision by not less than one (1) direct care worker to eight (8) juveniles during day and evening shifts and not less than one (1) direct care worker to sixteen (16) juveniles during normal sleeping hours.

48.b Method Two: Defendants may develop, and submit to the court for approval, an alternate staffing roster for any facility in this case. The roster shall be based on a study that shall specify fixed posts and the assignment necessary to implement the terms of this agreement, taking into consideration the physical configuration and function of spaces, the classification and risk profiles of youths involved, the incident patterns in the settings involved, the routine availability in the settings of other categories of staff, and the overall number of direct care positions necessary to consistently achieve the coverage proposed. Once a plan is approved for a facility, defendants shall document the employment of the necessary overall numbers of direct care staff, and the ongoing deployment of such staff in accordance with the plan.”

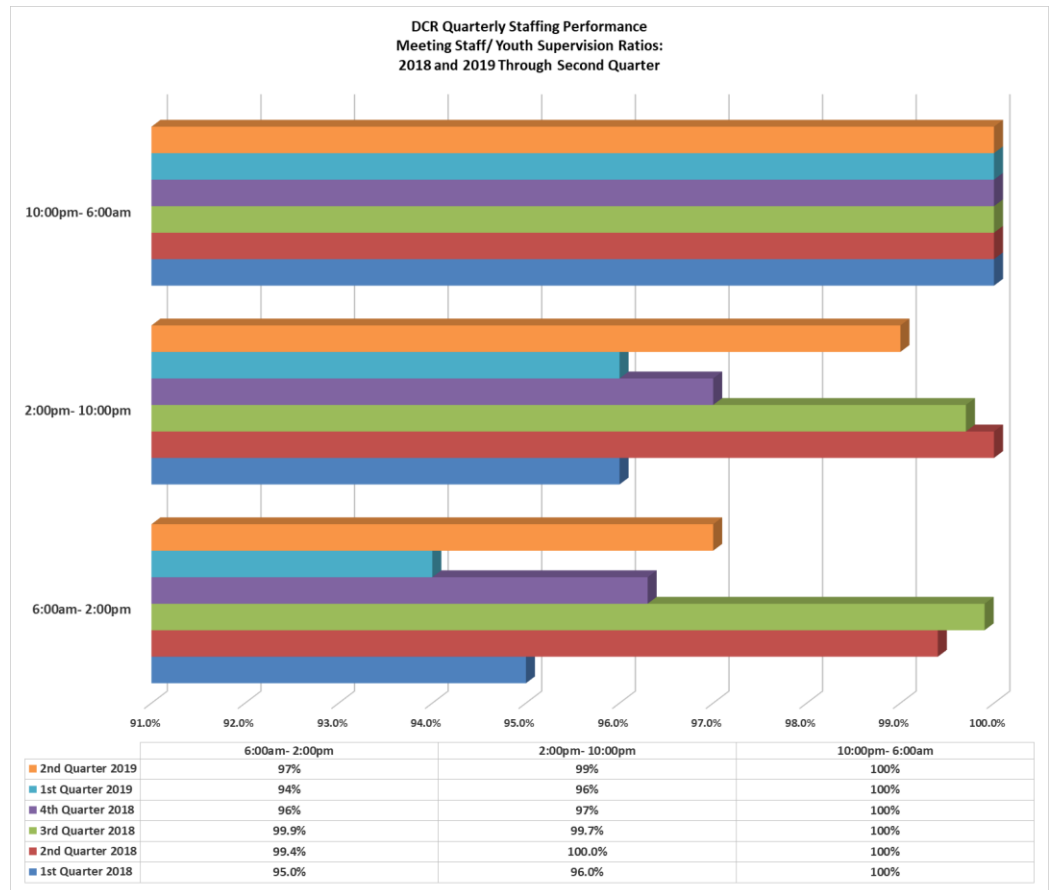
The Commonwealth has the choice to demonstrate compliance according to method 48.a or 48.b. They have informed the Monitor that they do not intend to select method 48.b and that their legal position is that this language should be struck from the Settlement Agreement as superfluous.

| Compliance Ratings | Non-Compliance |
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| Description of Monitoring process during this period of time | <p>S.A. 48 Staff Youth Ratio monitoring compliance is analyzed on a quarterly basis using DCR facility generated weekly staff youth ratio forms as well as the weekly Form DCR -NIJ - 0144. These forms are submitted to the Monitor’s Consultant throughout the reporting quarter. DCR facilities daily shift by shift staffing and youth population for each operational housing module is reported, as well as any 1:1 supervision events, and the volume of staff that are required to work a double shift. The compliance report provides information from Staff Youth Ratio forms that were provided to the Monitor’s Consultant for the period April 1, 2019 through June 29, 2019.</p> <p>The Monitor's staff conducted site visits on May 14 and June 4, 2019 to CTS Ponce and May 15 and June 5, 2019 to CTS Villalba. Observation and documentation of housing module staff youth ratios is conducted on each visit.</p> |
| Findings and Analysis | <p>DCR submitted a total of 26 facility staff youth ratio forms for the two facilities requiring staff youth ratios, allowing for 100% of the staff youth ratio forms being available for analysis. DCR has consistently provided all requested Staff Youth Ratio forms used for monitoring and reporting.</p> <p>The chart and table below represent staff youth ratio performance by shift for the period (April 1, 2019 through June 29, 2019).</p> |

DCR Facility Staff Youth Ratio Performance By Shift: Second Quarter 2019



The following chart represents the DCR agency Staff Youth Ratio averages by shift for 2018 through June 29, 2019:



Waking Hours Youth Ratio Events:

CTS Ponce reported meeting the minimum required staff youth ratio in 99% of the waking hour staffing events, meeting the staff youth ratio in 1456 of 1467. PUERTAS,

housed in one of the housing modules within CTS Ponce, met the minimum required staff youth ratios for all shifts throughout of the 2019 second quarter reporting period.

CTS Villalba reported meeting the minimum required staff youth ratio in 97% of the waking hour staffing events, meeting the staff youth ratio in 1415 of 1464.

The DCR 2019 second quarter performance in meeting Staff Youth Ratios is as follows:

- 6:00 am – 2:00 pm shift: 97% of events, a 3% increase from the first quarter of 2019 (94%)
- 2:00 pm – 10:00 pm shift: 99% of events, a 3% increase from the first quarter of 2018 (96%)
- 10:00 pm – 6:00 am shift: 100% of events, a 0% increase from the first quarter of 2018 (100%)

Of the 2931 waking hour supervision events (6:00 – 2:00 and 2:00 – 10:00 shifts) 2871 of the events (98%) met the minimum shift staff youth ratio requirements. The DCR 2019 second quarter Staff Youth Ratios compliance performance reflects a 3% increase in staff youth ratio compliance compared to the first quarter reporting period.

Staff Double Shifts:

For the 2019 second quarter, 1188 (27%) of the 4396 staff youth ratio events were covered by staff working a double shift. This is 8% increase of shifts requiring staff to work a double shift compared to the first quarter 2018 reporting period, an increase in volume of 376 staffing events. It needs to be noted that this increase in double shifts occurred after the closure of CD Humacao on January 15, 2019.

| DCR Staff Youth Ratio Events and Double Shifts: Second Quarter 2019 | Volume of Staff Youth Ratio Supervision Events | Volume of Shifts Meeting Staff Youth Ratio | Waking Hour Supervision Events | Met Minimum Staff Youth Ratio During Waking Hour Supervision Events | Volume of Shifts Covered by Staff Working a Double Shift | Percentage of Shifts Covered by Staff Working Double Shift | Waking Hour Double Shifts |
|---|--|--|--------------------------------|---|--|--|---------------------------|
| CTS Ponce | 2201 | 2190 | 1467 | 1456 | 616 | 28% | 464 |
| CTS Villalba | 2195 | 2146 | 1464 | 1415 | 572 | 26% | 428 |
| DCR Second Quarter 2019 Staff Youth Ratio: All Shifts | 4396 | 4336 | 2931 | 2871 | 1188 | 27% | 892 |

- CTS Ponce increased percentage of shifts covered by staff working a double shift to 28% (616 events), +8% increase from the previous quarter.
- CTS Villalba increased percentage of shifts covered by staff working a double shift to 19% (572 events), +7% increase from the previous quarter.
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A closer review identifies staff working double shifts occurred disproportionately on weekends and occurring on the first and second shifts. There was a significantly lower volume of non-compliant staff youth ratio events (60), from the first quarter, while 43% of the events occurred on weekends.

| DCR Facility Second Quarter 2019 | Volume of Non-Compliant Staffing Ratios | Volume of Non-Compliant Staffing Ratios on Weekends | Percentage of Non-Compliant Staffing Ratios on Weekends | Volume of Double Shifts | Volume of Double Shifts on Weekends | Percentage of Double Shifts on Weekends |
|-------------------------------------|---|---|---|-------------------------|-------------------------------------|---|
| CTS Ponce | 11 | 11 | 100% | 616 | 248 | 40% |
| CTS Villalba | 49 | 36 | 73% | 572 | 257 | 45% |
| DCR Totals | 60 | 47 | 78% | 1188 | 505 | 43% |

The table below displays the last five quarters of staffing events, double shift staffing events, percentage of double shift staffing events and total number of operational facilities for the quarter.

| Staff Double Shifts and Staffing Events | First Quarter 2018 | Second Quarter 2018 | Third Quarter 2018 | First Quarter 2019 | Second Quarter 2019 |
|--|--------------------|---------------------|--------------------|--------------------|---------------------|
| Volume of Double Shifts | 1202 | 1233 | 796 | 812 | 1188 |
| Volume of Staffing Events | 5712 | 5816 | 5935 | 4343 | 4396 |
| Percentage of Double Shift Staffing Events | 21% | 21% | 13% | 18.7% | 27.0% |
| Number of Facilities | 3 | 3 | 3 | 3 | 2 |

Implications of a large volume of double shifting are deterioration in staff productivity, reducing the ability to be actively engaged in the supervision of youth as well as the negative impact to staff morale. The outcome of double shifting for direct care staff can lead to a level of inattentiveness on the part of staff, failure to provide active behavior management, which can negatively impact youth safety and potentially contribute to staff negligence in providing effective, safe and secure supervision of youth. Double shifting often leads to staff calling in sick to avoid being required to double shift after their regularly scheduled shift. All of the aforementioned are outcomes of a significant dependence on double shifts to staff housing modules.

There are no prohibitions nor restrictions in S. A. 48 on the use of double shifts to meet the requirements of minimum required direct care staff youth ratios. Although undesirable from an operational and budgetary perspective, it does not impact analysis of whether the minimum required staff youth ratios are being met. Conversely, the volume of staff youth ratio events filled by staff double shifting is extremely operationally problematic and non-sustainable. Double shifting is a significant contributing factor that jeopardizes the agency's capacity to provide staffing to provide adequate supervision to assure youth safety and protection from harm, as well as staff call offs and staff turnover.

On the weekly staff youth ratio reports completed by each facility, NIJ requires documentation of the volume of double shifts used for each day for each shift. By Policy 9.20, Supervisors IV and III are required to assign officers to housing modules to meet the minimum required staff youth ratio based on the module youth population.

For the 2019 second quarter, NIJ has not demonstrated sustainable performance compliance in meeting the minimum required staff youth ratios without an extensive use of double shifting. For the second quarter of 2019, with the closure of CD Humacao, and a continuing reduction in youth population, NIJ has not been able to sustain meeting the

minimum required staff youth ratio for 100% of the staffing events, while remaining operationally dependent on double shifting.

Staffing Policy and Procedural Compliance and Quality Assurance:

As of September 16, 2018, DCR and NIJ successfully implemented agency staffing policy to procedurally require staffing assignment and documentation to prioritize operational compliance with the minimum required staff youth ratios. On November 16, 2018, NIJ provided to the Monitor's Consultant a final, Secretary signed and approved Policy 9.20, "*Handling and Distribution of Youth Service Officers Roster*".

The Monitor's Consultant Staff Policy Compliance and Performance Reviews assess for accuracy, reliability and comprehensive reporting required by the DCR Staff Policy and is the primary quality assurance process to determine compliance of S.A. 48a. The design of the Monitor's Consultant Staff Policy Compliance and Performance Reviews consists of a comparative analysis of weekly submitted Staff Youth Ratio workbook documentation and forms DCR-NIJ-0144 with the Master Roster, the daily rosters and mini-control logs.

- Form DCR -NIJ -0144 is required by Policy 9.20. Form DCR -NIJ -0144 is completed by the Supervisor IV and documents Policy 9.20 policy and procedural compliance, posts that are compliant and non-compliant with the requirements of Policy 9.20, as well as the volume of posts that do not meet the minimum required staff youth ratio.
- The facility Master Roster is an agency generated staffing roster, identifying posts, fixed posts, fixed posts identified by need, movable posts and relief personnel. The Master Roster designates one fixed post for each housing modules and additional fix posts identified by need, predicated on the housing module youth population and youth on special status (protective custody, transitional measure, constant supervision, etc.).
- The facility daily shift staff rosters display which staff has been assigned to which modules and corresponding module youth population. Supervisor IV's are required to develop a facility daily shift staff rosters from the Master Roster, adjusting as required for housing module youth populations, approved leave status, call offs, training, trips and special needs.
- Daily youth population list that identifies which youth are in which modules, designation of any youth on Protective Custody, Transitional Measures, Therapeutic Observation or Constant Watch. Additionally, daily trips and youth assigned to those trips are documented on the daily population list.
- Mini-control logs are used to provide supplemental documentation of staff housing module assignments and staff and youth movement.
- Staffing documentation binders are in place at each facility and allow for a review of daily staffing practices, which allows for both DCR and Monitor's Office analysis of policy and procedural compliance.

Compliance Status:

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| | <p>For the 2019 second quarter, S.A. 48a is found to be in non-compliance, with these additional findings:</p> <ul style="list-style-type: none"> • There are not sufficient staff and resources to implement the requirements of the provision. • The volume and rate of staff youth ratio events continues to become dangerously dependent on double shifting • The extraordinary percentage of shifts (27%) covered by staff doing double shifts continues to increase • The agency youth population continues to decrease. • The closure of CD Humacao and transfer of youth to CTS Ponce and CTS Villalba did not positively impact compliant minimum required staff youth ratio events, absent the expansion of double shifting. The volume of non-compliant minimum required staff youth ratio events and double shifting are occurring disproportionately on Saturdays and Sundays. • The volume of reported and unreported incident events that identify or allude to staffing deficiencies appears to be increasing. <p>As of the 2019 second quarter, the Monitor and Monitor's Consultant believe being in non-compliance with the minimum staff youth ratios, and heavy reliance on double shifts significantly jeopardizes youth safety and protection from harm.</p> |
| <p>What is needed for full compliance? What steps are required and/or recommended?</p> | <p>NIJ needs to meet procedural compliance not only with S.A. 48, but also their own Policy 9.20. Compliance requires significant improvement in meeting minimum required staff youth ratios with a significant reduction and minimum dependence on double shifting.</p> <p>Additionally, procedural compliance with DCR-NIJ Policy 9.20 requires meeting minimum required staff youth ratios as well as corrective action when ratios are not met for any given supervision event on any shift. NIJ needs to produce quality assurance reports as required by DCR-NIJ Policy 9.20.</p> |
| <p>Priority Next Steps</p> | <p>Priority next steps required to find compliance for S.A. 48a are the following:</p> <ul style="list-style-type: none"> • Recalculate and produce new Master Rosters for facilities based on the CD Humacao closure and staff and youth population redistribution. • Address the requirement for procedural compliance with staffing Policy 9.20, especially in light of facility housing module increased populations, as well as any required 1:1 staff youth supervision events. • Address the inability to provide the necessary staff to maintain youth in the least restrictive placement possible, assuring protection from harm. • Provide the Monitor's Consultant with electronic versions of each facilities the monthly/ cycle Master Roster as well as DCR-NIJ 0144 occurring during the third quarter of 2019. • DCR-NIJ needs to implement independent quality assurance assessment of procedural compliance as required by Policy 9.20, generating reports for both internal use and submission to the Monitor's Office. |

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| | <p>Monitor's Note: The Office of the Monitor is requesting that DCR/NIJ provide a report within 30 days detailing the steps which have and will be taken to address the staffing shortage, including the details regarding the request for approval of officers and supervisors for both facilities, responses to such request, and if approved, how such officers and supervisors will be secured, and the time frame for doing so. If it is necessary for new officers to be recruited and trained, the time frame for recruitment, training and placement should be provided. The plan should also indicate how the Commonwealth will reduce its reliance upon double shifting to meet the minimum required staff/youth ratio, and indicate a recognition that staff youth ratios that exceed the minimum level will be required at times to keep assure youth safety.</p> |
| Quality Assurance Measures | <p>DCR Staffing Policy 9.20 identifies that retrievable staff youth ratio documentation be maintained at each facility. As described in the previous section, the documentation consists of the following:</p> <ul style="list-style-type: none"> • Daily youth population list identify which youth are in which modules, designation of any youth on Protective Custody, Transitional Measures, Therapeutic Observation of Constant Watch. Additionally, daily trips and youth assigned to those trips should also be maintained in the daily population list. • The facility staff roster, displaying which staff has been assigned to which modules. It is critical that the form allows for clear documentation of officers assigned to each module as well as mini control. <p>Staff youth ratio quality assurance compliance analysis consists of a review of the Master Roster, facility Daily Roster, facility mini control logs, and DCR-NIJ 0144 daily forms to assess procedural and performance compliance with DCR-NIJ Policy 9.20.</p> <p>The Master Roster is an agency generated staffing roster-identifying posts, fixed posts, fixed posts identified by need, movable posts and relief personnel. Supervisor IV's are required to develop a facility shift Daily Roster from the Master Roster, adjusting as required for housing module youth populations, approved leave status, call offs, training, trips and special needs. The Master Roster designates one fixed post for each housing modules and additional fix posts identified by need, predicated on the housing module youth population and youth on special status (protective custody, transitional measure, constant supervision, etc.). Mini-control logs are used to provide supplemental documentation of staff housing module assignments and staff and youth movement.</p> <p>Additionally, review and assessment of DCR-NIJ 0144 forms for each day are assessed for accuracy to the Daily Roster and compliance with DCR-NIJ Policy 9.20 by the Supervisor IV the day after the events.</p> <p>At this time DCR-NIJ has not initiated independent analysis of procedural compliance to Policy 9.20.</p> |

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| Sources of Information upon which Consultant report and compliance ratings are based | <p>Weekly facility staff youth ratio workbooks and form DCR-NIJ-1044 are provided to the Monitor's Consultant throughout the quarter. Facility staff youth ratio workbook data is analyzed to assess facility and agency compliance in meeting the minimum required staff youth ratio as described in S.A. 48a. Form DCR-NIJ-1044 is analyzed for procedural compliance with staffing policy, 9.20.</p> <p>A component of facility site visits is review facility staffing source documentation, Master Rosters, Daily Rosters, mini control analyzed against the weekly facility staff youth ratio workbooks that are provided to the Monitor's Consultant. Review and assessment of DCR-NIJ 0144 forms for each facility for each day are assessed for accuracy to the Daily Roster and compliance with DCR-NIJ Policy 9.20, by the Supervisor IV the day after the events.</p> |
| <p>January 2009 Stipulation Paragraph 1: All necessary steps shall be taken immediately to ensure the reasonable safety of youth by providing adequate supervision of youth in all facilities operated by, or on behalf of, the Defendants.</p> | |
| <p>Compliance Ratings</p> | <p>Non-Compliance</p> |
| Description of Monitoring process during this period of time | <p>The Monitor's Consultant reviews and analyzes weekly Staff Youth Ratio forms and form DCR-NIJ-0144. Additional documentation that is reviewed is as follows: Master Rosters, Daily Rosters, DCR-NIJ 0144 Daily Staffing forms, as well as use of force events, monthly contraband reports, and incident report events. Observation and documentation of housing module staff youth ratios is conducted on each site visit.</p> <p>Additionally, 284 referrals to UENMI and OISC investigative reports have been reviewed to assess incidents and investigations that identify youth safety and youth supervision issues.</p> |
| Findings and Analysis | <p>Facility Closure of CD Humacao: As of January 15, 2019, the CD Humacao facility was closed for youth populations.</p> <p>The following narrative was submitted for the 2018 fourth quarter compliance report:</p> <p><i>Prior to the confirmation of the CD Humacao closure, the Monitor's Consultant shared with NIJ his reservations and concerns about the planned closure of CD Humacao, especially in the absence of a comprehensive transition plan. As witnessed with previous facility closures and staff and youth population reassignment, there is a period of instability and storming as the facilities adjust to the housing assignments, new classification configurations and staff and youth composition. Housing modules with youth populations between twelve and fifteen youth will consistently require a minimum of two staff for both the first and second shifts. With the influx of recent and anticipated staff voluntary resignations, fiscal restraints on overtime for double shifting, the projection of meeting minimum requirements for staff youth ratios seems very challenging.</i></p> |

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| | <p><i>Additionally, meeting the minimum staff youth ratio of two staff for a housing module of a large youth population may not be adequate to assure youth safety.</i></p> <p><i>In light of the geographic distance and residency of CD Humacao staff, the proposed closure of CD Humacao cannot be expected to provide an infusion of direct care staff to CTS Ponce and CTS Villalba. As in previous closures, the reassignment of staff from the closed facility to the open facilities is a process that is not assured as to whether staff will accept the assignments. At the same time the two facilities require an influx of direct care staff and professional staff to meet the staffing, programming and service requirements of the Settlement Agreement.</i></p> <p><i>The reconfiguration of youth populations will initiate new dynamics in the facilities and housing modules. Managing youth "leaders" and maintaining safe and secure environments will require strong and persistent staff leadership and a level of direct care staff active behavior management skills and practice that does not consistently exist at this time in NIJ facilities. Consequently, not only a facility closure, but the staff training, skill development and programming development to manage a reduced but significantly more challenging youth population would be a crucial component for successful implementation.</i></p> <p><i>Based on what the Monitor's Consultant is aware of in regard to classification, youth population, special populations, protection from harm and facility operations, there is a significant risk to youth safety with a facility closure at this time and with the apparent absence of preparation and planning.</i></p> <p>After the closure of Humacao, 127 staff were reassigned to other facilities. The two remaining facilities absorbed the additional youth and classifications without sufficient staff to ensure compliance with paragraph 48. Double shifting is not the solution to an overall inadequate staffing number. It has been determined by DCR security staff that both facilities need 29 new officers, and 4 or 5 supervisory staff each. In May, the Monitor met with key DCR/NIJ staff to discuss the budgetary implication of this, and to agree on a process to obtain the new staff. Director Raul Cepeda agreed to seek approval for the additional staff from Secretary Erik Rolon. The remaining charge, perhaps more complex, is to determine whether sufficient Humacao staff could be moved to Ponce and Villalba, or whether a new training class of recruits must be sought, or both. Since that time, the Officer of the Monitor has received no updated information regarding approval of the additional staffing, or measures to implement reassignment of existing staff from Humacao, or the hiring of new staff.</p> |
| <p>What is needed for full compliance?</p> | <p>DCR has provided a January 2009 Stipulation Paragraph 5 report for January and March 2019, that describes the volume of staff by classification assigned to each of the three facilities, even though CD Humacao no longer houses a youth population. Analysis of the</p> |

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| <p>What steps are required and/or recommended?</p> | <p>January 2009 Stipulation Paragraph 2 and 5 report can be found in the January 2009 Stipulation Paragraph 5 compliance report section.</p> <p>Meeting minimum staff youth ratios does not necessarily equate that staffing provides adequate supervision to keep youth safe. For full compliance, staff youth ratios need to consistently meet the minimum required staff youth ratio, as well as additional staffing that is required by special populations, youth assigned to Transitional Measures, Protective Custody and 1:1 staff youth supervision events. Reliance upon placement of youth in restrictive housing statuses in an effort to provide protection from harm does not provide “adequate supervision” to ensure youth safety.</p> <p>To assure youth safety, procedural and operational practices need to require direct care staff to engage in active behavior management, youth need to be engaged in robust programming, as well as classification and programming to assure adequate staff supervision to effectively manage and control aggressive youth and youth “leaders”.</p> <p>For full compliance for this provision, NIJ needs to consistently provide and assure availability of direct care staff to be deployed to housing modules based on the minimum required staff youth ratio as well as the specific staff supervision needs of special populations, Transitional Measures, Protective Custody and 1:1 staff youth supervision events.</p> |
| <p>Priority Next Steps</p> | <p>The Monitor’s Consulting Team continue to request access to incident report information as one of the critical components to assess youth safety. As of the close of the 2019 second quarter this information has not been provided.</p> <p>Digitizing incident reports has long been discussed so that the Monitoring team can have immediate access to this information, but more importantly, for efficiency, consistency and accountability purposes for NIJ.</p> <p>Monitor’s Note:</p> <p>The Monitor’s plan for improving disclosure of information regarding incidents occurring in facilities includes:</p> <p style="padding-left: 40px;">a) Incident report cover sheets for a given week should be sent to the Office of the Monitor (specifically to Kim Tandy, Javier Burgos and Bob Dugan) by Monday of the following week. This should begin immediately, and the person responsible for providing the information should be designated.</p> <p style="padding-left: 40px;">b) Incidents of a serious nature should be sent to the Office of the Monitor (specifically Kim Tandy, Javier Burgos and Bob Dugan) within 24 hours. Examples of incidents of a serious nature include, but are not limited to:</p> <p style="padding-left: 80px;">i. Incidents of self-mutilation involving sutures, hospitalization or other in-house medical care;</p> |

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| | <p>ii. Incidents involving youth being cut by other youth with razor blades, knives or other sharp objects where sutures, hospitalization or other in-house medical care is required;</p> <p>iii. Actual or attempted escapes;</p> <p>iv. Youth on youth assaults involving hospitalization or on-site medical care of one or more youth;</p> <p>v. suicidal behavior and/or attempts requiring intervention by medical and/or mental health staff;</p> <p>vi. Assault of a staff member requiring hospitalization or other in-house medical care;</p> <p>vii. Allegations of sexual assault on a youth by other youth or by staff;</p> <p>viii. Incidents involving group fights or assaults where OC and/or other restrictions are utilized, including lockdown of units.</p> <p>ix. Group lockdowns or Group Time Modifications that exceed 8 hours as defined in Policy 9.17</p> <p>This should begin immediately, and the person designated to send the report should be identified.</p> <p>c) A plan for digitalization of incident reports, incident report cover sheets, and any needed IT and support should be developed and submitted to the Office of the Monitor by September 1, 2019 and include implementation steps and time frames. If and when such system is in place, the Monitor can retrieve the documents which are available on line without hard copies of such.</p> <p>The Monitor and Consultant are also working to establish measures of safety based upon those criteria contained within Paragraph 78 reporting, and other factors.</p> |
| <p>Quality Assurance Measures</p> | <p>Incident report analysis and quality assurance requires consensus on incident report characteristics and definitional compliance as well as comprehensive reporting. The proposed installation of video systems at CTS Villalba, while assisting in the assessment of investigations, will also significantly help in assessing youth safety, as well as the dynamics associated with youth incident events and adequate staff supervision to assure youth safety.</p> |
| <p>January 2009 Stipulation Paragraph 2: All necessary steps shall be taken to provide sufficient direct care staff to implement the Consent Decree and adequately supervise youth, pursuant to Paragraph 48.</p> | |
| <p>The requirement that 50 YSOs be hired each month was terminated by the Court on September 13, 2011 (Docket 991). No new YSOs were hired during the Second Quarter of 2019.</p> | |
| <p>Compliance Ratings</p> | <p>Non-Compliance</p> |

| <p>Description of Monitoring process during this period of time</p> | <p>Monitoring of S.A. 48 January 2009 Stipulation Paragraph 2 occurs through review of the monthly staffing report required by the January 2009 Stipulation Paragraph 5 provided by the DCR Human Resources Development and Training Institute. The report indicated that no new officers were appointed during the quarter. Additional monitoring processes that occurred during this quarter were analysis of facility populations, classification levels, youth assigned to restrictive housing, minimum required staff youth ratios, and agency and facility staff volume and assignments.</p> | | | | | | | | | | | | | | | | | | |
|---|--|-------------------------|--------------------------------------|--------------------------|--|--|-------------------------|--------------|--------------------------|-----------|----|----|----|---|--------------|----|----|---|---|
| <p>Findings and Analysis</p> | <p>Analysis of Sufficient Staffing: The closure of CD Humacao did not provide the volume of staff to CTS Ponce nor CTS Villalba to relieve the agencies inability to consistently meet the minimum required staff youth ratio, nor to provide the adequate supervision to keep youth safe in the least restrictive placement possible, nor to relieve the disproportionate necessity on double shifting to provide the minimum required staff youth ratio for youth supervision. The availability and manner that staff are deployed to facilities and youth populations, based on housing module youth population volume or by need, has not consistently met the requirements of this provision.</p> <p>Second Quarter 2019 Contraband Report Review: NIJ submitted contraband workbooks for both active facilities for each month of the second quarter of 2019.</p> <ul style="list-style-type: none"> • CTS Ponce reported twenty-three contraband events for the quarter. • CTS Villalba reported sixteen contraband events for the quarter. <p>The second quarter contraband reports reported the following:</p> <table border="1" data-bbox="451 1052 1531 1184"> <thead> <tr> <th rowspan="2">Facility</th> <th rowspan="2">Volume of Reported Contraband Events</th> <th colspan="3">Type of Contraband</th> </tr> <tr> <th>Sharps (blades, knives)</th> <th>Pills/ Drugs</th> <th>Cell Phones/ Accessories</th> </tr> </thead> <tbody> <tr> <td>CTS Ponce</td> <td>23</td> <td>20</td> <td>18</td> <td>3</td> </tr> <tr> <td>CTS Villalba</td> <td>16</td> <td>26</td> <td>4</td> <td>2</td> </tr> </tbody> </table> <p>The contraband report did not document the volume of searches that were conducted at each facility, the type of searches that resulted in the discovery of contraband, nor the volume of searches that did not result in the discovery of contraband. The volume of sharps, drugs and medications contraband that were discovered is concerning in light of the history and volume of cutting events at NIJ facilities.</p> <p>Staffing and Incident Events and Investigations:</p> <p>There were 60 staff youth ratio events during the second quarter that did not meet the minimum required staff youth ratio.</p> <p>In addition to these sixty staff youth ratio events, additional staff supervision events have occurred where staff were not actively engaged in effective behavior management or were violating DCR policy and procedure by abandoning their posts without authorized staff relief.</p> <p>Officers properly assigned, posted, supervised, engaged in active behavior management and awareness of behavioral indicators of potential disruptive behavior increases the capacity of staff being able to keep youth safe. The NIJ youth population, although</p> | Facility | Volume of Reported Contraband Events | Type of Contraband | | | Sharps (blades, knives) | Pills/ Drugs | Cell Phones/ Accessories | CTS Ponce | 23 | 20 | 18 | 3 | CTS Villalba | 16 | 26 | 4 | 2 |
| Facility | Volume of Reported Contraband Events | | | Type of Contraband | | | | | | | | | | | | | | | |
| | | Sharps (blades, knives) | Pills/ Drugs | Cell Phones/ Accessories | | | | | | | | | | | | | | | |
| CTS Ponce | 23 | 20 | 18 | 3 | | | | | | | | | | | | | | | |
| CTS Villalba | 16 | 26 | 4 | 2 | | | | | | | | | | | | | | | |

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| | <p>smaller in volume, can certainly be characterized as a more sophisticated, violent adolescent population requiring competent staffing, predicated on a volume of staff that does not rely on almost 30% of shifts being covered by staff doing double shifts. The serious nature of incident events, reported and unreported, certainly indicates that the staffing issue within NIJ has risen to a critical point that is no longer compliant with the provisions of S.A. 48.</p> <p>Staffing rosters are inadequate to provide sufficient number of staff on all shifts without an increase in assigned staff. Investigations completed during the second quarter indicate incidents occurring while required staff are off unit and/or not adequately providing supervision of youth. Facilities and security management cannot adequately maintain their rosters when insufficient staff are available to them, or they are forced to rely heavily on double shifting.</p> <p>The Monitor and Monitor's Consultant believe that being quantitatively in meeting the minimum staff youth ratios, in and of itself, is not sufficient to assure youth safety, especially in increasing high volume of double shifting. There are not sufficient staff and resources to implement the requirements of the provision.</p> <p>This Stipulation is found to be in non-compliance for the second quarter of 2019.</p> |
| <p>What is needed for full compliance? What steps are required and/or recommended?</p> | <p>For full compliance for this provision, NIJ needs to consistently provide and assure availability of direct care staff to be deployed to housing modules based on the minimum required staff youth ratio as well as the specific staff supervision needs of special populations, Transitional Measures, Protective Custody and 1:1 staff youth supervision events to avoid restrictive housing placement to assure youth safety.</p> |
| <p>Priority Next Steps</p> | <p>The Monitor's Team is analyzing how to better assess characteristics of incident reports to accurately assess the volume of events occurring impacting youth safety and adequate staff supervision of youth.</p> <p>A priority next step will be to assess DCR IT capacity to provide an electronic incident report module within the electronic record keeping process. In the interim, the Monitor's Consultant has developed an Excel contraband workbook for consideration of implementation by DCR to allow for more efficient analysis of contraband reporting.</p> <p>Additionally, the Monitor and Monitor's Consultant will continue to dialogue with DCR to better understand stipulation requirements to assess whether the existing volume of direct care staff is "sufficient" to "adequately supervise youth". There appears to be an inadequate number of staff available for assignment in NIJ facilities, as well as a significant need for staff skill development and programming to assure "adequate youth supervision".</p> |
| <p>Quality Assurance Measures</p> | <p>The critical next steps for quality assurance measures is to develop consensus over critical terms of this stipulation. Agreement on the importance of the accuracy and reliability of data, consensus on definitional compliance of terminology, and</p> |

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| | comprehensive reporting of events and incident event characteristics are essential for effective quality assurance measures. |
| Sources of Information upon which Consultant report and compliance is based | Reports that were used for analysis of this compliance ratings were the January 2009 Stipulation Paragraph 5 report for April, May and June 2019 and the DCR-NIJ submitted contraband reports for April, May and June 2019. |
| January 2009 Stipulation Paragraph 3: Defendants will include as direct care staff all social workers assigned to its institutions, once such staff receive forty (40) hours of pre- service training, pursuant to Paragraph 49 of the Consent Decree. The same shall also receive annual training as direct care staff, pursuant to Paragraph 50 of the Consent Decree. | |
| Compliance Ratings | NA |
| <i>In approximately 2011, the Commonwealth decided not to employ the categorization of Social Workers as direct care staff as allowed by this provision to enhance coverage. However, the provision remains as a future option. Unless and until the Commonwealth determines that they want to apply this provision, the Monitor's Office will not Monitor the provision. The choice to not implement this provision is not non-compliance, but has been categorized as "NA" not applicable. The struck part of the provision references a provision that has been terminated.</i> | |
| January 2009 Stipulation Paragraph 4: All persons hired to comply with Paragraph 48 shall be sufficiently trained, pursuant to Paragraph 49 of the Consent Decree, before being deployed. Defendants shall deploy all duly trained direct care staff, pursuant to Paragraph 49, to juvenile facilities in a timely manner. <i>The struck part of the provision references a provision that has been terminated.</i> | |
| Compliance Ratings | NA |
| Monitoring process during this period of time | There were no new appointments to the agency during the second quarter reporting period, nor has there been any new appointments in the last several years. Upon hiring of any new staff, DCR NIJ Policy Chapter 4.1 and 4.2 address the agency's policy and procedure for new employee pre-service training and annual training, as well as certification prior to facility assignment. In light of the approved and implemented policies, but the absence of any new hires during this quarter, this stipulation is found to be non-applicable (NA) for assessment of compliance for this quarter. |
| January 2009 Stipulation Paragraph 5: On the fifth day of every thirty-day period commensurate with the Order approving this Stipulation, Defendants shall submit a report to the Monitor and the United States providing the following: a. the number of current direct care staff, by position classification, at each facility; b. the number of qualified direct care staff hired during the previous period; c. the number of hired direct care | |

staff in the previous period who were hired and have received pre-service training, pursuant to Paragraph 49; and d. the juvenile facilities where the direct care staff who were hired in the previous quarter and have received pre-service training, pursuant to Paragraph 49, have been deployed or assigned.

The struck part of the provision references a provision that has been terminated.

| Compliance Ratings | Partial Compliance | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------------------------------|---|------------|---------|--------|---------|----------|-------------------|-------------------------------|-------------------|-------------------------------|---------------|--------|-----|----|----|---|-----|----|---|---|-----------|--------|-----|----|----|---|-----|----|---|---|-----------|--------|-----|----|----|---|-----|----|---|---|----------|
| Description of Monitoring process | Monitoring of S.A. 48 January 2009 Stipulation Paragraph 5 occurs through review of the monthly staffing report provided by the DCR Human Resources Development and Training Institute. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Findings and Analysis | <p>January 2009 Stipulation Paragraph 5: DCR provided the April, May and June staffing report required by the stipulation. On May 17, 2019, NIJ provided the April 2019 report. On June 11, 2019 NIJ provided the May report. On July 9, 2019, NIJ provided the June report.</p> <p>The stipulation language requires that the defendants shall submit a report by the fifth day of the following month. As seen in the receipt dates of the second quarter reports, the reports were not received by the fifth day of the month.</p> <p>The Monitor’s Consultant has identified that the staffing documented in the report should reflect the volume of staff identified in each facility master roster. On July 10, 2019, NIJ provided facility forty-two day Master Roster April, May and June 2019 relative to the data provided in the January 2009 Stipulation Paragraph 5 reports.</p> <p>The table below summarizes the April, May and June 2019, January 2009 Stipulation Paragraph 5 reports:</p> <table border="1" data-bbox="415 1201 1507 1367"> <thead> <tr> <th>Month/Year</th> <th>OSJ I</th> <th>OSJ II</th> <th>OSJ III</th> <th>OSJ IV</th> <th>Total</th> <th>Inactive</th> <th>New Hires: 1/2019</th> <th>Voluntary Resignation Program</th> <th>Date Received</th> </tr> </thead> <tbody> <tr> <td>Apr-19</td> <td>364</td> <td>29</td> <td>21</td> <td>6</td> <td>420</td> <td>40</td> <td>0</td> <td>0</td> <td>5/17/2019</td> </tr> <tr> <td>May-19</td> <td>364</td> <td>26</td> <td>21</td> <td>6</td> <td>417</td> <td>44</td> <td>0</td> <td>0</td> <td>6/11/2019</td> </tr> <tr> <td>Jun-19</td> <td>360</td> <td>25</td> <td>21</td> <td>6</td> <td>412</td> <td>45</td> <td>0</td> <td>0</td> <td>7/9/2019</td> </tr> </tbody> </table> <p>Although the aggregate volume of staff would appear that DCR/NIJ has the volume of staff to meet the requirements of S.A. 49, a closer review illustrates that staff have not been deployed in a manner to meet minimum required staff youth ratios nor to effectively reduce the disproportionate reliance on double shifting, nor adequate staffing to assure youth safety.</p> | Month/Year | OSJ I | OSJ II | OSJ III | OSJ IV | Total | Inactive | New Hires: 1/2019 | Voluntary Resignation Program | Date Received | Apr-19 | 364 | 29 | 21 | 6 | 420 | 40 | 0 | 0 | 5/17/2019 | May-19 | 364 | 26 | 21 | 6 | 417 | 44 | 0 | 0 | 6/11/2019 | Jun-19 | 360 | 25 | 21 | 6 | 412 | 45 | 0 | 0 | 7/9/2019 |
| Month/Year | OSJ I | OSJ II | OSJ III | OSJ IV | Total | Inactive | New Hires: 1/2019 | Voluntary Resignation Program | Date Received | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Apr-19 | 364 | 29 | 21 | 6 | 420 | 40 | 0 | 0 | 5/17/2019 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| May-19 | 364 | 26 | 21 | 6 | 417 | 44 | 0 | 0 | 6/11/2019 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Jun-19 | 360 | 25 | 21 | 6 | 412 | 45 | 0 | 0 | 7/9/2019 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| Facilities | Month/Year | OSJ I | OSJ II | OSJ III | OSJ IV | Total | Inactive | New Hires: 1/2019 | Voluntary Resignation Program | Date Received |
|---|---------------|------------|-----------|-----------|----------|------------|-----------|----------------------|-------------------------------------|------------------|
| CD Humacao | Apr-19 | 17 | 0 | 3 | 1 | 21 | 8 | 0 | 0 | |
| CTS Ponce | Apr-19 | 112 | 12 | 5 | 2 | 131 | 5 | 0 | 0 | |
| CTS Villalba | Apr-19 | 120 | 10 | 7 | 2 | 139 | 12 | 0 | 0 | |
| Nivel Central y Otras facilidades DCR | Apr-19 | 115 | 7 | 6 | 1 | 129 | 15 | 0 | 0 | |
| | Apr-19 | 364 | 29 | 21 | 6 | 420 | 40 | 0 | 0 | 5/17/2019 |
| CD Humacao | May-19 | 17 | 0 | 3 | 1 | 21 | 13 | 0 | 0 | |
| CTS Ponce | May-19 | 113 | 12 | 5 | 2 | 132 | 7 | 0 | 0 | |
| CTS Villalba | May-19 | 118 | 8 | 7 | 2 | 135 | 13 | 0 | 0 | |
| Nivel Central y Otras facilidades DCR | May-19 | 116 | 6 | 6 | 1 | 129 | 11 | 0 | 0 | |
| | May-19 | 364 | 26 | 21 | 6 | 417 | 44 | 0 | 0 | 6/11/2019 |
| CD Humacao | Jun-19 | 16 | 0 | 3 | 1 | 20 | 12 | 0 | 0 | |
| CTS Ponce | Jun-19 | 111 | 14 | 5 | 2 | 132 | 10 | 0 | 0 | |
| CTS Villalba | Jun-19 | 118 | 7 | 7 | 2 | 134 | 14 | 0 | 0 | |
| Nivel Central y Otras facilidades DCR | Jun-19 | 115 | 4 | 6 | 1 | 126 | 9 | 0 | 0 | |
| | Jun-19 | 360 | 25 | 21 | 6 | 412 | 45 | 0 | 0 | 7/9/2019 |

For the 2019 second quarter, January 2009 Stipulation Paragraph 5 is found to be in partial compliance.

As can be seen in the table above, with the closure of CD Humacao of a youth population, there still remained 20 officers assigned to CD Humacao to manage the facility.

When legal counsel for DCR, Arlene R. Pérez Borrero, was asked in an email on April 12, 2019, as to why the closure of CD Humacao did not result in a positive impact to the staffing compliance requirements of S. A. 48, the following answer was provided:

There are several reasons why personnel might be placed in the Central offices or the closed facilities, such as the officers have rights under their Union Contracts cannot be placed in facilities or position that are farther than a certain distance from their home, or they are providing a service to the central offices and their position has not been reclassified in response to this functions. Other officers are placed in closed facilities because there are still some operations in them that require security personnel.

The closure of CD Humacao did not provide the volume of staff to CTS Ponce nor CTS Villalba to relieve the agencies inability to consistently meet the minimum required staff youth ratio, nor to provide the adequate supervision to keep youth safe in the least restrictive placement possible, nor to relieve the disproportionate necessity on double shifting to provide the minimum required staff youth ratio for youth supervision. The availability and manner that staff are deployed to facilities and youth populations, based on housing module youth population volume or by need, has not consistently met the requirements of this provision.

This Stipulation is found to be in partial compliance for the second quarter of 2018.

What is needed for full compliance?

The Monitor's Consultant believes the following actions, metrics and data elements are necessary for DCR-NIJ to be in compliance with S.A. 48 January 2009 Stipulation Paragraph 5:

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| | <ul style="list-style-type: none"> • Assessment and deployment of staffing requirements of the two operational facilities to meet the minimum required staff youth ratio without unreasonable reliance on double shifting, and capacity to provide adequate staffing to keep youth safe in the least restrictive placement possible without dependence on restrictive housing; • For each month submit a January 2009 Stipulation Paragraph 5 staffing report to the Monitor's Consultant on or about the fifth day of the month; • The inactive (inactivos) staff identified for each facility should be identified by classification type; • The report should contain the number of qualified direct care staff hired during the previous period (month); • For each month, the volume of staff by classification type and facility that has resigned as a result of the Puerto Rico government or DCR agency incentivized voluntary resignation program should be identified; • Identify the juvenile facilities where the direct care staff who were hired in the previous quarter have been deployed or assigned. • Provide the Monitor's Consultant with each facility's electronic version of the Master Rosters that is applicable to the monthly S.A. 48 January 2009 Stipulation Paragraph 5 reports. • DCR needs to stipulate that the volume of staff documented in each facility's Master Roster corresponds with the data in the monthly S.A. 48 January 2009 Stipulation Paragraph 5 reports. |
| Priority Next Steps | <p>DCR needs to continue to provide this report on a consistent and timely basis. Additionally, in order to assess the accuracy and reliability of the S.A. 48 January 2009 Stipulation Paragraph 5 report, DCR needs to continue to provide to the Monitor's Consultant an electronic version of each facility's corresponding monthly/cycle Master Rosters for each facility. As the Monitor's Consultant has explained to the Operations Functional Team, the criteria to assess the accuracy of the S.A. 48 January 2009 Stipulation Paragraph 5 report would be that the monthly report documentation be the same volume of staff that is identified in each facilities Master Roster.</p> |
| Quality Assurance Measures | <p>Upon receipt of the monthly facility Master Roster, a comparative analysis will occur with the S.A. 48 January 2009 Stipulation Paragraph 5 report to assess the accuracy and reliability of the report matching the data from the facility Master Rosters.</p> <p>Ultimately, the Monitor's Consultant expectation as an effective quality assurance measure that DCR-NIJ, upon production of the S.A. 48 January 2009 Stipulation Paragraph 5 report, assure and stipulate that the numbers presented in the report correspond to the volume of staff and corresponding classifications for each facility's Master Roster. If the cycle Master Report and the S.A. 48 January 2009 Stipulation Paragraph 5 report staff numbers do not match, an explanation as to why there is variance in the numbers should be provided.</p> |

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| | As of the production of the 2018 second quarter report, DCR has not stipulated that the volume of staff documented in each facility’s Master Roster corresponds with the data in the monthly S.A. 48 January 2009 Stipulation Paragraph 5 report. |
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PROTECTION FROM HARM – CLASSIFICATION (Bob Dugan)

S.A. 52: At both the detention phase and following commitment, Defendants shall establish objective methods to ensure that juveniles are classified and placed in the least restrictive placement possible, consistent with public safety. Defendants shall validate objective methods within one year of their initial use and once a year thereafter and revise, if necessary, according to the findings of the validation process.

| Compliance Ratings | Non-Compliance | | | | | | | | | | |
|--|---|----------|----------|---------------------|---|---------------------|--|--------------------|--|---------------------|---|
| Description of Monitoring process during this period of time | <p>The Monitor's staff conducted site visits on May 14 and June 4, 2019 to CTS Ponce and May 15 and June 5, 2019 to CTS Villalba. Observation and documentation of housing module staff youth ratios is conducted on each visit.</p> <p>During site visits facility youth population classification and housing assignments were provided for both facilities. Throughout the quarter, and in the previous twenty-eight quarters, NIJ has provided detention and committed classification documentation, with corresponding youth facility assignments and assessed levels of treatment. NIJ facility and housing assignments have been found to consistently correspond to youth’s assessed levels of classification and treatment.</p> <p>As documented in the first quarter 2019 Classification Compliance Report, CD Humacao closed on January 15, 2019. The Monitor's Consultant provided his initial concerns about a possible CD Humacao closure to NIJ on October 17, 2018 by email. The Monitor's Consultant provided analysis of existing and potential classification housing module needs, concerns to NIJ representatives about the absence of a transition plan, implications of youth population consolidation, potential negative impact to existing classification milieus within housing modules, and behavior management challenges anticipated with larger housing module populations</p> | | | | | | | | | | |
| Findings and Analysis | <p>NIJ has been engaged in an effort to meet the requirements of S. A. 52 since 2013. The following timeline illustrates various milestones of the agency’s classification efforts:</p> <table border="1" style="margin-left: 20px; border-collapse: collapse; width: 80%;"> <thead> <tr> <th style="text-align: center;">Quarters</th> <th style="text-align: center;">Activity</th> </tr> </thead> <tbody> <tr> <td>Fourth Quarter 2013</td> <td>Proposals for Classification validation study</td> </tr> <tr> <td>Fourth Quarter 2014</td> <td>Start of Classification validation study</td> </tr> <tr> <td>First Quarter 2015</td> <td>Classification validation study preliminary report</td> </tr> <tr> <td>Second Quarter 2015</td> <td>Classification Manual for training and implementation</td> </tr> </tbody> </table> | Quarters | Activity | Fourth Quarter 2013 | Proposals for Classification validation study | Fourth Quarter 2014 | Start of Classification validation study | First Quarter 2015 | Classification validation study preliminary report | Second Quarter 2015 | Classification Manual for training and implementation |
| Quarters | Activity | | | | | | | | | | |
| Fourth Quarter 2013 | Proposals for Classification validation study | | | | | | | | | | |
| Fourth Quarter 2014 | Start of Classification validation study | | | | | | | | | | |
| First Quarter 2015 | Classification validation study preliminary report | | | | | | | | | | |
| Second Quarter 2015 | Classification Manual for training and implementation | | | | | | | | | | |

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| Fourth Quarter 2016 | NIJ Administrative Order CDR -2016-10, for implementation of NIJ Classification processes |
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Since the Fourth Quarter 2014, NIJ has experienced a 60% reduction in the volume of facilities and a 69% reduction in youth population:

Throughout the NIJ Classification development process the Monitor's Consultant has continually requested that the agency provide the following core elements to assure policy and procedural compliance with the S.A. 52:

- An approved, agency Secretary signed, trained policy and procedure that addresses the requirements of S. A. 52.
- The policy needs to specifically require an annual validation that assesses the objective methods and efficacy of the classification processes. Revisions to the classification processes should be made based on the annual validation.
- The policy needs to provide for both the detention and committed classification processes an administratively approved override process.

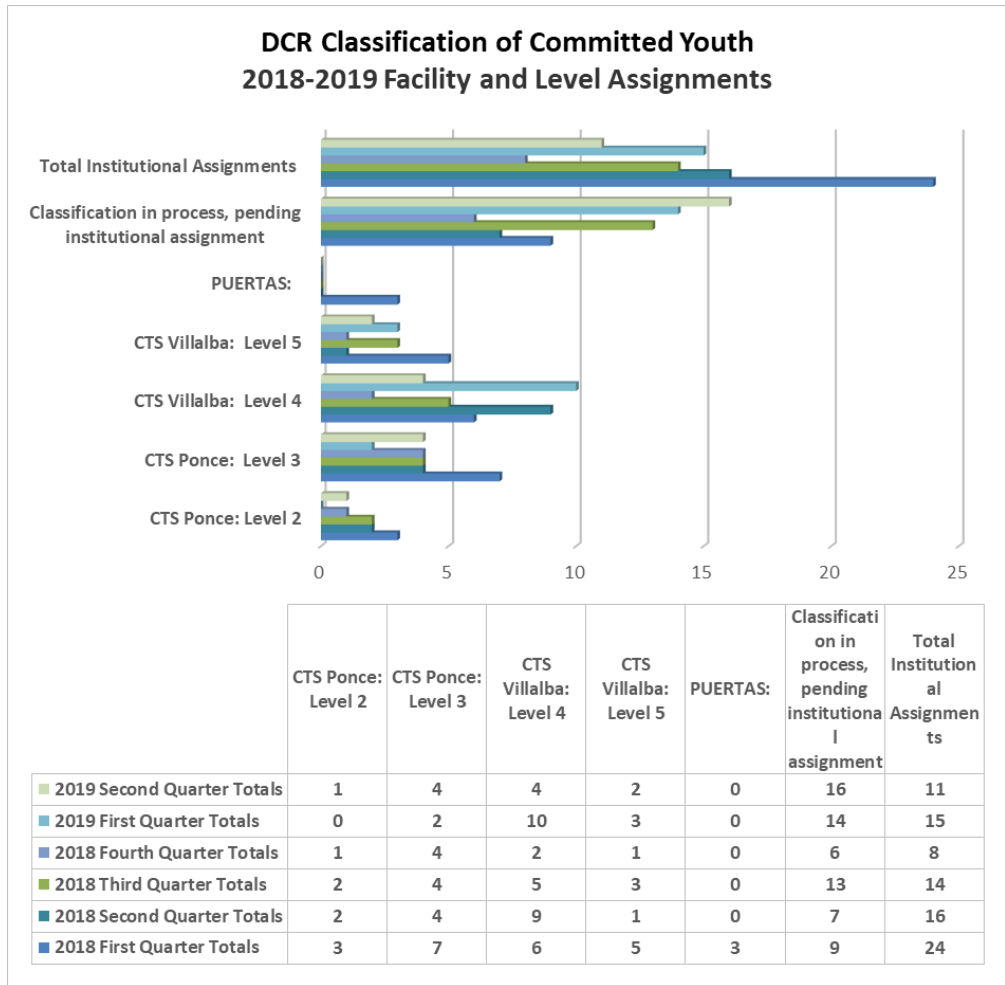
As of June 30, 2019, the agency has only produced various draft classification policies, has not produced any annual validations, has not identified a mechanism for or implemented any detention nor committed classification overrides, nor made any revisions to the existing classification practices.

In October 2018, the Monitor's Consultant was asked to provide his professional opinion relative to the closure of CD Humacao. At that time, the Monitor's Consultant addressed his concerns about the impact that the closure of CD Humacao would have on the classification, staffing and youth safety. These issues were further documented in the Monitor's 2018 Fourth Quarter Report:

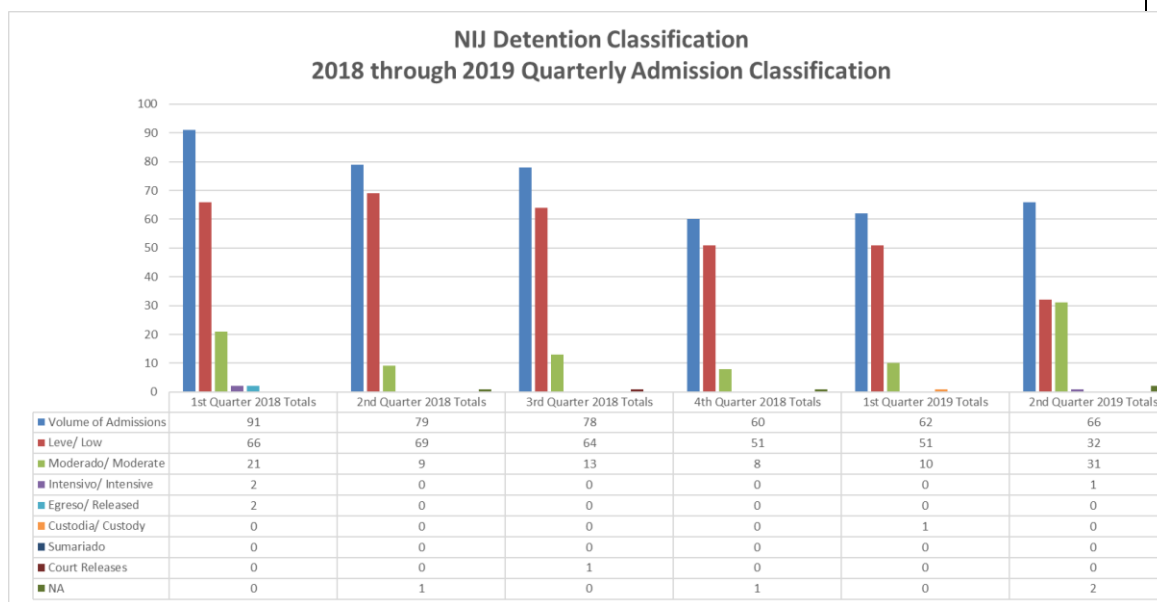
Needless to say, the proposed classification distribution leaves NIJ with no capacity to manage facility maintenance without further population and classification consolidation. Although there is recognition of the NIJ population reduction, the logistics to maintaining the integrity of the existing classification practices will be very challenging.

The present NIJ Classification practice was implemented in the Spring of 2015 with an Administrative Order. Staff were trained in April of 2015, at which time the agency operated five facilities and an agency youth population of 267. With the reduction in facilities, over a 50% reduction in youth population, and the absence of classification validation studies, the Monitor's Consultant has significant concerns about whether the NIJ classification practices are effective in meeting the safety and treatment needs to youth, especially in light of facility closure and consolidation of youth populations.

As of June 30, 2019, the NIJ committed classification housing assignments are illustrated below:



As of June 30, 2019, the NIJ detention classification housing assignments are illustrated below:



With the closure of CD Humacao, DCR/NIJ does not have the housing module capacity to house all of the detention classification levels in separate housing modules.

The volume of youth that require placement on transitional measures has generated a hybrid classification status that needs to be addressed by agency policy and practice in order to assure that they can be placed in the least restrictive placement possible, receiving a full array of educational services and programming. NIJ’s limited classification housing options, as the result of the closure of CD Humacao, the failure to provide minimum required staff youth ratios, generating restrictive housing practices resulting in extended room confinement for a population with the associated limited educational services and programming dictates an urgent response.

NIJ has failed to produce an annual objective validation of the classification instruments for the four years that the classification process has been in practice. The reduction in youth population, facilities requires an urgent analysis of the existing agency resources and youth classification, treatment and safety needs.

For the second quarter of 2019, the Monitor's Consultant has determined that DCR-NIJ is in non-compliance with S.A. 52.

What is needed for full compliance?
What steps are required and/or recommended?

The dynamic changes in the reduction of NIJ facilities and youth populations, accompanied by the absence of comprehensive planning, and the failure to conduct annual classification validation and revisions, has jeopardized the agency’s capacity to provide for the safety and treatment needs of the youth in their care in the least restrictive placements as possible.

It is imperative that NIJ initiate a comprehensive review of the agency’s classification, restrictive housing and non-compliant staffing practices. The review and associated revisions to policy and practice should result in a classification process that places youth in the in the

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| | <p>least restrictive placement possible, with the minimally required staffing to assure protection from harm, absent restrictive housing practices.</p> <p>A review of the classification practices and revisions to the classification validation should be focused on expeditiously developing the required policy, procedures, training and quality assurance processes to meet all of the compliance requirements of, S. A. 48, S. A. 52, as well as the protection from harm and services required by S. A. 79 and S. A. 80.</p> <p>The metrics established for compliance of this provision are the following:</p> <ul style="list-style-type: none"> • A final agency approved classification policy and procedure, inclusive of a process requirement for annual classification methodology validation, findings, and revisions that are necessary. • Production of annual review of validation of classification objective methods, findings and revisions as required. • Continued production of monthly detention and committed classification data. • 100% of detention youth are classified and assigned to appropriate housing modules, unless prior release by the Court. • 100% of committed youth are classified and assigned to appropriate facilities and housing modules, consistent with their assigned classification treatment levels and safety requirements. • Youth are placed in the least restrictive placement possible with staff assigned to assure their safety and protection from harm. |
| <p>Priority Next Steps</p> | <p>The closure of Humacao has also brought new challenges to the remaining two facilities to comply with classification requirements. Space limitations, as well as staffing shortages, work to hamper the ability of staff to separate youth when necessary for safety reasons. There is currently no additional unit at Villalba should a high risk youth be admitted into detention. Girls are grouped together by status regardless of risk levels. Current policies require that NIJ “validate objective methods within one year of their initial use and once a year thereafter and revise, if necessary, according to the findings of the validation process.” The purpose of the classification system, as indicated in Paragraph 52, is to “ensure that juveniles are classified and placed in the least restrictive placement possible, consistent with public safety.”</p> <p>Past ratings for classification have not achieved a substantial compliance mark in part because of the absence of language regarding annual reviews and necessary revisions. While that language must be added for the policy to be reviewed, it is critical to revisit the classification system given the new reality of housing youth in only two facilities. This is particularly true now that the population has decreased so significantly, and that there is a higher concentration of youth with a history of violence and/or mental health concerns.</p> <p>Pursuant to Paragraph XVII (j), the Office of the Monitor is requesting a report within 60 days, detailing current concerns with the classification system, analyzing existing data from DEC from the prior 12 months, and making recommendations for how to address current limitations while ensuring that youth remain in the least restrictive placements, consistent with public safety. It is strongly recommended that the process include the input of the</p> |

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| | <p>facility directors, facility compliance officers, social work supervisors and others with direct working knowledge of the classification system. Recommendations which can bring paragraph 52 into compliance, both in policy and practice, should be concrete, with specific time frames, and address underlying problems occurring with current space limitations. Please identify who will be responsible to prepare such report, who will be involved in the process, and who will be responsible for its submission.</p> |
| <p>Quality Assurance Measures</p> | <p>NIJ effectively documents the results of both detention and committed classification processes and youth classification, levels of treatment and corresponding housing module assignments. Monthly documentation of detention and committed classification is consistently provided to the Monitor’s Consultant.</p> <p>NIJ must incorporate annual reviews of the validation of the objective methods of the classification instruments, processes and findings, negating the opportunity to systematize quality assurance into the classification processes.</p> <p>The CD Humacao facility closure, youth population consolidation, staff resignations and staff reassignments, the volume of transitional measures, protective custody and the corresponding restrictive housing practices requires NIJ to assess the effectiveness of existing Classification practices in light of a reduction in housing modules, and how these issues impact youth treatment and protection from harm requirements.</p> |
| <p>Sources of Information upon which Consultant report and compliance ratings are based</p> | <p>Monthly classification documentation for youth who have been classified for detention and committed youth is provided to the Monitor’s Consultant. Monthly, NIJ provides the Monitor’s Consultant facility youth population and classification reports. During site visits, the Monitor’s Consultant obtains facility youth population documentation that identifies youth housing module populations and classification levels of treatment.</p> <p>Detention classification documentation provided to the Monitor’s Consultant monthly, indicates youth have been consistently classified and assigned to a housing module that corresponds to detention classification level.</p> <p>For the second quarter of 2019, all the reviewed committed institutional assignments are consistent with the level of treatment scores and level assignments as reported in the monthly committed classification reports. Youth committed classification levels and institutional housing assignments are reviewed for consistency during site visits.</p> |

PROTECTION FROM HARM – USE OF FORCE (David Bogard)

S.A. 77. In no event is physical force justifiable as punishment on any juvenile. The use of physical force by staff, including the use of restraints, shall be limited to instances of justifiable self-defense, protection of self and others, to maintain or regain control of an area of the facility, including the justifiable protection of significant property from damage; and prevention of escapes; and then only when other less severe alternatives are

insufficient. A written report is prepared following all uses of force and is submitted to administrative staff for review. When force, including restraint, is used to protect a youth from self, this must be immediately referred to the medical area for medical and mental health evaluation and any necessary treatment.

Compliance Rating Partial Compliance

Description of Monitoring process during this period of time

Monitor’s staff visited the two facilities on June 4-5, 2019 to review quarter to date use of force incidents and discuss same with institutional management and compliance staff. At Ponce, incident reports and videos were reviewed for two use of force incidents that had transpired thus far in the quarter; four others occurred after the site visit within the quarter and were not reviewed. At Villalba, I reviewed incident reports for the two incident that had occurred in the quarter although there was a third incident that occurred later in the quarter that was not reviewed. Off-site, I reviewed 4 OISC investigations for use of force incidents or related allegations that occurred during the current and previous quarters of 2019 to determine whether the investigations were thorough, findings reasonable, and comported with the requirements of ¶78.

I also reviewed DCR’s weekly spreadsheet reports of use of force incidents and multiple descriptive data elements for same including names of youth involved, locations, types of force employed, injuries sustained by youth, medical services provided, etc. I also reviewed a table developed by UEMNI listing all OISC and UEMNI investigations of use of force and other allegations and the status of such reports and any corrective or disciplinary actions taken against staff for confirmed mistreatment.

Findings and Analysis

The number of use of force incidents and youth involved increased significantly in this quarter, breaking a very positive trend of reduced uses of force. In contrast to the first quarter of 2019 when there were only four use of force incidents involving a total of only four youths, this quarter had 9 incidents involving 17 youth. This quarter’s incidents occurred as follows: Villalba (3) and Ponce (6).

| Facility | Q2 Events: Use of Force | Q1 Events: Use of Force | Q2 Youth Involved | Q1 Youth Involved |
|--------------|----------------------------|----------------------------|-------------------|-------------------|
| CTS Ponce | 6 | 3 | 9 | 3 |
| CTS Villalba | 3 | 1 | 8 | 1 |

Chemical agents usage increased over the previous quarter’s low figure of 2, with OC deployed against 10 youth in this quarter. Review of videos at Ponce revealed that OC is not always being “used in extreme situations and as a last resort” where an imminent and significant threat is posed to staff or other youth by the subject as required by NIJ policy 9.18. Along with more incidents, the volume of physical restraints have also increased, from 5 in the first quarter to 17 in this second quarter. And, there appear to be incidents

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| | <p>in which alternatives to force are used only briefly before resorting to physical restraints or chemical agents.</p> <p>As compared to the previous quarter, Q2 had significantly more use of force incidents, involving more youth, with more OC and physical restraints employed. This trend may be, in part, a function of the closure of Humacao and the resultant decrease in housing flexibility due to fewer available housing locations and the inability to separate youths as a result.</p> <p>No youth were reported as injured due to staff force.</p> <p>My review of 4 OISC investigations for use of force reveals that these investigations continue to improve and have generally become extremely useful and informative reviews of incidents. The reports are typically thorough, following an investigation protocol that is geared to assessing numerous aspects of the incidents being reviewed including the completeness and accuracy of written reports, good summaries of youth and staff interviews, review of medical records and interviews with nurses, most recent training received by each employee involved, as well as thorough findings of relevant facts. OISC is now routinely opining as to whether there is evidence to corroborate allegations of excessive or unnecessary force and whether other policy or training violations occurred. Although it is the Legal Division that ultimately determines the efficacy of charges and, if appropriate, any corrective actions, OISC staff are also now identifying specific policy violations, by policy number, that may have occurred.</p> <p>In almost all cases, staff who used force themselves, or were witnesses, prepared thorough reports using the check boxes and narrative components of the Incident Report form, with reviews by supervisors’ part of that package and Cernimiento reviews by directors and compliance staff to determine whether 284 referrals would be made. The reports typically provide adequate explanations and justifications for the amount and type of force used, consistent with policy and this provision, including pre and post use weights of any OC canisters that are deployed.</p> <p>When youth bring an allegation of excessive or unnecessary force to staff, typically to social workers, psychology or behavior modification staff, a 284 is promptly generated. And use of force related investigations are routinely completed within 30 days.</p> <p>As of December 2018, IDECARH issued revised training materials to reflect the August 2018 revised version of policies 9.18 (use of force) and 9.10 (reporting). As stated in the previous QR, we reviewed the revised training materials and found them to mirror or track the new policy and appropriately convey to staff the expectations for use of force as required by ¶77 and the policy itself.</p> |
| <p>What is needed for full compliance?</p> | <p>On March 31, 2019 the Monitor’s Consultant drafted a QA Use of Force template that he and NIJ can use to review use of force incidents. This draft tool reflects the requirements of ¶77 as clarified by policy 9.18. While DCR does have review procedures in place to assess whether OISC investigations are required for use of force incidents (e.g., Cernimiento), they are not sufficiently directed at the key provisions to</p> |

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| | <p>be said to specifically assess compliance with the provision and associated policies. And while OISC has protocols that determine what steps its investigators will take in reviewing an incident, those measures are not directed at reviewing specific aspects of an incident to determine whether there is compliance with ¶77 and Policy 9.18. NIJ responded on May 1 regarding the status of the review process but there has been no further communication in this regard. This tool needs to be finalized and then used by NIJ officials for QA and compliance documentation.</p> <p>In order for the Monitor to find substantial compliance with ¶77, NIJ must be able to provide evidence of OC routinely being used according to the procedures set forth in Policy 9.18.</p> <p>Over the past couple of years we have observed staff routinely exhibiting much patience and use of alternatives to force at Ponce before resorting to physical restraints or chemical agents, but NIJ must provide additional evidence to the Monitor and reinforce to staff that, where feasible and safe, alternatives to force and de-escalation and patience must be used before staff resort to physical, mechanical and chemical restraints</p> <p>DCR IDECARH needs to provide evidence to the Monitor’s Office that all staff have received the required training in the revised Use of Force Policy 9.18 and reporting requirements included in 9.10. During the quarter, 9 training sessions were scheduled on Use of Force for four hours each, and 13 sessions were scheduled on Reporting Institutional Abuse and Neglect for four hours each.</p> |
| <p>What are next steps recommended for compliance?</p> | <p>NIJ needs to adopt the use of Force Checklist for use by institutional supervisors and by OISC. OISC should consult with use of force instructors/internal experts in their video reviews and other aspects of use of force investigations. Checklists should be completed as a QA tool for all use of force incidents and submitted to the Monitor’s Consultant for review.</p> <p>OISC and UEMNI should meet with institutional managers and compliance staff monthly to review any use of force incidents in order to determine any corrective measures that may be necessary and any training that may be required.</p> <p>As per the Court’s Order, which NIJ has committed to following, installation of cameras at Villalba could greatly enhance youth and staff safety in many respects, including serving as a deterrent to unsafe behavior by staff and youth and allowing for far greater employee accountability via enhanced investigations. The schedule for installation, training and operationalizing the cameras was provided to the Monitor in May, with completion expected by the end of May. While some work has been completed on the installation, no additional information has been received since that time to determine if the process has been completed.</p> |

Protection from Harm: Investigations of Abuse and Institutional Neglect
 – Kim Tandy, Javier Burgos and David Bogard

S.A. 78. Defendants shall take prompt administrative action in response to allegations of abuse and mistreatment. An incident report shall be prepared for each allegation of physical or mental abuse, including juvenile on juvenile assaults, staff on juvenile abuse, and excessive use of force by staff, within 24 hours of the incident. A copy of each incident report together with the preliminary investigation prepared by the Police Department and/or AIJ shall be forwarded to Defendant Department of Justice, where the allegations shall be investigated and a final report shall be made in 30 days. In addition, a copy of each incident report alleging physical or mental abuse by staff or excessive use of force by staff together with the preliminary investigation prepared by the Police Department and/or the AIJ, shall be forwarded to the Defendant Department of Social Services.

| Compliance Rating | Partial Compliance |
|---|--|
| <p>Description of Monitoring process during this period of time</p> | <p>The Monitor met with the Functional Team regarding Paragraph 78 on May 15. The meeting included a discussion of monthly and quarterly reporting as part of the Document Request Master Chart, categorization of investigations (physical aggression versus excessive use of force), and corrective action plans as a result of investigative results.</p> <p>At the Monitor’s request, NIJ shared 3 charts completed for calendar year 2018 – a list of incidents referred for 284 investigations by type and other identifying information, use of force chart for calendar year 2018 with findings, investigations with criminal and administrative actions taken by the DOJ and DCR, and/or prosecutors. The Monitor requested that an analysis of this information be completed after June of 2019 for the fiscal year as was done by special request in August of 2018. The Monitor also reviewed the table developed by UEMNI listing all OISC and UEMNI investigations of alleged abuse and/or institutional neglect for the first quarter of 2019, and any corrective or disciplinary actions taken against staff for confirmed mistreatment</p> <p>The Monitor sought clarification about the process for identifying corrective action measures taken as a result of the investigations done, including who is involved in that review, and how time frames are established for needed policy changes and/or training.</p> <p>Incidents involving abuse and/or institutional neglect fall into three general categories: those involving self-harm where misconduct is alleged by staff, unnecessary or excessive use of force incidents, and/or other incidents involving harm to a youth such as assaults between youths. Level 1 incidents which do not meet the criteria for a referral for an abuse or neglect investigation are investigated through UEMNI for resolution. A review of Second Quarter Level 1 incident reports for 2019 was completed by Javier Burgos for compliance with policy.</p> <p>Incidents involving suicidal or self-mutilation were diverted to Miriam Martinez for review under paragraph 63, as well as investigations by UEMNI and OISC when allegations of abuse or neglect are alleged. Level 2 284 reports completed by OISC involving the use of force were</p> |

| | <p>reviewed by David Bogard. Other investigations by OISC are reviewed by the Monitor and/or David Bogard. The Monitor reviewed 14 completed investigations for the first quarter, including 5 which were categorized as incidents of physical aggression and several which were self-harm incidents.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|---------------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|---|-----|-----|-----|-----|-------------------------------|----|----|----|----|--|----|----|---|----|---|----|----|---|---|--|---|---|---|---|--|---|----|----|----|
| <p>Findings and Analysis</p> | <p>The approved policies are divided in three sections, and include the analysis of referrals of abuse and/or institutional neglect by UEMNI (Policy No 13.2.1); immediate prevention actions regarding serious allegations (Policy No. 13.2.2); and final determinations on referrals of abuse and/or institutional neglect (Policy 13.2.3). Review of investigations under this provision are reviewed against these policies.</p> <p>NIJ routinely provides training to staff on Management of Investigations Regarding Abuse and Institutional Neglect. For the Second Quarter, thirteen (13) 4 hour training sessions were scheduled for Management of Investigations Regarding Abuse and Institutional Neglect. The prior 18 month report, ending December of 2018, reported that 95% of staff received this training during that period of time.</p> <p>The following tables summarize statistics about case management for the past four quarters. The primary source of the information is the case tracking records maintained by NIJ along with other records such as the underlying individual case reports and records reviewed by members of the Monitoring team.</p> <p>The first table summarizes general information about incidents events. An incident event may generate many incident reports, but this table counts a multiple-report incident as a single event. Because incident reports are not digitalized, and there are no detailed reports generated, the Monitoring team cannot corroborate the information in this set of data.</p> <p>Incident Tracking by Quarter involving Harm to Youth</p> <table border="1" data-bbox="431 1213 1442 1776"> <thead> <tr> <th data-bbox="431 1213 1073 1325">A. General Measures by quarter</th> <th data-bbox="1073 1213 1192 1325">3rd 2018</th> <th data-bbox="1192 1213 1268 1325">4th 2018</th> <th data-bbox="1268 1213 1354 1325">1st 2019</th> <th data-bbox="1354 1213 1442 1325">2nd 2019</th> </tr> </thead> <tbody> <tr> <td data-bbox="431 1325 1073 1381">A.1 Average Monday 1st Shift count of youth</td> <td data-bbox="1073 1325 1192 1381">158</td> <td data-bbox="1192 1325 1268 1381">142</td> <td data-bbox="1268 1325 1354 1381">123</td> <td data-bbox="1354 1325 1442 1381">119</td> </tr> <tr> <td data-bbox="431 1381 1073 1438">A.2 Number of incident events</td> <td data-bbox="1073 1381 1192 1438">45</td> <td data-bbox="1192 1381 1268 1438">45</td> <td data-bbox="1268 1381 1354 1438">33</td> <td data-bbox="1354 1381 1442 1438">53</td> </tr> <tr> <td data-bbox="431 1438 1073 1495">A.3 Number of youth-to-youth incident events</td> <td data-bbox="1073 1438 1192 1495">13</td> <td data-bbox="1192 1438 1268 1495">11</td> <td data-bbox="1268 1438 1354 1495">6</td> <td data-bbox="1354 1438 1442 1495">10</td> </tr> <tr> <td data-bbox="431 1495 1073 1551">A.4 Incident events involving use of force by staff</td> <td data-bbox="1073 1495 1192 1551">14</td> <td data-bbox="1192 1495 1268 1551">10</td> <td data-bbox="1268 1495 1354 1551">3</td> <td data-bbox="1354 1495 1442 1551">9</td> </tr> <tr> <td data-bbox="431 1551 1073 1665">A.5 Incident events with suicide act, ideation, or gesture</td> <td data-bbox="1073 1551 1192 1665">2</td> <td data-bbox="1192 1551 1268 1665">4</td> <td data-bbox="1268 1551 1354 1665">5</td> <td data-bbox="1354 1551 1442 1665">5</td> </tr> <tr> <td data-bbox="431 1665 1073 1776">A.6 Incident events w/ self-mutilation act, ideation, or gesture</td> <td data-bbox="1073 1665 1192 1776">5</td> <td data-bbox="1192 1665 1268 1776">12</td> <td data-bbox="1268 1665 1354 1776">15</td> <td data-bbox="1354 1665 1442 1776">18</td> </tr> </tbody> </table> | A. General Measures by quarter | 3rd 2018 | 4th 2018 | 1st 2019 | 2nd 2019 | A.1 Average Monday 1st Shift count of youth | 158 | 142 | 123 | 119 | A.2 Number of incident events | 45 | 45 | 33 | 53 | A.3 Number of youth-to-youth incident events | 13 | 11 | 6 | 10 | A.4 Incident events involving use of force by staff | 14 | 10 | 3 | 9 | A.5 Incident events with suicide act, ideation, or gesture | 2 | 4 | 5 | 5 | A.6 Incident events w/ self-mutilation act, ideation, or gesture | 5 | 12 | 15 | 18 |
| A. General Measures by quarter | 3rd 2018 | 4th 2018 | 1st 2019 | 2nd 2019 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A.1 Average Monday 1st Shift count of youth | 158 | 142 | 123 | 119 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A.2 Number of incident events | 45 | 45 | 33 | 53 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A.3 Number of youth-to-youth incident events | 13 | 11 | 6 | 10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A.4 Incident events involving use of force by staff | 14 | 10 | 3 | 9 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A.5 Incident events with suicide act, ideation, or gesture | 2 | 4 | 5 | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A.6 Incident events w/ self-mutilation act, ideation, or gesture | 5 | 12 | 15 | 18 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Mental Health Incidents – Including 284 Reports

The subset of incidents involving suicidal acts, ideation, or gestures, or self-mutilation acts, ideation or gestures is found in Table B. Most of these do not warrant abuse allegations. If a 284 report is filed, implicating possible abuse by a staff member or other, the case also moves through the investigative stage.

| | 3rd | 4 th | 1 st | 2 nd |
|---|-------------|-----------------|-----------------|-----------------|
| B. Mental Health Record Information | 2018 | 2018 | 2019 | 2019 |
| B.1 Suicidal incidents, ideation or gestures | 2 | 7 | 5 | 5 |
| B.2 Number of individual youth referenced | 2 | 7 | 5 | 4 |
| B.3 Cases involving ideation only | 1 | 5 | 3 | 3 |
| B.4 Cases involving suicide gesture | 1 | 0 | 2 | 0 |
| B.5 Cases involving suicide intention | 0 | 2 | 0 | 2 |
| B.6 Cases w/ ambulatory treatment | 2 | 4 | 4 | 3 |
| B.7 Cases with hospitalization | 0 | 3 | 1 | 2 |
| B.8 Cases leading to death | 0 | 0 | 0 | 0 |
| B.9 Suicide Cases with 284 report filed | 1 | 1 | 0 | 0 |
| B.10 Self-mutilations incidents, ideation or gestures | 5 | 17 | 15 | 18 |
| B.11 Number of individual youth referenced | 4 | 14 | 10 | 15 |
| B.12 Cases requiring sutures | 0 | 0 | 0 | 4 |
| B.13 Cases requiring hospitalization | 0 | 0 | 0 | 0 |
| B.14 Cases leading to death | 0 | 0 | 0 | 0 |
| B.15 Self-Mutilation Cases with a 284 report filed | 2 | 6 | 5 | 2 |

The above cases come from mental health records. NIJ has implemented a screening procedure and instrument that diverts the investigation of some incidents from the Paragraph 78 process to a mental health process. Of the 53 (A.2) incident events in most recent quarter, twenty- three (2) (B.1 plus B.10) involved suicide and self-mutilation incidents. **Among the last 8 quarters, this ranks the third highest (.44), behind only the 4th quarter of 2017 (.51) and first quarter of 2018 (.55) (after the hurricanes).**

During the second quarter, only 2 of the eighteen (18) incidents involving self-mutilation resulted in a 284 report being filed. None of the five (5) cases involving suicidal gestures or ideation resulted in a 284 case being filed.

This information was received and reviewed by the Mental Health Consultant Dr. Miriam Martinez to ensure that appropriate protocols have been followed, and that data provided here matches what is provided to that her for purposes of Paragraph 63. For a discussion of these incidents and how they were handled, see Dr. Martinez's analysis for Paragraph 63 in the Mental Health section.

Responses to Abuse Referrals

The next table summarizes abuse referrals and the initial responses to such referrals.

| C. 284 Incidents by quarter (2018-2019) | 3rd | 4th | 1st | 2nd |
|---|-----------------------|-----------------------|-----------------------|-----------------------|
| C.1 284 Incident Events | 27 | 24 | 19 | 24 |
| C.2 Level One Incident Events | 3 | 5 | 5 | 4 |
| C.3 Level Two Incident Events | 24 | 19 | 14 | 20 |
| C.4 Referrals to OISC | 24 | 19 | 14 | 20 |
| C.5 Youth to Youth incidents | 13 | 11 | 6 | 10 |
| C.6 Youth to Youth Injuries | 10 | 5 | 3 | 6 |
| C.7 Youth to Youth with External Care | 4 | 5 | 3 | 3 |
| C.8 Youth to Youth Sexual Intercourse | 0 | 1 | 0 | 0 |
| C.9 Youth to Youth Sexual Intercourse w/injury | 0 | 0 | 0 | 0 |
| C.10 Staff to Youth Incidents | 14 | 13 | 13 | 14 |
| C.11 Staff to Youth Injuries | 8 | 7 | 6 | 6 |
| C.12 Staff to Youth External Care | 3 | 0 | 1 | 2 |
| C.13 Staff to Youth Sexual Intercourse | 0 | 0 | 1 | 1 |
| C.14 Staff to Youth Sexual Intercourse w/injury | 0 | 0 | 0 | 0 |
| C.15 284 Incidents with Admin. Action | 27 | 24 | 19 | 24 |
| C.16 284 Incidents with report by shift end | 27 | 24 | 18 | 23 |
| C.17 Level 1 investigations completed 20 days | 3 | 5 | 5 | 4 |
| C.18 Special Operations interventions | 2 | 0 | 1 | 2 |
| C.19 SOU reports with 284 investigations | 1 | 0 | 0 | 1 |
| C.20 284 with Item 5 completed | 27 | 24 | 19 | 24 |

| | | | | |
|--|-----|-----|-----|-----------------|
| C.21 284 with Staffing Compliance | 25 | 23 | 17 | 24 ¹ |
| C.22 Percent of 284 cases with staffing compliance | 93% | 96% | 89% | 100% |

A determination is made at the institutional level as to whether incidents are Level One or Level Two based upon criteria in the Cernimiento de Incidentes de Alegado Maltrato Institutional form. Level one incidents by definition include verbal abuse and some forms of physical aggression. Level Two incidents include material exploitation, incidents of a sexual nature, death, various instances of institutional neglect, including youth self-harm, undue restrictions with medication, misuse of mechanical restraint or pepper spray, and excessive use of force.

Level One incidents are investigated locally at the institution. Level Two incidents are investigated by OISC. Referrals to OISC as based on the screening protocol.

A review during the 2st quarter of 2019 for the calendar year shows that there were 3 Level 1 reports made, two of which were reclassified as Level 2 incidents. These Level I cases followed the same format/guidelines than Level II cases but the facilities' investigators only have 20 working days to finish the investigation.

Initial Case Management Measures Taken

| D. Initial Case Management Measures (2018-19) | 3rd | 4th | 1st | 2nd |
|---|-----------------------|-----------------------|-----------------------|-----------------------|
| D.1 284 percent with admin actions | 100% | 100% | 100% | 100% |
| D.2 284 per cent completed by end of shift | 100% | 100% | 95% | 96% |
| D.3 284 Level 1 Investigation Complete Within 20 days | 100% | 100% | 100% | 100% |

Initial case management data indicates that compliance remains strong regarding the percentage of documentation by the end of the shift, and completion by UEMNI of Level 1 investigations within the prescribed period of time.

Investigations Referred to OISC

| E. OISC (2018-2019) | 3rd | 4th | 1st | 2nd |
|--------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| E.1 Cases Referred from this quarter | 24 | 19 | 14 | 20 |
| E.2 Received by OISC Within 24 hours | 22 | 19 | 12 | 17 |

¹ The quarterly statistics show that there were no housing unit incidents which occurred when there was staffing non-compliance. The Monitor believes this may not be accurate given reports by OISC which document incidents where staffing non-compliance is present. How this number obtained is being examined further.

| | | | | |
|---|-----|------|-----|-----|
| E.3 Completed by OISC Within 30 workdays | 15 | 19 | 12 | 18 |
| E.4 Complete during the next quarter, but within 30 days | 0 | 0 | 0 | 0 |
| E.5 Cases Not Completed by OISC Within 30 days. | 3 | 0 | 2 | 2 |
| E.6 Percent of OISC cases completed within 30 days | 88% | 100% | 86% | 85% |
| E.7 Completed Cases Returned for Further investigation | 0 | 0 | 0 | 2 |
| E.8 Percent of cases returned for further investigation | 0% | 0% | 0% | 10% |
| E.9 Further Investigation Completed | 0 | 0 | 0 | 0 |
| E.10 Cases this quarter incomplete, including further investigation | 2 | 0 | 0 | 2 |
| E.11 Percent of cases from this quarter not yet completed | 12% | 0% | 0% | 10% |

NIJ's quarterly statistical report indicated that 20 cases were referred for investigation and 17 of were completed. 85% of new referrals met the 30 day completion time and 2 cases (10%) were returned for further investigation. The Monitor received and reviewed 14 completed investigations during the quarter. David Bogard reviewed 4 use of force related OISC investigations during this quarter.

OISC reports were typically very thorough, assessing numerous aspects of the incidents being reviewed including the completeness and accuracy of written reports, good summaries of youth and staff interviews, review of medical records and interviews with nurses, most recent training received by each employee involved, as well as thorough findings of relevant facts.

Findings as to whether the allegations were validated and other policy or training violations occurred are increasingly detailed. Although it is the Legal Division that ultimately determines the efficacy of charges and, if appropriate any corrective actions, OISC staff are now making recommendations as to whether there is sufficient evidence to corroborate the allegations or any other concerns that arise during the investigation. Reports are also now identifying specific policy violations, by policy number, that may have occurred. Investigations are reviewed by supervisors to ensure investigators are following protocol.

Given the challenges now faced by Ponce and Villalba, OISC has noted circumstances which directly relate to compliance issues effecting safety and security. For example, several

reports note staffing ratios during specific incidents which may violate paragraph 48. A notation by OISC at the end of a report urges intervention with youth at Ponce who have been involved in repeated incidents of violence. Staff inattentiveness during incidents has been noted on several occasions, while watching TV, talking among themselves, and tied in some cases to delayed response to problems on unit. These are red flags which should trigger action on the part of management and facility directors. That connection between identified problems and underlying issues in OISC reports and preventative and corrective actions within facilities must be more evident. Routine data collection and analysis must also be part of that process.

Some investigations are hampered by the absence of video footage at Villalba. Investigators have expressed concern that this tool is not available to provide critical information to substantiate or refute certain allegations. The cameras are now available and are on a schedule for installation, training and testing.

The following table summarizes the decisions and actions taken in cases that do not involve criminal charges.

| F. Administrative Determinations for 284 Cases (2018-2019) | 3rd | 4th | 1st | 2nd |
|---|-----------------------|-----------------------|------------|------------|
| F.1 Cases with youth discipline referrals | 44 | 43 | 21 | 31 |
| F.2 Cases with youth discipline actions | 36 | 36 | 12 | 19 |
| F.3 Cases with youth no discipline actions | 5 | 2 | 9 | 7 |
| F.4 Cases Staff/youth with determinations | 11 | 18 | 9 | 12 |
| F.5 Cases recommending personnel actions | 7 | 10 | 3 | 6 |

Of the 31 youth cases referred for disciplinary action (F.1) with referrals as a 284 cases, 19 disciplinary actions were imposed; no discipline was imposed in 9 cases.

Of the 7 cases involving staff/youth incidents, 12 determinations were made, and of these 6 were recommended for disciplinary action.

A summary of actions taken by the legal department should be provided at the end of the fiscal year as part of the annual report. It would be helpful to indicate whether such decisions were overturned on appeal or through any other process. The summary should also provide information on the nature and extent of disciplinary actions involving youth.

Prosecutorial Determinations for 284 Cases

| G. Prosecutorial Determinations for 284 Cases (2018-2019) | 3rd | 4th | 1st | 2nd |
|--|-----------------------|-----------------------|------------|-----------------------|
| G.1 Cases received by PRDOJ | 2 | 0 | 1 | 2 |

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|---|--|--|---|---|---|---|---|---|---|---|---|----------------------------------|---|---|---|---|
| | <table border="1"> <tr> <td>G.2 Cases with decision not to prosecute</td> <td>1</td> <td>0</td> <td>1</td> <td>2</td> </tr> <tr> <td>G.3 Cases with referral for prosecution</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>G.4 Cases pending determinations</td> <td>1</td> <td>0</td> <td>1</td> <td>0</td> </tr> </table> | G.2 Cases with decision not to prosecute | 1 | 0 | 1 | 2 | G.3 Cases with referral for prosecution | 0 | 0 | 0 | 0 | G.4 Cases pending determinations | 1 | 0 | 1 | 0 |
| G.2 Cases with decision not to prosecute | 1 | 0 | 1 | 2 | | | | | | | | | | | | |
| G.3 Cases with referral for prosecution | 0 | 0 | 0 | 0 | | | | | | | | | | | | |
| G.4 Cases pending determinations | 1 | 0 | 1 | 0 | | | | | | | | | | | | |
| <p>What is needed for full compliance?</p> <p>What steps are required and/or recommended?</p> | <p>Referrals for criminal investigations were note in the 33 cases completed in 2018, but none appeared to result in a prosecution. Two remain pending. Several others were noted as still under investigation. A report should be completed for FY 2018-2019 which provides a cumulative look at these decisions over the last year.</p> <p>Effective treatment cannot take place absent an environment where youth and staff are safe. Paragraph 78 is a critical aspect of protecting youth from harm while incarcerated in NIJ facilities.</p> <p>The process is designed ensure that allegations of harm are immediately reported, investigated at both the facility level and through OISC, and that appropriate actions are taken for discipline against youth and/or employees involving such misconduct. Of equal importance, however, is that the process should identify policies which may need to be changed, additional training which may need to occur, and/or other measures which should be taken in response to incidents which have been investigated. In that sense, Policy 13.2.1 has as part of its purpose, “to prevent and minimize the occurrence of situations involving abuse or institutional neglect.”</p> <p>The Monitor and her team have continued to be impressed by the quality of investigations being performed by UEMNI and OISC, including thorough, timely reports which increasingly conclude with findings which indicate conduct which appears to violate policy, and weigh evidence to support or disprove allegations and other reported circumstances. But timely and thorough investigations are not enough to find substantial compliance without consideration to whether policies and practices meet the underlying purpose of Paragraph 78. In this regard, there remains work to be done.</p> <p>Safety and security are critical issues facing NIJ, exacerbated by the closure of Humacao. Staffing shortages and double shifting, combined with classification challenges and inconsistency/shortages in mental health care, make this provision all the more critical as a preventative as well as corrective measure.</p> <p>Compliance measures require:</p> <ol style="list-style-type: none"> 1) Transparency and timely reporting of incidents as detailed in other aspects of this report, to the Office of the Monitor. This ensures the Monitor that incidents are appropriately reported for investigation, or otherwise identified for review and possible intervention. 2) Completion of installation, training and operation of video cameras at Villalba, is a top priority. The lack of cameras has hampered investigators in the fact finding process in any number of cases. This must be remedied according to the plan detailed for the Court. | | | | | | | | | | | | | | | |

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| | <p>3) Submission of UEMNI referrals and OISC completed investigations should be done at least monthly, or sooner if requested. Translation and review of these reports can be time consuming, but the content is extremely important and reflective of institutional climate, youth population challenges and leadership issues, as well as the response to such.</p> <p>4) OISC investigations should continue to evaluate compliance with procedural requirements regarding the handling of incidents, and equally important, contain sufficient detail with regard to violations of policy, credibility of facts and evidence supporting or disavowing allegations, and other relevant conclusions reached by the investigators. Processes must be in place within facilities and NIJ leadership to then utilize these findings to make needed changes. Currently, it appears that only UEMNI information is used to determine whether there are ways to improve training and to review policies.</p> <p>5) Consistent with the purpose of Paragraph 78, and Policy 13.2.1, measures must be in place to prevent and minimize the occurrence of situations involving abuse or institutional neglect. At a minimum, reporting on this should include:</p> <ul style="list-style-type: none"> a) Quarterly statistical reports of incidents involving allegations of abuse or institutional neglect, with analysis of possible patterns, trends, and other observations which can help prevent further incidents; b) Evidence of meetings which document meetings with management and others to discuss cases of alleged abuse, status and outcomes of investigations, evaluation of patterns of recurrence, compliance with the terms, and discussions of alternatives for the prevention of incidents. Summaries of these meetings and decision regarding policies, training needs, and other appropriate action steps should be documented and submitted. c) Evidence of training for staff trainers and other direct service staff on the handling of referrals of alleged abuse and institutional neglect in coordination with IDECARH. d) Maintenance of a log of actions taken against employees including the particulars of the actions by the employee, and actions taken against the employee, whether administrative or criminal. Given that the purpose is to consider recidivism of actions constituting abuse or neglect, an analysis of such information should be done at least quarterly, or more often if warranted. A copy of this log should be made available to the Monitor on a quarterly basis, along with any analysis done or actions taken as a result. |
| <p>Priority Next Steps Toward Compliance</p> | <p>The plan for installation and operation of cameras at Villalba must be completed. The seriousness of incidents at this facility, which houses Levels IV and V youth, cannot be underestimated, and warrants completion of this plan immediately.</p> <p>Increasingly, the Office of the Monitor receives word of serious incidents involving youth (or officers) only when one of the team members are on site, when a UEMNI report is sent, or after an investigative report is completed by OISC The recent review of second quarter OISC and UEMNI reports reveals a number of other disturbing incidents involving youth safety which were not disclosed to the Monitoring team for weeks, or in some cases, months.</p> |

The Monitor's plan for improving disclosure of information regarding incidents occurring in facilities includes:

a) Incident report cover sheets for a given week should be sent to the Office of the Monitor (specifically to Kim Tandy, Javier Burgos and Bob Dugan) by Monday of the following week. This should begin immediately, and the person responsible for providing the information should be designated.

b) Incidents of a serious nature should be sent to the Office of the Monitor (specifically Kim Tandy, Javier Burgos and Bob Dugan) within 24 hours. Examples of incidents of a serious nature include, but are not limited to:

- i. Incidents of self-mutilation involving sutures, hospitalization or other in-house medical care;
- ii. Incidents involving youth being cut by other youth with razor blades, knives or other sharp objects where sutures, hospitalization or other in-house medical care is required;
- iii. Actual or attempted escapes;
- iv. Youth on youth assaults involving hospitalization or on-site medical care of one or more youth;
- v. suicidal behavior and/or attempts requiring intervention by medical and/or mental health staff;
- vi. Assault of a staff member requiring hospitalization or other in-house medical care;
- vii. Allegations of sexual assault on a youth by other youth or by staff;
- viii. Incidents involving group fights or assaults where OC and/or other restrictions are utilized, including lockdown of units.
- ix. Group lockdowns or Group Time Modifications that exceed 8 hours as defined in Policy 9.17

This should begin immediately, and the person designated to send the report should be identified.

c) As has been previously requested, Dr. Miriam Martinez should be notified immediately about any incident involving suicidal ideation and/or intent. Immediately should be as soon as the patient is stable, even if awaiting psychiatric evaluation, or as soon as triaged to the hospital if the youth is going to the hospital.

d) Digitizing incident reports has long been discussed so that the Monitoring team can have immediate access to this information, but more importantly, for efficiency, consistency and accountability purposes. NIJ should create a plan for digitalization of incident reports, incident report cover sheets, and determine needed IT and support. This should be submitted to the Office of the Monitor by September 1, 2019 and include implementation steps and time frames. If such measures have already been taken, and sufficient information is able to be accessed by the Monitor, there is no need to provide these manually.

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| | <p>Provide the Monitor with evidence of the last 3 meetings where discussions were held regarding the status and content of investigations, trends identified, and decisions made as a result.</p> <p>Provide the Monitor with the last year years of data detailing employee conduct and actions taken by the agency, along with analysis of recidivism or other trends completed.</p> |
| Quality Assurance Measures | The Monitor has not reviewed proposed QA measures in this area. |

Protection from Harm – Isolation (David Bogard)

S.A. 79. Juveniles shall be placed in isolation only when the juvenile poses a serious and immediate physical danger to himself or others and only after less restrictive methods of restraint have failed. Isolation cells shall be suicide resistant. Isolation may be imposed only with the approval of the facility director or acting facility director. Any juvenile placed in isolation shall be afforded living conditions approximating those available to the general juvenile population. Except as provided in ¶ 91 of this agreement, juveniles in isolation shall be visually checked by staff at least every fifteen (15) minutes and the exact time of the check must be recorded each time. Juveniles in isolation shall be seen by a masters level social worker within three (3) hours of being placed in isolation. Juveniles in isolation shall be seen by a psychologist within eight (8) hours of being placed in isolation and every twenty-four (24) hours thereafter to assess the further need of isolation. Juveniles in isolation shall be seen by his/her case manager as soon as possible and at least once every twenty-four (24) hours thereafter. A log shall be kept which contains daily entries on each juvenile in isolation, including the date and time of placement in isolation, who authorized the isolation, the name of the person(s) visiting the juvenile, the frequency of the checks by all staff, the juvenile's behavior at the time of the check, the person authorizing the release from isolation, and the time and date of the release. Juveniles shall be released from isolation as soon as the juvenile no longer poses a serious and immediate danger to himself or others.

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| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | <p>The Monitoring Team’s 2019 Second quarter site visits occurred on June 4-5, 2019.</p> <p>During the June 4 Q2 site visit to Ponce, there was one youth on TM status and a second youth was on PC status. Monitor’s staff interviewed the youth on TM status, (self-seclusion due to fear for his safety due to his “leader” status) but the youth on PC was out of the facility that day and unavailable for an interview. There were no youths on TM or PC status at Villalba as of the time of our June 5 site visit..</p> <p>While at Ponce, we were made aware that there had recently been a week-long series of serious disruptions in the Module 2 holding Sumariados and, as a result, the facility imposed restrictions on group activities for those youth, via a modified schedule and emphasis on individual and small group activities. This measure was taken pursuant to Policy 9.17, <i>Group Time Modification</i>, which identifies the types of group behaviors that can prompt imposition</p> |

of this policy. As described, this measure does not constitute “group punishment” (which is prohibited by Policies 9.17 and 15.7) since activities and services did continue (and that 15 minute room checks were made and documented when youth were confined to their rooms). The limitations on group dayroom time were set forth in a detailed justification and group behavior management plan prepared by the Social Worker Supervisor consistent with the requirements of a form/attachment to Policy 9.17. The Monitor’s office was subsequently informed that the Group Time Modification extended for just one day, although some reports suggest that group punishment of no dayroom access during the hours of 6pm-6am for a full week was subsequently imposed as a separate, disciplinary measure in violation of Policy 15.7. The Monitor’s office has yet to receive the requested documentation to verify this.

Villalba also experienced a similar incident involving a serious assault on staff in Module D-1. In that case, the module was locked down by order of the facility director, without any reference to Policy 9.17, on June 6 for some period of time. We were assured that all youth were receiving services, but we have yet to receive the requested documentation which can better document the nature and extent of the lockdown, and what services were provided during this time.

Consistent with the Monitor’s commitment to begin shifting monitoring to self-evaluation by DCR, the Monitor’s staff enlisted the excellent assistance of two Ponce compliance staff to conduct a partial audit of ¶79 criteria as applied during the quarter to four youth at that facility. In lieu of Monitor’s staff searching through TM or PC files to find source documents and evidence of compliance or non-compliance, facility compliance staff were asked to review the four pre-selected cases and answer a checklist of eight ¶79 criteria by summarizing the compliance as to each of the four youths and providing source documentation to support the compliance findings. The eight criteria were selected from the 20 ¶79 requirements and were those that the Monitor’s staff have identified as being most difficult for DCR to provide evidence of compliance previously. On June 6, Ponce compliance staff provided the Monitor’s staff with summaries and notes pertaining to each of the four youths and the eight audited criteria. They also presented the source documents, e.g., Treatment Committee notes, logs, social worker progress notes, daily observation notes. The record review was only for four youth at Ponce inasmuch as the number of placements has decreased so significantly.

In October 2018, the Monitoring Team provided a process to better document the decision making process for authorization of the TM and PC measures, and provided the forms and instructions to DCR for collecting this information-- a *‘TM/PC Decision Making Questionnaire’* to track the decisions made by the facility when making assessing the need to place a youth on TM or PC status and a *‘SA 79 and 80 Checklist,’* which assesses the conditions of the youth on PC or TM status and how they measure up to the required services and protections set forth in ¶79.

The information was to be used to provide a more in-depth analysis which could inform changes to policies which are currently non-compliant with ¶79. We indicated at that time that further changes in the policies would likely not be productive and would not be approved by the Monitor until such analysis could be done. On April 12 (in this Q-2), the Monitor received isolation checklists for two cases from Villalba, five from Ponce, and one decision

| | <p>making questionnaire completed on a Ponce youth. Most of those cases were reviewed when we were last in PR and therefore we were able to do a side-by-side analysis and validation of the two Villalba checklists and four of five Ponce checklists; that analysis revealed a significant number of errors by NIJ staff who prepared the forms. This exercise served as part of the genesis for the self-evaluation conducted during June by Ponce Compliance staff.</p> <p>The replacement of air vent grilles with suicide resistant versions on the lower levels of the housing units at Ponce and Villalba has been completed. DCR staff have arrived at what seems to be a viable plan to retrofit new door hinges that will meet the ¶79 suicide resistant requirements for any youth held in isolation. As of the first month of Q3, DCR staff report that work has commenced and the Monitor’s physical plant consultant will be reviewing progress when on-site during a planned September 2019 Q3 visit.</p> | | | | | | | | | | | | | | | |
|------------------------------|--|----------------------------------|-------------------------------|----------------------------------|-------------------------------|----------------------------------|-----------|---|---|---|---|--------------|---|----|---|---|
| <p>Findings and Analysis</p> | <p>The number of TM placements decreased significantly at Villalba during Q2, from 17 in Q1-19, to none in Q2, while the number of TM placements at Ponce remained the same at 2 each quarter. There were twice as many PC placements at Ponce this quarter as compared to Q1 (8 versus 4), although this would appear to be more a function of judicial decisions than institutional assignments.</p> <table border="1" data-bbox="453 900 1484 1165"> <thead> <tr> <th>Facility</th> <th>Q1 Events: Protective Custody</th> <th>Q1 Events: Transitional Measures</th> <th>Q2 Events: Protective Custody</th> <th>Q2 Events: Transitional Measures</th> </tr> </thead> <tbody> <tr> <td>CTS Ponce</td> <td>4</td> <td>2</td> <td>8</td> <td>2</td> </tr> <tr> <td>CTS Villalba</td> <td>0</td> <td>17</td> <td>1</td> <td>0</td> </tr> </tbody> </table> <p>There continues to be extensive documentation available concerning the requirements of this provision when TM and PC youth are in room confinement/isolation.</p> <p>Case reviews conducted by Monitor’s consultants early in the quarter for 11 youth on TM status and four on PC status, revealed consistent compliance as follows: the cases reviewed consistently met all log documentation criteria; youth were consistently seen by case managers as soon as possible; consistent random minimum fifteen-minute room safety checks were conducted; living conditions approximating those available to the general juvenile population; and the facility director or acting facility director reviewed and approved the placements expeditiously. However, documentation revealed protection and isolation compliance deficiencies for the following elements:</p> <ul style="list-style-type: none"> • There is inadequate documentation concerning the actual reasons underlying the conclusions about the youth posing “a serious and immediate physical danger to himself or others.” The current explanation of “inability to cohabitate” is not adequate to justify isolation as required by this criterion, although there are instances in which a significant risk does, in fact, exist but is insufficiently documented and supported beyond the “inability to cohabitate” description; | Facility | Q1 Events: Protective Custody | Q1 Events: Transitional Measures | Q2 Events: Protective Custody | Q2 Events: Transitional Measures | CTS Ponce | 4 | 2 | 8 | 2 | CTS Villalba | 0 | 17 | 1 | 0 |
| Facility | Q1 Events: Protective Custody | Q1 Events: Transitional Measures | Q2 Events: Protective Custody | Q2 Events: Transitional Measures | | | | | | | | | | | | |
| CTS Ponce | 4 | 2 | 8 | 2 | | | | | | | | | | | | |
| CTS Villalba | 0 | 17 | 1 | 0 | | | | | | | | | | | | |

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| | <ul style="list-style-type: none"> • There is inadequate documentation to determine if “...other less restrictive methods of restraint was tried and failed;” • While progress has been made on making ceiling vents and door hinges safer for when youth are confined to their sleeping rooms for TM or PC, all such rooms are not yet sufficiently suicide resistant at the two facilities; • Youth were not consistently seen by a psychologist within eight (8) hours of being placed in isolation; • Youth were not seen by a psychologist every twenty-four (24) hours thereafter to assess the further need of isolation; • With the exception of one event, youth were not seen by a master’s level social worker within three hours of being placed in isolation; • Youth were not seen by their case manager at least once every twenty-four (24) hours thereafter. <p>However, the June 6 analysis by Ponce Compliance staff provided documentation that revealed somewhat improved compliance relative to the following ¶179 criteria that have previously been found to be non-compliant:</p> <ol style="list-style-type: none"> 1- Youth were placed in isolation only when they posed a serious and immediate physical danger to himself or others; 2- Other less restrictive methods of restraint were tried and failed; 3- Youth were seen by a masters level social worker within three hours of placement; 4- Youth was seen by a psychologist within 8 hours of being placed in isolation; 5- Youth was seen by psychologist every 24 hours to assess the further need for isolation; 6- Youth was seen by case manager as soon as possible. <p>Evidence did not support the youth being seen by their case manager every 24 hours (consistent with previous Monitor’s findings) and (consistent with previous Monitor’s findings) it appeared that youth are being released from isolation as soon as they no longer posed a serious and immediate threat to self or others.</p> <p>While the number of cases included in the Ponce Compliance staff analysis was limited and not dispositive, it nonetheless did evince some positive findings relative to criteria that has previously been found non-compliant and, as such, warrants consideration and repetition in future quarters. Monitor’s consultant will meet with compliance staff in September to further review the methodology employed. NIJ did use one source document that (e.g., there was evidence of daily psychologist visits in the digital system, a source that we previously did not have access to) and will jointly determine how to further implement NIJ’s role in P 79 QA.</p> |
| <p>What is needed for full compliance? What steps are required</p> | <p>Compliance with this provision would require documentation that placements of TM and PC youth in isolation substantially satisfy the 20 criteria set forth in ¶179 as well as the eight criteria specifically required in ¶180 in the case of PC youth. For those youth on PC status that are not separated in a form of isolation, only the ¶180 requirements will apply.</p> |

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| and/or recommended? | As a prerequisite to developing a compliant policy for TM and one for PC, DCR must begin completing accurately ‘The <i>Protective Custody or Transitional Measures Decision Making Process</i> questionnaire,’ and the ‘¶179 and ¶180 Checklist’ for all Transitional Measures and Protective Custody events moving forward. |
| Priority Next Steps | <p>Routine completion of the Decision Making Questionnaire and Checklists (see above) and submission of same to the Monitor’s Office; agreement on a definition of “isolation;” development of new policies driving TM and PC; and improved performance relative to restrictive housing or confinement cases that would fall within ¶179 criteria are the most critical next steps to advance compliance. It is also imperative that there be a rethinking of TM versus PC criteria such that youth who are vulnerable to assault would typically be considered PC. In addition, there must be a general understanding that TM and PC status does not automatically invoke ¶179—that happens only when the youth is placed in “isolation” in order to carry out the status’ safety requirements.</p> <p>There also is a need to create and define alternatives to isolation that can insure the safety of youths on TM and PC statuses. Alternatives could include specialized and designated housing modules in each facility for TM or PC or expanded use of staff one-on-one escorts, although each of these measures is currently unlikely due to insufficient numbers of staff and limited housing options since Humacao was closed.</p> |
| Quality Assurance Measures | <p>The Monitor has provided DCR with various tools that will lend themselves to future QA efforts by DCR. These tools include the ‘<i>Protective Custody or Transitional Measures Decision Making Process</i> questionnaire,’ and the ‘¶179 and ¶180 Checklist’ for all Transitional Measures and Protective Custody events, which the Monitor has been using to assess compliance but which DCR needs to take over responsibility for the QA aspects of same.</p> <p>Facility Compliance staff should assume responsibility for completing analyses of ¶179 and ¶180 documentation compliance for each quarter.</p> |

PROTECTION FROM HARM – PROTECTIVE CUSTODY (David Bogard)

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| S.A. 80. The terms of this agreement relating to safety, crowding, health, hygiene, food, education, recreation and access to courts shall not be revoked or limited for any juvenile in protective custody. | |
| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | <p>The Monitoring Team’s 2019 Second quarter site visits occurred on June 4-5, 2019.</p> <p>During the Q2 site visit to Ponce, there was one youth on PC status (L.V.O.) who was out of the facility that day and unavailable for an interview. There were no youths on PC status at Villalba as of the time of our site visit. Villalba staff explained that one youth on PC status at Ponce due to the sexual nature of his alleged offenses, had been transferred to Villalba the previous week. Despite the concerns that had the youth on PC status at</p> |

Ponce, the Treatment Committee at Villalba determined that the youth could be safely housed in general population and the PC status was lifted.

| Facility | 1 st Quarter PC | 2 nd Quarter PC |
|--------------|----------------------------|----------------------------|
| CTS Ponce | 4 | 8 |
| CTS Villalba | 0 | 1 |

Activities this quarter also included receipt and analysis of weekly PC data concerning numbers of placements and compiling this data into quarterly spreadsheets.

In early October 2018, after a couple of months of discussions regarding the use of TM and PC measures, the Monitoring Team provided a process to better document the decision making process for authorization of these measures, and provided the forms and instructions to DCR for collecting this information-- a *'TM/PC Decision Making Questionnaire'* to track the decisions made by the facility when making assessing the need to place a youth on TM or PC status and a *'SA 79 and 80 Checklist,'* which assesses the conditions of the youth on PC status and how they measure up to the required services and protections set forth in ¶79 and ¶80.

The information was to be used to provide a more in-depth analysis, which could inform changes to policies which are currently non-compliant with ¶80. We indicated at that time that further changes in the policies would likely not be productive and would not be approved by the Monitor until such analysis could be done. Although DCR committed to begin sending these QA forms on March 1 when we met to discuss the process on February 27, it was not until April 12 that the Monitor received isolation checklists for two cases from Villalba, five from Ponce, and one TM/PC decision making questionnaire completed on a Ponce youth. Fortunately, most of those cases had already been reviewed when we were last on site in February and therefore we were able to do a side-by-side analysis and validation of the two Villalba checklists and four of five Ponce checklists; that analysis revealed a significant number of errors by NIJ staff who prepared the forms.

Findings and Analysis

The four PC placements this quarter were lower than the previous quarter, although that figure is primarily driven by judicial orders of protection. Even if it is determined that PC placements are typically ordered by judges, there may still be alternate means available to provide the required protection without resorting to isolation.

In addition, the Monitor's case reviews and youth interviews reveals that some youths designated as TM should more appropriately be considered as PC because they are separated solely or primarily for their protection from potential physical harm by others. This would require a policy change to effectuate.

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| | <p>There continues to be extensive documentation available concerning the requirements of this provision when PC status youth are in room confinement/isolation (See the summary findings included in the narrative for ¶179.) Concerning the eight criteria specifically included in ¶180, findings were that there was no revocation or limitation as it related to: safety; crowding; health; hygiene; food; or access to courts.</p> <p>Limitations in recreation are primarily due to weekend cancellations associated with staff shortages. This is particularly problematic in the case of youth on PC status who are also on some degree of isolation and for whom an hour of daily recreation presents an opportunity to mitigate any negative aspects of the isolation by providing time out of room, exercise and fresh air.</p> <p>As it pertains to education, new policies now require that youth still enrolled in school must be provided with a full school day. Alternative classrooms have been created on unit and were being used during the second quarter for youth in Ponce. A further discussion of what services were provided for the 3 eligible youth this quarter can be found in the discussion section of Paragraph 94.</p> |
| <p>What is needed for full compliance?</p> <p>What steps are required and/or recommended?</p> | <p>Challenges that still remain include implementing alternative measures to achieve the critical and fundamental safety goals of protective custody but without having to resort to any form of “isolation” or room confinement. Where that may not be possible, the confinement must either consistently meet all ¶179 and ¶180 criteria or at least the potential harm should be mitigated by reducing the duration, increasing time out of rooms, and increasing access to out of room education and programs.</p> |
| <p>Priority Next Steps</p> | <p>Completion of the QA study Decision Making questionnaire and TM/PC checklists, agreement on a definition of “isolation,” development of new policies driving PC and improved performance relative to isolation cases meeting ¶179 criteria are the most critical next steps to advance compliance. It is also imperative that there be a rethinking of TM versus PC criteria such that youth who are vulnerable to assault would typically be considered PC. In addition, there must be a recognition in policy and discussions of compliance that while PC status must be applied so as to satisfy the requirements of ¶180 criteria, it does not automatically invoke ¶179—that happens only when the youth is placed in “isolation” in order to carry out the status’ safety requirements (which is typically the case at this time).</p> <p>Efforts to ensure that educational services are provided to eligible youth must continue, including use of alternative educational classrooms, additional qualified teachers, and the provision of a full school day, including special education services.</p> |
| <p>Quality Assurance Measures</p> | <p>DCR must apply the QA criteria set forth in the TM/PC Decision Making Questionnaire to track the decisions made by the facility when assessing the need to place a youth on TM or PC status and also the S¶179 and ¶180 Checklists. These documents should be provided to the Monitor’s Consultant on a routine and timely basis for validation.</p> |

MENTAL HEALTH – Dr. Miriam Martinez

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| <p>S.A. 59. Defendants, specifically the Department of Health (ASSMCA), shall provide an individualized treatment and rehabilitation plan, including services provided by AIJ psychiatrists, psychologists, and social workers, for each juvenile with a substance abuse problem.</p> | |
| <p>Compliance Rating</p> | <p>Partial Compliance</p> |
| <p>Description of Monitoring process during this period of time</p> | <p>During this quarter the Mental Health Consultant performed remote chart reviews and completed site visits in June of 2019 to Ponce and Villalba.</p> <p>During the site visits, the Mental Health Consultant interviewed staff, as well as 18 youth in total. Twelve youth were from Ponce and 6 resided in Villalba. There were no youth reported during the site visit that were in transitional measures or in protective custody. A functional team meeting was held with DCR leadership on June 24, 2019 regarding concerns identified during the site visit. During this quarter, the Mental Health Consultant has been in contact with DCR leadership regarding concerns related to the delivery of mental health services and mental health staffing, and delivered written notes of concerns.</p> <p>The Mental Health Consultant also received and reviewed documentation regarding use of emergency psychotropic medication, suicidal ideation, intent or self-mutilation, administration of the MAYSI 2 and reports of youth in TM or PC.</p> <p>The Office of the Monitor has received information indicating that some social workers have been relocated from Ponce and Villalba to other facilities. More information needs to be provided regarding the number of social worker positions lost in each facility and the potential impact of that on this provision.</p> |
| <p>Findings and Analysis</p> | <p>As previously reported, chart reviews have consistently revealed individualized plans for youth with goals, objectives, and documentation of services provided. The reviews also indicate gaps in service that require attention. These are further illuminated in the remainder of this report and it bears mentioning that the psychiatric coverage of youth remains a concern.</p> <p>The Mental Health Consultant has not found compliance with S.A. 59 as DCR is falling short of supplying youth with consistent mental health care that meets minimum professional standard of care.</p> <p>The removal and reassignment of some social workers from Ponce and Villalba is concerning given the needs of the current population. While more information is needed to determine the impact of this decision, the reduction in social workers may have an adverse effect on compliance with</p> |

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| | <p>this provision and with the capacity to provide adequate treatment planning and the delivery of services.</p> |
| <p>What is needed for full compliance? What steps are required and/or recommended?</p> | <p>For full compliance:</p> <ol style="list-style-type: none"> 1. There needs to be a stable and consistent work force that delivers mental health services per the plan of care and per the suggested delivery of services for PUERTAS. 2. Each staff mental health staff person should be credentialed, trained and completely familiar with the history and needs of the youth in their care (see first quarter report). 3. The plan should reflect the immediate and individual needs of the youth and not a “cookie cutter” approach to care. If a youth has serious substance abuse problems then his groups and their frequency should reflect this level of clinical care. If a youth has impulse control issues and anger management issues, then the young person’s plan of care should reflect this and those services need to be consistently delivered. 4. Every youth who expresses suicidal ideation, gesture or intent needs to be evaluated immediately – within 24 hours – by the psychiatrist. If the minor is immediately sent to the hospital for psychiatric evaluation, then this can take the place of the PCPS contracted psychiatrist providing this evaluation. 5. Documentation should be timely and in the electronic medical record unless a power outage prevents this. Documentation should indicate whether the note is an “order” placed by the psychiatrist or a face to face intervention by the psychiatrist or other mental health provider. |
| <p>Priority Next Steps</p> | <ol style="list-style-type: none"> 1. Stabilize mental health work force with qualified and experienced mental health professionals. 2. Increase psychiatric coverage by hiring another psychiatrist and bringing the total number to 1.5 FTE as has been recommended. 3. Ensure that via internal quality improvement monitoring that groups and other individualized care is actually being delivered on a day to day basis especially with those most vulnerable and at risk within the PUERTAS unit. 4. On intake, review psychiatric history and risk and plan accordingly monitoring those with a psychiatric history of suicidal ideation, intent gesture, a history of psychiatric hospitalization so that youth are safe and receiving a minimum standard of care. 5. Provide information to the Mental Health Consultant about the reduction in social worker time and the resulting impact of that on treatment planning, mental health and other services. |
| <p>Quality Assurance Measures</p> | <p>See previous reports where the Mental Health Consultant has suggested since March of 2016 the establishment of a Quality Assurance team for self-monitoring. This has yet to be realized although some planning was in place.</p> |

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| Sources of Information upon which Consultant report and compliance ratings are based. | Sources of information that the Mental Health Consultant relied on were site visits to Ponce/PUERTAS & Villalba interviews with youth and staff, review of medical records, and a review of all reports submitted to the Mental Health Consultant and the monitor, as well as mental health staffing reports. |
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C.O. 29: Defendants shall establish an adequate residential mental health treatment program which provides services in accordance with accepted professional standards for juveniles confined in the facilities in this case who are attempting to commit suicide and/or who are inflicting harm upon themselves and/or any other juvenile in need of such services as determined by the juvenile’s interdisciplinary mental health team, which includes a qualified psychiatrist. This residential treatment program will house up to forty-eight (48) juveniles from Commonwealth facilities. The residential treatment program will be established in an area that meets professional standards regarding safe physical areas for suicidal and/or self-mutilating juveniles.

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| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | The Mental Health Consultant conducted a site visit to PONCE PUERTAS in June of 2019. Youth and mental health staff were interviewed. |
| Findings and Analysis | <p>In June of 2019 and for several months prior, only three youth were housed in PUERTAS. The level of care was not discernably different than youth who were not admitted to this level of care. In other words the youth did not report more services, groups, individualized care and several stated that they never speak with nor see the Director of PUERTAS.</p> <p>Several youth in Ponce complained of being threatened with pepper spray, being pepper sprayed and of being threatened with lock down – “23 and 1.” One youth reported that his module mates threaten him with “cut or be cut” so he self-mutilated while in that module (Sumariados) due to a fear of being cut on his face. DCR is failing to abide by professional standards regarding safe physical areas for suicidal and self-mutilating individuals and instead there is a culture of fear, a lack of safety and a lack of a cohesive residential program that meets basic standards for multidisciplinary care of at risk juveniles in custody.</p> <p>Of the youth (9) who had 10 incidents of suicidal ideation, gesture or intent, only 2 were residing in PUERTAS. The youth #5806 who had two incidents, one being an attempt by hanging was in Villalba.</p> |
| What is needed for full compliance? What steps are required and/or recommended? | <p>To be in full compliance,</p> <ol style="list-style-type: none"> 1. The priority is to provide a safe, distinct and consistent specialized program for those most at psychiatric risk. This feedback with detailed suggestions/technical assistance has been |

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| | <p>developed by the Mental Health Consultant and delivered on multiple occasions, in person and via emails.</p> <ol style="list-style-type: none"> 2. The PUERTAS Director should be a known presence in the unit familiar with each youth in PUERTAS, their history, mental health needs and the appropriate management of risk. 3. The Director of the Institution should make rounds PUERTAS and to the other Ponce modules to be familiar with the youth and to hear of concerns. 4. The psychiatric coverage needs to be increased as per above and time needs to be allotted for multidisciplinary case conferencing, review of history, labs and medical records. 5. More youth need to be identified that can benefit from this level of service – especially those youth who express suicidal ideation or intent or have gestures. |
| Priority Next Steps | <p>Address the need for a cohesive and distinct program within PUERTAS per #1 above.</p> <p>Address culture of fear and the ensuing anxiety that results as a consequence of the pepper spray, threats of pepper spray, lock downs, threats of lock downs and as a result of the cutting/violence that has occurred.</p> <p>Immediately assess for PUERTAS those youth who express serious suicidal ideation, intent or gestures.</p> |
| Quality Assurance Measures | There are no quality assurance measures in place although DCR had stated that this was underway. |
| <p>C.O. 36. . Within 120 days of the filing of this Consent Order, Defendant Juvenile Institutions Administration shall provide continuous psychiatric and psychology service to juveniles in need of such services in the facilities in this case either by employing or contracting with sufficient numbers of adequately trained psychologists or psychiatrists, or by contracting with private entities for provision of such services. The continuous psychiatric and psychological services to juveniles in need of such services shall include at a minimum, a thorough psychiatric evaluation, necessary diagnostic tests before the prescription of behavior-modifying medications, blood-level monitoring if behavior-modifying medications are prescribed, therapy, counselling, treatments plans and necessary follow-up care.</p> | |
| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | During this quarter the Mental Health Consultant performed remote chart reviews and completed site visits in June of 2019 to Ponce and Villalba. See additional description above under S.A. 59 |
| Findings and Analysis | The Mental Health Consultant reviewed mental health hours delivered vs. hours contracted. During the first quarter, there were 234.35 hours contracted for that were not delivered by the PCPS mental health staff. During the second quarter, there were 152.25 more hours |

delivered than were contracted for indicating an undue burden on those staff contracted to try and meet the needs of the youth.

Several of the youth that were interviewed indicated that they were not receiving services – especially as a result of the 23/1 lock down which occurred in Ponce.

As has been highlighted as a serious concern in previous reports, staff turnover continues to be a struggle. During the site visit in June, the Mental Health Consultant learned that one of the new psychologists she had just met in February of same year site visit was no longer contracted with PCPS. He decided to leave, and the circumstances were not shared with the Mental Health Consultant despite her asking multiple parties (PCPS and NIJ staff).

These youth have histories of abandonment, are less likely to trust and engage, and need providers who are familiar with their individual needs and progress over time.

Chart reviews this quarter again revealed a need for more psychiatric coverage. A chart review of all youth who expressed suicidal ideation or intent, including gesture revealed 10 incidents of youth since January with 5 incidents this quarter. The Mental Health Consultant was not advised of one (in January) of the ten. She discovered his 2nd suicide attempt in January when she was reviewing self-mutilation data. The second hospitalization of this youth within days of the previous one indicates that there wasn't a serious monitoring plan in place that was multidisciplinary and took the serious risk into account.

Furthermore, a serious suicide attempt (in June) was not revealed to the Mental Health Consultant until the site visit when she interviewed the youth (#5806) who had tried to commit suicide by tying a sweater around his neck. Subsequent to the monitor's visit (last day was 6/24), the youth had another psychiatric hospitalization (7/28 to 7/4) for serious suicidal ideation again indicating (a) a need for evaluation for PUERTAS and (b) a higher level of psychiatric care to manage risk as this youth has now had 3 known attempts to end his own life, two by hanging.

Of the 10 incidents of youth who had suicidal ideation, intent or gestures since January of 2019, only 5 of those received an evaluation by the psychiatrist within 24 hours. There was a case # 5720 where the psychiatrist documented orders but it is unclear that he actually saw the youth.

It bears repeating that additional psychiatric hours are needed (see above) to not only intervene and assess/plan during a mental health crisis, the psychiatrist is expected to:

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| | <ul style="list-style-type: none"> • review medications the youth may be on • confer with medical and mental health providers • attend multidisciplinary planning meetings • order and read lab results • record timely documentation • attend court or reply to judges requests as needed <p>In addition to the above, the Mental Health Consultant heard from multiple youth a concern that (a) medical attention was being delayed, (b) there were constant threats of a lock down [23/1], that there were constant threats of use of pepper spray with officers sometimes allegedly moving the youth to areas where they are out of site of cameras, (c) a fear of being cut and having to self-mutilate or face being cut/mutilated on the face. These concerns are amplified in a recent memorandum issued by the Monitor to DCR leadership.</p> |
| <p>What is needed for full compliance? What steps are required and/or recommended?</p> | <p>See recommendations in S.A. 59 and C.O. 29 and as reported previously and data provided regarding psychiatric staffing - the Mental Health Consultant has recommended that the psychiatric coverage be brought up to 1.5 FTE to cover all youth 5 days a week and on call as needed.</p> <p>See first quarter report where the Mental Health Consultant recommended stability in the mental health staff as repeated turnover and addition of new staff leads to gaps in services, training, documentation and a cohesive team that is working together to deliver best practices and a minimum standard level of care.</p> <p>The Mental Health Consultant has requested that she be immediately appraised of staff turnover and that she be provided with the credentials and training records of any new staff coming on board.</p> |
| <p>Priority Next Steps</p> | <p>See above.</p> |
| <p>Quality Assurance Measures</p> | <p>See above.</p> |

S.A. 63. For each juvenile who expresses suicidal or self- mutilating ideation or intent while incarcerated, staff shall immediately inform a member of the health care staff. Health care staff shall immediately complete a mental health screening to include suicide or self-mutilation ideation for the juvenile. For each juvenile for whom the screening indicates active suicidal or self-mutilating intent, a psychiatrist shall immediately examine the juvenile. The juvenile, if ever isolated, shall be under constant watch. Defendants shall develop written policies and procedures to reduce the risk of suicidal behavior by providing screening for all juveniles at all points of entry or re-entry to AIJ's facilities and/or programs and by providing mechanisms for the assessment, monitoring, intervention and referral of juveniles who have been identified as representing a potential risk of severe harm to themselves. Treatment will be provided consistent with accepted professional standards.

| Compliance Rating | Partial Compliance |
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| Description of Monitoring process during this period of time | The Mental Health Consultant reviewed reports that were submitted by DCR of youth that were reported to have suicidal ideation, suicidal intent and/or self-mutilation for the entire quarter. The Mental Health Consultant reviewed the electronic medical records to find evidence of compliance with S.A. 63, including providing treatment consistent with professional standards. |
| Findings and Analysis | <p>DCR is failing to abide by this provision for a number of reasons. As stated above, of the 10 incidents of youth who had suicidal ideation, intent or gestures since January of 2019, only 5 of those incidents received an evaluation by the psychiatrist within 24 hours. Five of the 10 occurred during this second quarter. In one case (# 5720), the psychiatrist documented orders but it is unclear that he actually saw the youth.</p> <p>Chart reviews revealed inconsistent or incomplete nurse suicide evaluations upon entry or immediately following a transfer. It was not clear that the mental health staff assigned to care for the youth (psychologist or psychiatrist) were reading either the initial evaluation, the youth's history or the nursing notes as would be expected as accepted professional standard.</p> <p>Youth #5831 was particularly concerning as he threatened suicide on 6/22 and was not seen by a psychiatrist until 21 days later on 7/13/19. Furthermore, there were no documented mental health visits between 6/28 and 7/13/19 for this minor who had threatened suicide and had a history of psychiatric hospitalization.</p> <p>See also youth #5806 mentioned above.</p> <p>Since January of 2019 there have been 28 incidents of self-mutilation with 15 incidents in this second quarter. Of the 28 incidents of self-mutilation that have been reported since January, 21 were evaluated by a psychiatrist within 24 hours.</p> <p>With only one psychiatrist, there are two days that there is no coverage (Tuesday and Thursday). Even with the psychiatrist being "on call" 24/7 – it is impossible for him to serve all youth and still meet accepted professional standard of care. There are sick days, vacation days and unexpected crisis that could leave the youth uncovered psychiatrically leaving the youth at risk. Last quarter he was contracted for 360 hours and delivered 391, again indicating the need for more contracted hours of psychiatric care. The monitor has interviewed this psychiatrist and while he is hard working, has a strong work ethic and cares about the youth, the Mental Health Consultant understands that this is not</p> |

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| | sustainable and worries that he will burn out and/or not have enough hours to adequately serve the youth. |
| What is needed for full compliance? What steps are required and/or recommended? | <p>Policies and procedures are in place but they are not consistently adhered to.</p> <p>Policies and procedures for intake, suicide assessment, delivery of care immediately following suicidal ideation, intent, gesture or self-mutilation must be adhered to. Immediate notification of the Mental Health Consultant as indicated must be made.</p> <p>Accepted professional standards of care dictate that the history of youth be reviewed and taken into account when treatment planning, and that this be done consistently.</p> <p>The recommendation from prior reports is that the equivalent of 1.5 full time psychiatrists be available for services at the two remaining facilities. Specifically, the Mental Health Consultant urged this be done by the end of the second quarter ending June of 2019 in provide sufficient resources to be compliant. There has been no response to this.</p> |
| Priority Next Steps | <p>Monitor's Note:</p> <p>The Office of the Monitor believes that immediate action to implement the recommendations of the Mental Health Consultant relevant to increase psychiatric time is necessary to ensure safety of youth who are vulnerable and/or who have mental health needs, particularly in light of changing circumstances in both of the remaining facilities. The Monitor requests that the Director of NIJ Raul Cepeda immediately seek approval to increase the number of hours of psychiatric care, and ensure a plan is in place for these additional hours to be in place by the third quarter with qualified psychiatric staff. Dr. Martinez should be notified about the change in contract, the individual or individuals who will provide the additional hours, and the date such additional hours will begin.</p> |
| Quality Assurance Measures | It is highly recommended that DCR have PCPS perform their own quality assurance measures to ensure compliance with S.A. 63. This would include chart reviews of minors that express suicidal ideation/intent and minors who self-mutilate. This would also include randomly reviewing electronic medical records and interviewing youth as does the Mental Health Consultant during her site visits. This information was shared with PCPS and DCR during the last site visit as it has been in previous site visits. |

S.A. 72. All juveniles receiving emergency psychotropic medication shall be seen at least once during each of the next three shifts by a nurse and within twenty-four (24) hours by a physician to reassess their mental status and medication side effects. Nurses and doctors shall document their findings regarding adverse side effects in the juvenile's medical record. If the juvenile's condition is deteriorating, a psychiatrist shall be immediately notified.

| Compliance Rating | Substantial Compliance |
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| Description of Monitoring process during this period of time | The Mental Health Consultant has requested and reviewed documentation attesting to no use of emergency psychotropic medications during this first quarter and second quarters of 2019. This information was provided by the nursing staff. |
| What is needed for full compliance? What steps are required and/or recommended? | There are policies and procedures in place for the use of psychotropic medications which have been reviewed and approved by the Mental Health Consultant. Compliance and documentation will continue to be monitored. |
| Priority Next Steps | A period of assessment of at least one year with new psychiatric staff will be required for this provision. |
| Quality Assurance Measures | See above. |

S.A. 73. Defendants, specifically AIJ, shall design a program that promotes behavior modification by emphasizing positive reinforcement techniques. Defendants, specifically AIJ, shall provide all juveniles with an individualized treatment plan identifying each juvenile's problems, including medical needs, and establishing individual therapeutic goals for the juvenile and providing for group and/or individual counseling addressing the problems identified. Defendants, specifically AIJ, shall implement all individualized treatment plans.

| Compliance Rating | Substantial Compliance |
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| Description of Monitoring process during this period of time | The Mental Health Consultant has reviewed written evidence of the curriculum, staff training, receipt of incentives by the youth and interviewed youth during the site visits and consistently received information that incentives are being provided. During the site visit, youth reported receiving incentives, including an increase in minutes of time available to speak with family on the phone. Note: The Commonwealth filed a Motion to Terminate this provision during the second quarter, and the USA Department of Justice has not filed an objective. |
| Findings and Analysis | Please review previous reports where the Mental Health Consultant indicated the review of plans of care within electronic medical records. The records have consistently indicated a plan for behavior modification for youth in treatment facilities. Policies and |

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| | <p>procedures were provided, reviewed, discussed and approved. A request for training materials was made, delivered, reviewed and approved. In addition, the Mental Health Consultant has interviewed youth each quarter that she has been on site. The Mental Health Consultant requested proof of incentives being delivered and received written documentation of youth signing off on incentives they were given. The Mental Health Consultant will continue to work with behavior modification staff so that low or no cost incentives can be used more with youth (more time on phone with family, outdoor time, jobs outdoors, etc., a special trip or walk, etc.)</p> <p>While youth may protest that incentives are withheld, the treatment plans and review of documentation consistently supports that youth are receiving behavior modification services.</p> |
| <p>What is needed for full compliance? What steps are required and/or recommended?</p> | <p>As previously reported, policies and procedures for behavior modification have been reviewed and approved by the Mental Health Consultant.</p> <p>The Mental Health Consultant continues to suggest the use of low or no cost incentives.</p> |
| <p>Priority Next Steps</p> | <p>The Mental Health Consultant will continue to review records and will perform another site visit next quarter to review continued compliance with this provision unless terminated.</p> |
| <p>Quality Assurance Measures</p> | <p>See above.</p> |
| <p>Sources of Information upon which Consultant report and compliance ratings are based</p> | <p>Review of documentation has been adequate and indicates compliance with the policies and procedures and with the individual plans of care.</p> |

SPECIAL EDUCATION AND VOCATIONAL TRAINING –Kim Tandy

Section XIII: Educational and Vocational Services – General Population

S.A. 81 Defendants, specifically the Department of Education, shall provide academic and/or vocational education services to all juveniles confined in any facility for two weeks or more, equivalent to the number of hours the juvenile would have received within the public education system. Specifically, this education shall be provided 5 (five) days per week, 6 (six) hours per day, 10 (ten) months per year. AIJ shall provide adequate instructional materials and space for educational services. Defendants shall employ an adequate number of qualified and experienced teachers to provide these services.

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| Compliance Rating | Partial Compliance |
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| <p>Methodology for Monitoring this Quarter</p> | <p>The Monitor met with Carlos Delgado and other education staff on May 13 at Ponce and May 14th at Villalba. The visit included facility tours, including classroom areas which were newly created on units or elsewhere as a result of Humacao closure and additional space needs.</p> <p>Documentation received and reviewed this quarter for the time period April - June, as well as on-site verification includes:</p> <ol style="list-style-type: none"> 1) An analysis of classroom space and resources for the provision of education, including for transitional measures and protective custody youth, annually and/or as needed 2) List of school employee vacancies by month by facility 3) Monthly personnel attendance by support staff, teachers, and special education teachers, with documentation of teacher absences and “security situations” which disrupt school services. 4) List of all student receiving vocational education, including special education students 5) Verification of the provision of educational services within 5 days of arrival for eligible youth. 6) Verification of school records for those youth in transitional measures or protective custody. 7) Tracking Form for Initial and Re-evaluation Process <p>The Monitor also received revisions to Policies 20.1 and 20.2 from NIJ and DE in March, and returned comments. Revisions have been completed to Policy 20.1 but to date these have not been received as signed. Final revisions to Policy 20.2 have not been received. The Memorandum of Understanding between NIJ and PRDE regarding the delivery of education services in NIJ facilities should be revised.</p> <p>A Functional Team meeting was held May 14 with NIJ and PRDE representatives present including counsel for PRDE over special education compliance issues. Agenda items included impact of Humacao closure, paragraph 81 issues regarding PRDE assumption of responsibility and revised MOU, full school day issues, policies and procedures revisions, and training records, paragraph 86 issues relative to evaluations and re-evaluations, provision of specially designed instruction and related services, and procedural safeguards, and paragraphs 79, 80 and 94 related to educational services for youth in TM and PC.</p> <p>The Monitor also reviewed the education records and classrooms for youth in TM or PC status. An analysis of the 3 youth receiving educational services can be found in the Findings and Analysis under Paragraph 94. Only one of the 3 youth was eligible for special education services. Since all youth are required to receive full educational services, the regular education youth fall under this provision.</p> |
| <p>Findings and Analysis</p> | <p>The current structure for education services in NIJ facilities splits responsibilities between the Puerto Rico Department of Education, which provides special education</p> |

teachers, Title I, and vocational education staff, and the Department of Corrections and Rehabilitation, which provides academic and library staff. The language in S.A. 81 requires the Department of Education to provide these services. As such, compliance regarding educational and vocational education for youth confined 2 weeks or more, five days per week, 10 months per year, is the responsibility of the Department of Education. The requirement of providing qualified teachers logically also falls on the Department of Education based upon this responsibility. NIJ is required to provide adequate educational materials and space for instruction.

The current Memorandum of Understanding must be modified to reflect these responsibilities between the two entities and to redefine the relationship as DOE assumes full responsibility for the delivery of educational services. Previously, PRDE indicated that it would assume full financial responsibility for all services by July 1, 2019. The Monitor has been informed that this was not included in the PRDE budget and will not occur for the 2019-2020 school year.

Policy 20.1 Educational and Recreational Services provides for regular and vocational services to youth in detention and in social treatment centers. The revised policies received by the Monitor in May of 2019 contain the recommended changes with the exception of providing full school days to youth in TM or PC status but they are not yet signed. The new policies reflect improvement and show commitment and continued effort to provide high quality educational services for youth.

Monitored Provisions:

1) Provision of academic and/or vocational education for youth confined 2 weeks or more 5 days per week, 6 hours per day, 10 months per year.

This provision ensures that all youth who are eligible for educational services receive such services within a two week period, and that full school days are provided over the 10 month school calendar.

Documentation received at the beginning of the school year verifies that NIJ uses the PRDE school calendar. Monthly monitoring of attendance for education staff is documented on a daily basis, for administrative support, teachers, and special education teachers. Monthly reports have been received for the quarter.

Rates are affected by teacher absences and "security situations." Security situations are discussed in more detail in paragraph 94. NIJ has been asked to report when youth are removed from school for security or other reasons and do not receive educational services. Starting this quarter, that documentation is being collected and sent to the Monitor.

A review of enrollment information for educational services for the Second Quarter of 2019 indicates youth participation in vocational services as follows:

1) Villalba – A review of documentation for Villalba for April and May indicated that all youth regardless of grade level were enrolled in one vocational class, either

administrative assistance, barbering, bakery, horticulture and woodworking. There were no records submitted to indicate that youth who completed their 12th year were receiving vocational services. All special education students were receiving vocational services as well.

2) Ponce – A review of documentation for April and May listed all youth being scheduled for vocational services, including all special education students. Youth who have completed 12th grade were not listed. These include classes in administrative assistance, barbering, bakery or woodworking. Youth are scheduled for one vocational class each.

A summer program was provided from June 10 – 28 which included both academics as well as other enrichment activities. The Monitor reviewed daily schedules, attendance and activities.

It is impressive that the school program this year had 13 high school graduates completing the 12th grade, 6 graduating from the 8th grade and promoted to high school, and 10 graduating from the 6th grade.

2) All shall provide adequate instructional materials and space for educational services

Both facilities have multiple classrooms for students engaged in regular and special education as well as vocational services. Classrooms seem adequate for students to have small classes based upon subject, and in some cases, grade levels (i.e. elementary level students). The facilities have vocational education rooms which were inviting, seemingly well stocked, and were engaging students.

The closure of Humacao has created significant challenges to ensuring adequate classroom space with the addition detention youth in both of the other facilities, and an increase in the number of youth in TM/PC measures. A review of the schedule provided by NIJ indicates that each classification of youth is scheduled for a full school day, and the required teacher planning time is incorporated into the schedule. A separate discussion follows regarding education for youth in TM and PC status in Paragraph 93.

Some classes now combine 9th and 10th graders, and 11th and 12th graders by subject according to Carlos Delgado. There are 9 groups to accommodate within the facilities: 9th graders, 10th graders, 11th graders, 12th graders, sumariados, detained females, females in treatment, elementary school youth, and youth in TM or PC status.

A request has been made for 2 new special education teachers who can assist with providing services to youth in TM/PC status. One additional teacher was available during the Second Quarter, which has helped to serve this population. Efforts are being made to make use of unused space by creating on unit classrooms behind control centers in some units. This can accommodate youth who cannot attend regular school because of the inability to cohabitate, or because they are in protective custody. The Monitor observed two classroom to accommodate youth on TM status, and sumariados. An additional small classroom was created by splitting up a larger room which included library services. While not ideal, these on unit classrooms can help to ensure that youth

are receiving full school services, and are one way in which the current space issues can be creatively addressed. It will be important that these rooms can be arranged in such a way to ensure adequate materials, supplies and resources for meaningful learning experiences.

3) Defendants shall employ an adequate number of qualified and experienced teachers to provide these services.

The Monitor reviewed a list of instructional staff and their certifications and subject matter expertise for each of the three facilities the beginning of the school year, and continued to review any staffing vacancies.

In April, education staff attendance for the 17 scheduled school days at Villalba was at 83% for regular and vocational teachers, and only 54% for special education teachers, mostly due to teacher absences. For Ponce, attendance for regular and vocation staff was at 91% with special education teacher attendance at 94%. A “security situation” occurred on January 16th which kept all youth from receiving education services.

In May, regular and vocational staff attended at a 91% rate for the 22 school days of the month, with special education teachers achieving an 81% attendance rate. At Ponce, these numbers were at 91% and 100%, respectively. There were no security events or teacher absences which affected school attendance.

Having substitute teachers can help to ensure youth are not prevented from receiving services when there are teacher absences or other factors which are beyond control. Service interruption as a result of teacher training is anticipated and built into the annual schedule with additional days in June to ensure total required school days for the year are met.

NIJ Policy 4.1 requires the Training Division to coordinate and implement a master plan of training for staff development, including orientation and pre-service training of a minimum of 24 hours for treatment staff who are new. By definition, treatment staff includes teachers, social workers, counselors, and school principals.

Training records, while partially received, must reflect that all new educational staff receive 24 hours of training by NIJ. In addition, Policy 4.1 requires that staff training needs be assessed in operational areas (including education and social work), and that such areas, in conjunction with the Division of Training, design training according to need. While not included in Policy 20.1, the Department of Education also requires annual training for its special education instructors, usually for one week prior to the beginning of the school year.

Teacher attendance should be at 90% or higher, and a system of substitute teachers should be in place so that youth do not lose school days due to these absences. Youth who receive special education services are entitled to this service at the level indicated in each IEP. If special teachers are absent and the services are not provided, youth are entitled to make up that amount of time.

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| <p>What is needed for full compliance?</p> <p>What steps are required and/or recommended?</p> | <p>The Department of Education is responsible per the Settlement Agreement for the delivery of all educational services, as well as providing sufficient qualified teachers. After committing to that Monitor’s office that this would be done for assume this for the 2019-2020 school year, the Monitor was informed by counsel for NIJ at the May meeting the funds were not budgeted by PRDE and they would not be providing full funding for 2019-2020. No representatives from PRDE came to the Functional Team meeting to discuss why this process has once again been delayed.</p> <p>This policies and practices must ensure that youth in protective custody or transitional measures who are eligible for education services will receive the required 6 hours per day, five days per week, 10 months of the year. A revised version of Policy 20.1 was provided to the Monitor in May which meets this requirement. A signed copy has not yet been received in order to find this aspect in full compliance.</p> <p>Well qualified staff should include verification not only of certifications, but also of training for new educational staff, and training required by the Department of Education and coordinated between the Division of Training and NIJ educational services. Additionally, a staff training needs assessment for education staff should be produced, as well as a training plan for the 2019-20 school year based upon that assessment.</p> <p>Training records of education staff (including ancillary staff) should be documented and provided as evidence of training requirements. These documents were sought for the 2018-2019 school year repeatedly but have not been received.</p> <p>Facilities for classrooms and administrative staff for the education programs must be functional, without leaking roofs, moldy ceilings or walls, and with air conditioning units that are working. The facilities have made a good effort toward addressing these issues in the last few months. While work at Villalba has been substantially completed, the Monitor has had no updated information to ensure that work at Ponce is completed as it pertains to classrooms and other education areas.</p> <p>Monthly attendance by essential educational staff should remain at 90% or higher in each facility. Ideally, classes should not be disrupted or cancelled as a result of teacher absence. A system for substitute teachers could help to accommodate these situations.</p> |
| <p>Priority Next Steps</p> | <p>NIJ and PRDE must provide a signed copy of Policy 20.1 requiring full school services for youth in PC and TM status.</p> <p>Regular and special education teachers who can provide full school day services for youth in TM and PC must be in place for the 2019-2020 school year.</p> <p>Security situations should be fully examined so as not to adversely impact the availability of educational programming. Documentation of security situations must be communicated to education administrators. NIJ must meet the required number of school days based upon Puerto Rica’s relevant laws.</p> |

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| | Verification of training from the 2018-2019 school year should be provided as well a training schedule and verification of this year’s training for teachers on institutional policies and procedures. |
| Quality Assurance Measures | <p>The Monitor is encouraged by the documentation that is kept and provided relative to many of the provisions of this paragraph.</p> <p>Efforts at quality assurance must also come from the DOE relative to the delivery of service, and/or must be incorporated into the Memorandum of Understanding.</p> <p>The Monitor agreed to review the proposed QA provisions by June 1, but did not receive a copy upon request.</p> |
| Sources of Information upon which Consultant report and compliance ratings are based. | <p>Meetings at Villalba and Ponce facilities with Carlos Delgado to view available classrooms, teacher rosters and attendance, list of students, attendance logs, and documentation regarding intake of new students.</p> <p>Examination of school calendar</p> <p>Review of applicable policies</p> <p>Examination of other documents as listed above</p> <p>Review of file documentation</p> |

S.A. 86 Defendants, specifically the Department of Education, shall abide by all mandatory requirements and time frames set forth under the Individuals with Disabilities Education Act, 20 USC §§ 1401 et seq. Defendants shall screen juveniles for physical and learning disabilities. The screening shall include questions about whether the juvenile has been previously identified by the public school system as having an educational disability, previous educational history, and a sufficient medical review to determine whether certain educational disabilities are present, such as hearing impairments, including deafness, speech or language impairments, visual impairments, including blindness, mental retardation, or serious emotional disturbances adversely affecting educational performance.

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| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | <p>The Monitor met with Carlos Delgado and other education staff on May 13 at Ponce and May 14th at Villalba. The visit included facility tours, including classroom areas which were newly created on units or elsewhere as a result of Humacao closure and additional space needs.</p> <p>File reviews in MIPE were completed on 10 youth, including a review of IEP content, evaluations, and procedural timeframes. While MIPE provides a good source of information, there are limitations to its use which should be acknowledged. In most of the cases reviewed, documentation on past evaluations were unavailable. Procedural safeguards such as parent notifications, distribution of parental rights, and parent participation are more difficult to determine. Enrollment information for the youth if at</p> |

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| | <p>Ponce or Villalba often did not match records received from NIJ. Progress reports are not entered. Even with these limitations, the process provided a good source of verification to review the quality and thoroughness of the evaluation and IEP processes.</p> <p>Records sought and reviewed for the quarter included:</p> <ol style="list-style-type: none"> 1) List of all student receiving vocational education, including special education students 2) Verification of the provision of educational services within 5 days of arrival for eligible youth. 3) Verification of school records for those youth in transitional measures or protective custody. 4) Tracking Form for Initial and Re-evaluation Process 5) Verification of students approved for extended school year services by the PRDE and proof that such students received the services by a qualified teachers. |
| <p>Findings and Analysis</p> | <p>This section provides a general requirement that compliance with the IDEIA is necessary in order to meet compliance requirements of this section. For purposes of complying with the IDEIA, this provision has been broken down into 4 sections as noted below:</p> <p>1) Mandatory requirements of the Individuals with Disabilities Education Act</p> <p>a) Child Find</p> <p>PRDE is responsible for ensuring that Child Find provisions to locate and identify youth who may be eligible for special education are met, but must work collaboratively with NIJ instructional staff to ensure that adequate mechanisms are in place to identify when youth are appropriate for referrals.</p> <p>Youth are screened at detention using an education questionnaire to determine prior educational placements, previous involvement in special education, and academic achievement. Diagnostic testing is completed within five school days and school records are requested and obtained. Physical disabilities are noted, including visual problems, speech problems, use of medication, hearing problems, and orthopedic problems. Recommendations for testing are made including for hearing impairment, psychological, occupational therapy neurological examination, psychiatric, visual, health and/or a Woodcock Munoz.</p> <p>Documentation received from NIJ education staff indicates that 100% of new youth admitted on detention status, and who were held for a minimum of 5 days, were evaluated based upon the process noted above, including basic testing across the five subject areas. This screening and evaluation process, completed on all youth, is a excellent way in which Child Find requirements can be met.</p> <p>At the beginning of the last year, the Monitor received a list of youth who were identified and evaluated for specially designed instruction through this screening and other means. If this process is done routinely and properly, it is likely to result in some</p> |

youth being identified who have previously not been, or who previously exited special education and may now need services.

While the screening is an important tool being used to comply with Child Find requirements, it likewise is important for regular education students as well.

Given the documentation consistently received to date for the 2018-2019, the Monitor finds this part of Paragraph 86 in substantial compliance.

b) Evaluation of youth with suspected disabilities

PRDE has an obligation to ensure that youth with suspected disabilities, and those in need of re-evaluation, receive thorough multi-faceted evaluations which stretch across areas of concern as well as the identification of student strengths. This include three year re-evaluation processes as well.

The Monitor received a report generated through MIPE which provided the names and registration numbers of 11 youth whose 3 year re-evaluation time had expired. There was no indication that one of those 11 had been in an NIJ facility and so presumable sent in error. Of the remaining 10 youth, a review of files obtained through the MIPE system showed that such evaluations were in fact overdue, and sometimes substantially overdue. The time that the youth spent in the NIJ facility was also considered in cases where re-evaluations were not timely completed.

Examples of this follow:

Youth 14328961 is a youth with Specific Learning Disabilities (SLD) whose last evaluation date was April 1, 2016. The timeframe for a new evaluation to be completed was April 1, 2019. A new IEP was created and signed on April 4 2019. There was no mention of a pending evaluation or that the evaluation was overdue on the Tracking Document of Youth Evaluations for Special Education. It appears from file notes that the youth was in NIJ facilities at least for the second semester of the 2018-2019 school year, ending May 24th. MIPE notes the re-evaluation is overdue.

Youth 17305678 is a student in Villalba in the 6th grade who is SLD and receiving special education. He spent the second semester in school in an NIJ facility starting 1/16/19 and ending 5/9/19 according to NIJ records. (In MIPE, his enrollment is indicated as 4/25/19 to 5/31/19) His last evaluation was in 2011. MIPE has an alert for youth that this youth's re-evaluation period has expired, and a referral rejected as incomplete. While an IEP was developed on June 18, 2019 it is unclear whether or not his re-evaluation process has begun.

Youth 19647547 is 17 and has been diagnosed with SLD and was enrolled for the full second semester at Villalba. His last triannual report is dated April 22, 2011. On 8/24/18 a referral to evaluate is noted in MIPE and "approved as provisional remedy," but never done. The youth's IEP was created March 19, 2019 and amended April 4, 2019. On May 14th, 2019 a new referral was made for a re-evaluation in the MIPE system. MIPE notes the triannual evaluation is overdue.

The tracking form developed by NIJ is not working to ensure that evaluation and triannual evaluation deadlines are properly noted and met. The columns designated for “date of referral” and “initial evaluation and re-evaluation dates” are not filled out, yet rated as 100% compliant.

This section of Paragraph 86 remains in partial compliance.

c) Provision of specially designed instruction and related services

The Monitor also reviewed the 10 files noted above to examine certain aspects of the youth’s Individual Education Plan (IEP), including eligibility, levels of performance, IEP goals, progress notes and the provision of specially designed instruction, accommodations and related services. It should be noted that while MIPE information does not always appear to be complete, youth in correctional settings often arrive with spotty educational experiences, gaps in enrollment, multiple placements and missing records. To the extent that staff do not enter complete information, however, this should be improved. It may also be that information contained in the youth’s hard copy file may fill some gaps, but the chances of that information following the youth once in the community seems less likely if it is not entered into the MIPE system.

An evaluation process which is well designed, inclusive as to all areas of concern, and orchestrated properly, is critical to the development of an IEP. It should address deficits in content areas, and establish goals and objectives which are individualized, measurable, and able to be tracked. In some cases, evaluations are dated, and IEPs are developed without the benefit of that information.

Many of the IEPs reviewed lack specific, measurable goals. No progress notes or reports are entered into MIPE in these cases, so it is not possible to determine if youth were meeting the goals set for them, or in some cases, how they were being measured.

In a handful of files, notations were made that the youth’s behavior or emotional problems affected that youth’s academic achievement. No behavioral goals were included, and no additional supports were offered to the youth. Treatment committees are noted but no explanation of how this related to educational goals and what is needed to achieve them. Only 2 files contained any reference to behavior goals. In one case, in noting the youth’s tendency to challenge authority, the goal was simply to “achieve self-control of impulses” without discussion of how this would be done, or how it would be measured.

Special education services continue to be, for the most part, the same for all youth, in spite of indicators in some files that youth need more than the routinely provided 50 minutes five days per week. (Several files also did not specify the quantity properly.) For example, one student’s evaluation noted she needed a “structured room,” and also noted several emotional indicators which had an adverse impact on learning. The youth was receiving several good accommodations, but no support services, no behavior goals, and was located in a regular education classroom with “5 x a week” services noted, and no specific times.

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| | <p>Another youth identified as Other Health Impaired was noted as needing “help individually for all academic work.” File notations also indicate that the youth constantly forgets what learns, and needs constant monitoring for each exercise in math. The youth has ADHD. There were no behavioral goals or additional supports provided, no extended school services were noted, and his placement was in a regular classroom with 50 minutes of additional help 5 times per week, just as everyone else.</p> <p>When the level of placement is considered, along with the rationale for why a particular option is chosen, “in correctional institution” is sometime checked. The fact that these youth are incarcerated does not negate the responsibility of educational staff to make decisions relative to the level of placement options, absent significant security issues. It should also not foster a “one size fits all” option for providing the same type of service regardless of the youth’s disability and identified needs.</p> <p>This provisions remains in partial compliance and should be a high priority for improvement in the 2019-2020 school year. Additional training for education staff is highly recommended.</p> <p>d) Procedural safeguards</p> <p>Policy 20.2 must be amended to ensure that procedural safeguards required by IDEA are included. A policy draft of Policy 20.2 was returned in February of 2019 with instructions to include a section regarding the procedural safeguards in IDEIA.</p> <p>File reviews through MIPE seemingly do not designate a “parent” for purposes of enforcing education rights. There is no indication that NIJ/PRDE has a system for providing surrogate parents, although a draft of the new policies will include such.</p> <p>Procedural rights must also ensure that parents (as designated) are provided adequate opportunities to participate in and challenge decisions made regarding the identification, evaluation, eligibility determination, and IEP services for their child. A more thorough review of such practices will be examined during the 2019-2020 school year. File notations regarding parental participation in MIPE for the filed examined were cursory and boilerplate overall.</p> <p>Strong parental participation in educational services for youth in special education can have a dramatic and positive effect on the youth’s success. Maximizing ways to engage parents is often difficult in correctional settings. The Monitor looks forward to better understanding the ways in which educational staff have and will continue to engage parents.</p> <p>This section of Paragraph 86 is in partial compliance.</p> |
| <p>What is needed for compliance to be achieved?</p> | <p>NIJ and PRDE submitted substantially improved and updated policies consistent with requirements of the S.A as well as IDEA. One section which should be included, however, concerns procedural safeguards of youth and parents. Notes and suggestions were returned to NIJ/PRDE regarding the inclusion of this area in March.</p> |

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| | <p>Initial evaluations and re-evaluations must be completed in a timely manner, and in accordance with the provisions of IDEA. Under 34 CFR §300.305(a)(1), the IEP Team and other qualified professionals, as appropriate, as part of an initial evaluation and as part of any reevaluation under 34 CFR Part 300, must: “Review existing evaluation data on the child, including—(i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers.”</p> <p>Referrals into the MIPE system by social workers without convening a COMPU meeting are inadequate to comply with the requirements of IDEA.</p> <p>IEPs must include an individualized determination of disability, special considerations, including behavioral plans when appropriate, and a range of placement options, including the availability of resource rooms and a self-contained classroom if necessary. A one size fits all plan for youth is not acceptable.</p> <p>The procedures for identifying the “parent” for purposes of IDEA, and the use of surrogates when necessary, must be examined. While it may be possible that an NIJ social worker may stand in for a parent, this must be a parental designation and not one made by NIJ or PRDE. Policies and practices must also ensure other procedural safeguards for the participation of parents as well as youth.</p> |
| <p>Priority Next Steps</p> | <p>Changes to Policy 20.2 should be submitted to the Monitor now. Once that has been received and approved by the Monitor, more specific metrics for Procedural Safeguards will be developed and monitored. There should be no undue delays in completing this final set of policies and having them approved by the appropriate entities.</p> <p>Continue substantial compliance on Child Find requirements, including initial screenings done on youth within 5 days of intake. Provide information about the number of youth identified through this process, if any.</p> <p>PRDE must ensure that COMPU meetings are conducted prior to the request for an evaluation or re-evaluation, and that such meetings comply with the requirements of the regulations under IDEA as to purpose, timing and outcomes. The tracking form established by NIJ must be accurately completed, and should trigger the timeframes for completion of a new evaluation or re-evaluation accurately. This should be cross-checked with the MIPE system. That form should also be fully completed to note the dates that a new IEP will be required as part of an annual review.</p> <p>PRDE must ensure that there are proper procedures for identification of “parents” and that such individuals meet the definition within IDEA, or are designated by such person, and that surrogate parents are also available as needed. Other policies and practices regarding the participation of parents based upon IDEIA procedural safeguards will be discussed and reviewed during this coming school year.</p> <p>PRDE should increase oversight of special education teachers to ensure that youth are properly identified, that IEPs and the services provided as a result, are individualized as to student need, including the type of placement available to the youth. Adequate</p> |

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| | resources must be in place to provide a greater level of service to youth depending upon their needs. |
| Quality Assurance Measures | The monitor has not yet reviewed draft quality assurance plans but has requested a copy. |
| Sources of Information upon which Consultant report and compliance ratings | Interviews with NIJ and PRDE staff Documentation review of policies and procedures Interviews with youth who are receiving special education services Review of documentation regarding student schedules, attendance of staff and youth, disability categories and time spent in special education by facility Tour of facilities and classrooms |
| S.A. 87. If a juvenile has been previously identified as having an educational disability, Defendants shall immediately request that the appropriate school district provide a copy of the juvenile's individualized education plan ("IEP"). Defendants shall assess the adequacy of the juvenile's IEP and either implement it as written if it is an adequate plan or, if the IEP is inadequate, rewrite the plan to make it adequate, and then implement the revised IEP. | |
| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | The monitor previously reviewed the procedures and forms for requesting documentation on youth from prior school districts when admitted to detention. This includes the youth's cumulative file through SIS and the special education file through MIPE. The FT meeting Fourth Quarter of 2018 included a discussion regarding the timely review of IEPs and how "annual" review is to be interpreted. The Monitor reviewed first and second quarter tracking data to determine if IEPs are being reviewed on an annual basis, meaning within a 12 months period, and revised accordingly. File reviews were also completed as noted above on several youth identified for ESS, or which had evaluations which were incomplete and/or overdue. |
| Findings and Analysis | Appropriate policies are in place to require that records of the youth's IEP are obtained immediately from the appropriate district. Records must be requested within 10 business days after the screening is done and the youth has indicated he or she has an IEP. The youth is enrolled in school within 72 hours. Documentation about starting dates was reviewed and consistently showed youth begin their classes within a couple of days. This part of Paragraph 87 appears to be compliant. Two systems have been put in place electronically for securing regular and special education records of students. The Department of Education has been operating MIPE (My Education Portal) since 2012. Students eligible for special education are registered in this system, and any district, including the schools within NIJ facilities, can pull these |

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| | <p>records on a student they receive within their school. Access is available immediately. Some students, however, may have files that are “inactive” due to disruption in the youth’s education. In these cases, education staff indicated that they send a request manually for a copy of the records. A copy of the form was noted which documents this request in the youth’s file. In three cases this quarter, the Monitor noted that there was not an active IEP on file through MIPE, and in all 3, education staff initiated a re-evaluation to determine present levels of performance in order to create a new IEP with current information.</p> <p>The Student Information System (SIS) similarly provides student information on all youth registered for school in Puerto Rico, and interplays with MIPE. NIJ facilities are now on line and can obtain this information immediately when it is available in the system.</p> <p>The requirements of this provision as to obtaining records appears to be in compliance. IEPs are not always available through MIPE if the youth is “inactive” in the system. The Monitor will continue to examine whether IEPs are determined to be adequate when received, and/or whether changes are made. The Monitor will want to ensure that IEP’s are not being revised to meet the resources available at NIJ rather than the individuals needs which have been previously identified for the student. Similarly, disability categories must be aligned with the youth’s identified needs and areas of deficit. The rest of this section remains in partial compliance.</p> |
| <p>What is needed for full compliance? What steps are required and/or recommended?</p> | <p>All special education files should contain a records of annual IEP reviews, and other reviews of the IEP done during the year as needed. A system of reviewing IEPs must align with a 12 month calendar year, or more often.</p> <p>PRDE must establish greater oversight to ensure that youth are appropriately identified, that IEPs reflect the individualized needs of the youth, and that decisions regarding placement are based on the youth’s needs and not the resources available. As assessment of resources should be made during this school year to determine what additional classroom space may be needed.</p> |
| <p>Priority Next Steps</p> | <p>Ensure that the appropriate COMPU meetings are held to review the youth’s IEP goals and progress, present levels of performance, and any needed changes to the IEP’s goals, measurable objectives, accommodations and placement.</p> <p>PRDE must establish greater oversight over the supervision of special education staff and the quality of IEPs and placement decisions.</p> |
| <p>Quality Assurance Measures</p> | <p>Education QA tools have not been reviewed by the Monitor but have been requested so they can be reviewed.</p> |
| <p>Sources of Information upon which Consultant report and</p> | <p>Review of screening and evaluation materials completed while youth are detained</p> <p>Review of documentation used to request and follow up on records</p> <p>Discussions with PRDE and NIJ education staff</p> |

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| compliance ratings are based | Review of monthly documentation tracking special education deadlines for evaluations and IEP reviews. |
| <p>S.A. 90. Defendants shall provide appropriate services for juveniles eligible for special education and related services. Defendants shall provide each such juvenile with educational instruction specially designed to meet the unique needs of the juvenile, supported by such services as are necessary to permit the juvenile to benefit from the instruction. Defendants shall coordinate such individualized educational services with regular education programs and activities.</p> | |
| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | <p>See above generally.</p> <p>While the use of MIPE is helpful to evaluate many aspects of student files, MIPE files are not always complete, and the system does not contain information relative to the ongoing progress that is being made by the youth in achieving IEP goals. This progress data, along with other notations, is critical to determine if the services offered adequately permit the youth to benefit from the instruction.</p> |
| Next Steps | <p>PRDE and NIJ education staff must ensure that services are individualized based upon the identified disabilities, and that related services are also provided if necessary to properly implement the IEP.</p> <p>The Monitor will conduct manual file reviews with staff to examine progress data on IEPs.</p> |
| <p>S.A. 91. Qualified professionals shall develop and implement an IEP reasonably calculated to provide educational benefits for every juvenile identified as having a disability. When appropriate, the IEP shall include a vocational component.</p> | |
| Compliance Rating | Partial compliance |
| Description of Monitoring process during this period of time | <p>The Monitor reviewed the qualifications, including records of certifications, for special education staff at the beginning of the 2018-2019 school year. A review of all youth schedules for regular and special education students was completed, including vocational education classes. A review of teacher vacancies has been done each quarter. IEP reviews were done in the 4th quarter of 2018 and the 2nd quarter of 2019.</p> |
| Findings and Analysis | <p>Staff responsible for the development of IEPs are the special education instructors, who are training in working with students with disabilities and the creation of IEPs. An adequate number of special education staff are employed in the two facilities, with the exception of providing coverage to youth in PC and TM status. Resources appear adequate to provide IEP services to youth. DOE should provide information regarding training provided to special education teachers employed at NIJ facilities regarding IEP development and implementation.</p> <p>The Monitor has found substantial compliance with the section of Paragraph 91 relative to qualified staff.</p> |

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| | <p>A review of the special education student schedules in both facilities indicates that all special education students were enrolled in vocational classes. Likewise, this portion of Paragraph 91 is compliant.</p> <p>The extent to which IEPs are developed and implemented to allow youth to achieve academic benefit is monitored through Paragraph 86,</p> |
| <p>What is needed for full compliance?</p> <p>What steps are required and/or recommended?</p> | <p>The monitor believes that the policies and procedures, training, staff and resources are available to ensure that this provision is in compliance. A system of documentation has been created which is thorough and which appears to follow the requirements under IDEA for the creation and implementation of IEPs.</p> <p>The provision of vocational education is incorporated into policy and, while not mandatory in all cases, has been an integral part of providing more robust educational services for youth in NIJ and is offered consistently.</p> <p>IEPs must be designed based upon the individual needs of the youth. Such determinations as made as part of the Paragraph 86 compliance ratings. It is important to note the relationship between well designed evaluations which include all areas of concerns, proper identification of youth disabilities and levels of performance, and the individualization of a plan which can meet the specific needs of those youth, including the level of service afforded, special aids and supports, accommodations, and related services. Paragraph 86 ties those provisions together through file reviews, youth and teacher interviews, and observations.</p> |
| Priority Next Steps | Ongoing monitoring over the next year will ensure that all provisions in place are being implemented fully and faithfully. |
| Quality Assurance Measures | The Monitor has not reviewed proposed QA measures. |
| Sources of Information upon which Consultant report and compliance ratings are based | <p>All youth schedules including the provision of vocational instruction</p> <p>Review of Policies and procedures</p> <p>Review of system of documentation maintained in student files</p> <p>Student interviews</p> |
| <p>S.A. 93 Services provided pursuant to IEPs shall be provided year round. Defendants shall ensure that juveniles with educational disabilities receive a full day of instruction five (5) days a week.</p> | |
| Compliance Rating | Substantial Compliance |
| Description of Monitoring process during this period of time | The Monitor met with Carlos Delgado about the provision of extended school year services during her May 12 – 15 monitoring visit. The process of identifying, approving and providing services to youth who may require extended school year services (ESS) |

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| | <p>began during the last part of 2018, with approval by the Department of Education of several youth who were deemed eligible.</p> <p>In order to ascertain compliance with this provision, the Monitor has requested documentation of the critical for determining which youth are eligible for extended school year, information submitted to PR Department of Education to ascertain eligibility, a list of the eligible youth approved for services, proof that such services were provided and the dates provided, and verification of the extended contract for qualified teacher(s) to provide the services.</p> |
| Findings and Analysis | <p>Year round school services to special education students must be provided to students who “prior to the corresponding evaluations, require this service in order to avoid falling back in their academic skills and performance.” (See policy 20.2 Section V)</p> <p>During the first quarter, the Monitor learned that for the first time NIJ had submitted data to the PR Department of Education to qualify a number of students for extended school year. Data from September through December of 2018 was analyzed for grades, IEP progress, and student needs according to a formula established by the PRDE.</p> <p>Documentation was received that three youth at Ponce and five youth at Villalba qualified for extended school services (ESS) for five hours per day. All IEPs were modified to reflect the youth’s eligibility for this service.</p> <p>Documentation reviewed on site showed that that these youth received the services from a qualified special education teacher for the designated time during the month of June. Only one youth did not receive much of the service provided, and this was by choice.</p> <p>The Monitor finds this provision to be in Substantial Compliance for the Second Quarter and acknowledges the good work staff did in providing this extra serviced needed for some students.</p> |
| What is needed for full compliance? What steps are required and/or recommended? | <p>Policies are already in place which address the need for Extended School Services. The staff began the process for compliance during the second quarter of the 2019 school year by determine which students met the criteria for ESS, and submitting the information to the Department of Education for approval.</p> <p>Continued documentation for the 2019-2020 school year should include determining eligibility for youth for 2020 summer services, timely submission to PRDE, and the provision of ESS services with proper verification by a qualified teacher.</p> |
| Priority Next Steps | Continue the process begun during the 2018-2019 school year to identify, qualify, modify IEPs, and provide extended school year services for the coming year. |
| Quality Assurance Measures | Quality assurance measures should be established to ensure that such provisions are made in a timely manner, and that youth who are eligible received the service with a qualified teacher. |

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| Sources of Information upon which Consultant report and compliance ratings are based | <p>Documentation of files to examine whether IEPs of eligible youth were modified to include ESS. (The MIPE IEPs did not reflect all of the changes, but they were reviewed in hard copy format to verify)</p> <p>Review of documentation provided designating the youth approved for ESS, review of schedule, and documentation that youth received the services. A copy of the revised teacher contract for the needed dates was also reviewed on site.</p> |
| <p>S.A. 94. Juveniles shall not be excluded from services to be provided pursuant to IEPs based on a propensity for violence or self-inflicted harm or based on vulnerability. Juveniles in isolation or other disciplinary settings have a right to special education. If required for institutional security, services provided pursuant to IEPs may be provided in settings other than a classroom.</p> | |
| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | <p>The Monitor has reviewed and approved the final version of Policy 20.1 which requires NIJ to provide 6 fifty (50) minute classes daily to youth in transitional measures or protective custody unless they have already graduated.</p> <p>During the site visit in May, the Monitor reviewed the schedules and daily educational files of the students who were in PC or TM status for the quarter. This included only 5 youth, two of whom had already graduated from high school. She also reviewed file notations which provide explanation of school absences or the failure to provide services on a given day.</p> <p>NIJ maintains a tracking for to document times when youth may be excluded from school as a result of administrative actions taken, incidents, or the unavailability of security staff within the school. These incidents are reviewed by the Monitor quarterly.</p> <p>The Monitor also toured the school facilities in both institutions to determine the availability of alternative school settings for the provision of educational services for those youth in TM or PC status, or who otherwise need separation.</p> |
| Findings and Analysis | <p>There are three sections to Paragraph 94 which must be monitored:</p> <ol style="list-style-type: none"> 1) Whether youth who have an IEP are excluded from services based upon a propensity for violence or self-inflected harm or based on vulnerability. 2) Whether youth in “isolation or other disciplinary settings” are provided the right to special education services; and 3) Whether educational services provided pursuant to an IEP occurring in settings outside of the classroom are required for institutional security. <p>Services to Youth in TM or PC Status:</p> <p>NIJ turned a corner during the second quarter in reaching compliance on this issue by changing Policy 20.1 to require educational services be provided to all youth in Transitional Measures or Protective Custody who have not already graduated. The</p> |

requirement is for 6 fifty (50) minute classes, the same afforded other students. Compliance with this new policy positively impacts several provisions of the Consent Decree, including the educational requirements of Paragraphs 79 and 80, Paragraph 81, and Paragraph 86.

Verification of school services provided is made through examination of each youth's education schedule, and examination of daily attendance records, signed by each teacher, and by the student. For those dates when the youth did not receive a full school day, accompanying explanatory notes are examined.

PC and TM placements were lower during the second quarter, with only 5 youth being in that status, and only 3 which had not yet completed high school. Each of the 3 youth had unique issues, but in all 3 cases, teachers were for the most part available and engaged in providing services as required, and in alternative setting. A summary of the file reviews of these youth follows. (Please note that only one of the three youth received special education. The three cases are consolidated here for convenience. The other 2 youth are entitled to this service pursuant to Paragraph 80 and/or 81)

1) Youth A is a 12th grader, not in special education, who needs only 3 credits to graduate and complete high school. His school record while in TM was reviewed from January 31 - April 12. Classes for him began on February 6, and his schedule indicated he was to receive 50 minutes daily for each of his 3 remaining subjects: English, Spanish and Math. Sometimes he was given additional time when teachers were available. His transcript showed he had 15 of the 18 credits needed. A review of services showed numerous days where the youth did not receive services. Accompanying notes indicate 16 days (exclusive of holidays) where services did not occur, or where he did not receive all 3 classes. Notes include such reasons as scheduling issue, social worker interview, college test day, teacher training, "sick," nurse, or court. Of the 46 regularly scheduled school days, full services were provided 29 days (63%), and partial services on 8 (17%) additional days (usually 2 or 3 classes). Of the 9 other days, two were teacher training days, 3 were for court, and 3 were for medical reasons (either the youth or teacher). The goal for this youth is to complete his remaining 3 classes and graduate.

2) Youth B is a 2 year old Sumariado who was on Protective Custody and/or Transitional Measures status from 2/28 to 4/3/19. He was in 9th grade and not a special education student. He began classes on March 1 and his schedule included Spanish, Math, English, Science, History, and a vocational class in barbering. He worked on his GED. It was noted that Youth B "had different security issues."

Youth B declined a full school schedule, willing only to take ½ hour classes. Of the 22 school days, the youth rejected classes on 5 days because no security officer was available, and one day no services were provided because of teacher training (27% total). Of the remaining 16 days, he received 3 ½ hours (his self-designed program) on 11 days, and the remaining 5 days he attended partial time (between 2 – 5 classes). (73%) The goal for this youth is to receive his GED.

3) Youth C is a Sumariado who has been in TM or PC since December 14. His a special education student and in 10th grade. Documentation received indicated that in March,

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| | <p>of the 20 scheduled school days, this youth was in court 4 days, out because of teacher training 3 days, was sick one day, did not get classes 5 other days as a result of “security situations” or having no officer available. Only 7 of 20 days were provided that month. During the days in class, the schedule was most often 5 40 or 50 minute classes although there was some variance. Of 20 regular education days in April, the youth was out 1 day for court, 2 days because of teacher training, one day for “activity with parents”, one day the youth rejected services, and 3 days for security or because no offer was available. The youth had court one day. Classes on other days were typically 20 – 30 minutes each, with some being for 40 minutes. Some days 6 classes were offered, but often fewer classes were provided on a given day. In May, the youth as out 5 days for court, security reasons or administrative work. As the month progressed, more consistency was seen in providing 5 or 6 classes per day that were 50 minutes long.</p> <p>.</p> <p>School exclusion for Other Youth</p> <p>A tracking form was developed and is being used to document when school services are not available as a result of register, incidents such as fights, lack of available security or other reasons not the fault of youth. Two instances in April resulted in school being cancelled for the entire day as a result of no officers being available, once for Level 4 youth in Villalba, and once for the Sumariados in Ponce.</p> <p>In May, there were 7 days where youth were out of school, three at Villalba because of the lack of security officers and which involved between 16 and 23 youth being out of school on these dates. An incident at Ponce involving a fight cancelled school for all youth for the day for a 5 hour period. For 3 days in May, girls did not receive school as a result of being in a “security module.”</p> <p>Classroom and Education Staff</p> <p>In order to properly implement the new policy, NIJ must have sufficient educational staff to serve these youth, and the physical resources needed to conduct classes in a safe environment. Good progress has been made in both areas in the first six months of 2019. At Ponce, there are 2 rooms which have been set up for TM or PC youth which were operational - one in room by small recreation court, the other in Unit D. Two classrooms were also set up on unit for youth in detention to help with space issues in the regular classrooms. The units all have cells behind the control room, some of which are in the process of being converted for use for additional classrooms. One is outside the PUERTAS Unit and has a cage around it with a lock. One is set up for barbershop services which are brought in as needed for youth who receive this vocational service.</p> <p>Two additional teachers were requested from PR Department of Education during the first quarter, but only one was received. Applications were very limited because of the time of year.</p> |
| <p>What is needed for full compliance?</p> | <p>Compliance with the new policy will require that NIJ consistently provide full school days of 6 fifty minute classes in accordance with individual schedules for youth who are in TM and PC and who have not graduated from high school.</p> |

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| What steps are required and/or recommended? | <p>Coordination with security staff is essential to limit the disruption to the school schedule as best possible, and to ensure that youth receive the required services. Continues documentation and analysis of days where youth do not receive services do to other reason is critical.</p> <p>The use of alternative classrooms is a positive move, but should ensure that they include necessary personnel and resources to approximate as best possible the regular school setting</p> |
| Priority Next Steps | <p>Continue to track when youth are excluded from school due to violence or vulnerabilities, and ensure that appropriate security measures are in place which limit these instances.</p> <p>Continue to use the tracking mechanism to ensure that if youth are removed from school as a result of behavior, self-harm or vulnerability, documentation is provided to indicate why such removal was necessary.</p> <p>Documentation should be developed to indicate when alternative school settings are used and to justify the need for these alternative settings based upon institutional security issues</p> <p>Ensure that each facility has at least two areas set up to provide alternative settings for youth in TM/PC measures, and that adequate teaching staff are available to ensure services for a full school day.</p> |
| Quality Assurance Measures | No QA has been reviewed for this provision but the Monitor. The Monitor expressed willingness to review a draft of QA Measures but has not received these. |
| Sources of Information upon which Consultant report and compliance ratings are based | <p>Review of policies and procedures relative to education</p> <p>Discussion with education staff</p> <p>Review of tracking form regarding removals due to security or other instances.</p> <p>Review of education records of three (3) youth in TM and PC status.</p> |
| S.A. 95. When an IEP is ineffective, Defendants shall timely modify the IEP. | |
| Compliance Rating | Partial Compliance |
| Description of Monitoring process during this period of time | See above for discussion of this section. |
| Findings and Analysis | See discussion above. |

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| <p>What is needed for full compliance?</p> <p>What steps are required and/or recommended?</p> | <p>There are a number of indicators that a youth's IEP is inappropriate or ineffective. Student goals and objective may be vague and unmeasurable. The IEP may be inadequate to address identified deficits in the student's multi-faceted evaluation. Needed accommodations may be missing, or related services may not be included when necessary. The needs of the youth may simply change based upon any variety of circumstances.</p> <p>Good data must be kept on student goal achievement, and should reflect student progress for meeting IEP goals, and receiving academic benefit from instruction provided. Student files reviewed indicated that reviews are completed every 10 weeks on students, and information on progress is sent to parents. This practice, when done consistently, provides the youth and parents with good benchmarks for the year, but should also provide indicators for when IEPs may need to be modified.</p> <p>Supervision of IEPs and data collection should provide indicators of whether such progress is being achieved with each student. PRDE must have a system of providing oversight of special education teachers to monitor their development of IEPs, as well as progress and benchmarks achieved.</p> <p>Full compliance with this provision is met when Paragraph 86 reaches full compliance</p> |
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