

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL ACTION NO:
)	2:08-cv-475
THE STATE OF OHIO, et al.,)	
)	JUDGE ALGENON L. MARBLEY
Defendants.)	
_____)	
S.H., and all other similarly situated, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	CIVIL ACTION NO:
)	2:04-cv-1206
TOM STICKRATH,)	
)	JUDGE ALGENON L. MARBLEY
Defendant.)	
_____)	

ORDER

It is hereby **ORDERED** that Defendants show cause as to why they should not be held in contempt for submitting false and or inaccurate data pursuant to an Order of this Court. **This matter is scheduled for a contempt hearing on July 1, 2010, at 9:00 a.m., in Courtroom 331.**

I. BACKGROUND

On February 24, 2010, this Court held a Status Conference in *S.H. v. Stickrath* (the *S.H.* case) and *U.S. v. Ohio* (the *U.S.* case) to discuss the Ohio Department of Youth Services' ("DYS") policy of denying meals to youth when they refused to leave their rooms to eat in the

facility dining room or cafeteria ("Meal Refusal Policy").¹ The Department of Justice and the Monitor in the S.H. case, Mr. Fred Cohen ("Monitor Cohen"), participated by telephone. Amy Ast, Christine Money, Barbara Moore, and Marci Sutherland, all with DYS, were also present.²

In preparation for the Status Conference DYS provided to this Court summary data and information about the effect of the DYS Meal Refusal Policy at the Circleville Juvenile

¹The policy from Christine Money, DYS Deputy Director, addressed to Thomas Teague, Superintendent at Circleville and dated August 5, 2009 states:

[Circleville] has been approved to implement this PILOT for thirty days. Effective immediately the following protocols must be followed when a youth refuses to attend a meal in the cafeteria.

- A staff member MUST inform the youth that eating in the cafeteria is their only opportunity to receive a meal.
- Once the youth has been informed of the opportunity and the youth continues to refuse, a staff member is required to document the refusal in the Unit Log Book and notify the on-duty Operations Manager.
- Any youth who refuses to go to the cafeteria will not receive a carry back meal.
- Any youth refusing to go to the cafeteria shall be placed in their rooms or in a dorm setting must sit in an assigned location until the unit returns.
- IF a youth misses two (2) consecutive meals the Unit Manager must complete a face to face interview with the youth to determine the reason for the refusal. If the Unit Manager is not available then the unit Social orker or the Operations Manager must complete the interview.
- If through the interview, the youth continues to refuse to go to the cafeteria, the Unit Staff are required to develop an individual plan to address the needs of the youth.

A weekly report shall be forwarded to Deputy Director Money indicating the number of youth refusing the opportunity to attend a meal in the cafeteria. At the end of the month, the Deputy Director along with the Superintendent will evaluate the PILOT to determine if it will continue.

(August 5, 2009 DYS Memo on Cafeteria Refusals - CJCF Pilot).

²At the time of the Status Conference, Christine Money was serving as DYS Deputy Director of Facility Programs and Operations. Ms. Money has since been appointed to serve as the Interim Director for DYS.

Correction Facility (“Circleville”). (See Doc. 160 Order Attachment 1.)³ At the Status Conference, the Court confirmed that the DYS Meal Refusal Policy was implemented not only at Circleville, but also at the other DYS facilities, including the Ohio River Valley Juvenile Correctional Facility (“ORV”), the Scioto Juvenile Correctional Facility (“Scioto”), and the Indian River Juvenile Correctional Facility (“Indian River”). The Court also found that the Meal Refusal Policy, as it was written, to be at odds with the guiding principle in the *S.H.* and *U.S.* cases that the health and safety of the youth is of paramount importance. (See Doc. 160.) On February 26, 2010, this Court ordered DYS to alter its Meal Refusal Policy to reflect that: (1) the youth in DYS’ custody and care must be fed and any youth articulating any fear for safety must be fed during the particular meal of refusal; and (2) when youth refuse to eat a meal in a facility cafeteria, DYS will keep records of the reason for that refusal. *Id.* at 6. Further, this Court ordered DYS to provide summary information and data on meal refusals from the Scioto, ORV, and Indian River facilities for the period of August 5, 2009, when the Meal Refusal Policy was enacted, to February 23, 2010. *Id.* And DYS was directed to provide copies of the log books from the Circleville, Indian River, ORV, and Scioto facilities along with the summary information.⁴ *Id.* at 7.

On March 3, 2010, DYS submitted to this Court summary data on meal refusals at the Scioto, ORV, and Indian River facilities. (Doc 162 Notice of Compliance Ex. A.) On March 9,

³All citations to the record in this Order refer to the Docket in the S.H. Case, 2:04-CV-1206.

⁴Currently, DYS maintains separate log books for meal refusals. (Tr. of Status Conf. February 24, 2010 p.13.) Prior to February 11, 2010 this information was kept in a log book, but not one that was maintained specifically on the issue of meal refusals. *Id.* Additionally, prior to February 11, 2010, the log books did not record the specific reason for the meal refusal. *Id.*

2010, DYS filed a Motion for relief from the Court's February 26, 2010 Order requiring the submission of log book data, or in the alternative for an extension of time to submit the log book data. On March 17, 2010, this Court entered an Order granting DYS an extension of time, until April 9, 2010, to supply the log book data. (Doc. 165.) On April 13, 2010, DYS filed manually with the Clerk's Office the log book data on the Meal Refusal Policy.⁵ (Doc. 175.) On June 1, 2010, DYS filed with this Court a Notice of Supplemental Notice of Compliance with Court Order, which provided summary data for meal refusals at the DYS facilities from March 2010 through May 2010. (Doc. 178 Ex. A p. 2.)

II. ANALYSIS

This Court has now had an opportunity to review the summaries and log book data provided by DYS. For *none* of the DYS juvenile correctional facilities does the summary data accurately reflect or match the data provided in the log books maintained by DYS.

Scioto provided this Court with the most accurate data regarding the number of meal refusals by the youth confined within this facility. Both the summary data for Scioto (*See* Doc. 162 Ex. A p. 1.) and the log book data from Scioto⁶ (*See* Ex. 1) accounted for a total of 83 meal

⁵On April 9, 2010, DYS filed an Unopposed Motion for Order to Permit Defendant to Manually File the required log book data. (Doc. 173.) On April 12, 2010, this Court granted the Unopposed Motion. (Doc. 174.)

⁶DYS provided the summary data on the Meal Refusals Policy for Circleville, Scioto, Indian River, and ORV demonstrating the number of breakfasts, lunches, and dinners refused each month. (*See* Doc. 160 Attachment 1; Doc. 162 Ex. A.) DYS provided the log book data on the Meal Refusals Policy for Circleville, Scioto, Indian River, and ORV demonstrating the number of meal refusals per unit. (*See* Doc. 172 Attachment 1; Doc. 175.) Therefore, the Court compiled the log book data to document the number of meal refusals by month to enable a side-by-side comparison with the summary data provided by DYS. Attached as Exhibit 1 to this Order is a chart reflecting the meal refusals documented in the log book data from Scioto. (*See* Doc. 172 Attachment 1 Exs. B00435-36, B00437-449, B00450-459, B00460-501.) Attached as

refusals from November 2009 through February 2010. Although the summary data and log book data accounted for the same number of total meal refusals within the four month period, the two data sources did not accurately reflect the same number of breakfast, lunch, and dinner refusals for the months of November 2009 and December 2009. (See Doc. 162 Ex. A p. 1.; Ex. 1.)

The summary data provided by DYS for ORV showed that 110 meals were refused during the applicable time period. (See Doc. 162 Ex. A p. 2.) The log book data from ORV accounted for 134 meal refusals during the same time period. (See Ex. 2.)

The summary data provided for Circleville, did not accurately reflect the data recorded in the logs for the total number of meals refused by youth from August 2009 through February 2010. The summary data for Circleville reported that a total of 429 meals were refused during this time period. (See Doc. 160 Attachment 1.) The summary indicated that 386 breakfasts, 30 lunches, and 13 dinners were refused within the seven month period. *Id.* The log data documented 435 meal refusals from August 2009 through February 2010. (See Ex. 3.) The log data shows that 355 breakfasts, 36 lunches, and 44 dinners were refused. *Id.*

Indian River egregiously reported the number of meal refusals by youth in its summary

Exhibit 2 to this Order is a chart reflecting the meal refusals documented in the log book data from ORV. (See Doc. 172 Attachment 1 Exs. 000383-391, B00392-399, B00400, B00401-403, B00404-406, B00407-419, 000420-424, B00425-434.) Attached as Exhibit 3 to this Order is a chart reflecting the meal refusals documented in the log book data from Circleville. (See Doc. 172 Attachment 1 Exs. B00001-18, B00019-57, B00058-89, B0090-120, B00121-144, B00145-178, B00179-192.) Attached as Exhibit 4 to this Order is a chart reflecting the meal refusals documented in the log book data from Indian River. (See Doc. 172 Attachment 1 Exs. B0193-211, B00212-267, B00268-332, B00333-339, B00340-353, B00354-358, B00359-368, B00369-382.) Attached as Exhibit 5 to this Order is a chart reflecting the meal refusals documented in the charts submitted from Indian River. (See Doc. 172 Attachment 1 Exs. B000502-706, B000707-1513, B001514-2291, B002292-3094, B003095-3913, B003914-4631, B004632-4813.)

data, log data, and charts submitted to this Court. Unlike the other facilities, Indian River also submitted charts as a third source of data to report the number of breakfast, lunch and dinner refusals occurring during the seven months the Meal Refusals Policy was in place. None of these same three sources of information lead to the same conclusions regarding the numbers of meals refused at the facility. The summary data reported that 1,622 meals were refused by youth at Indian River from August 2009 through February 2010. (*See* Doc. 162 Ex. A p. 3.) The log book data from Indian River accounts for only 581 meal refusals during the same time period.⁷ (*See* Ex. 4.) The charts from Indian River show that a shocking 2,160 meals were refused by youth in this facility from August 2009 through February 2010. (*See* Ex. 5.)

It is of particular concern to this Court that DYS appears to have misrepresented the effects of its Meal Refusal Policy in the summary data it was ordered to provide. (*See* Doc. 160 Attachment 1; Doc. 162 Ex. A.) It is also unclear why discrepancies exist between the log book data and the summary data documenting meal refusals at DYS facilities, which both document data compiled by DYS. At the Show Cause hearing, DYS should be prepared to explain these discrepancies and to provide evidentiary support that: (1) DYS policy on meal refusals is in compliance with the requirements of the Stipulations in *S.H.* and *U.S.*; and (2) DYS accurately

⁷ The information compiled from Indian River's log book data reflects this Court's best efforts at deciphering the recorded entries. The entries were often illegible, did not include dates for recorded meal refusals, and the time for many refusals had been cut off when the log books were copied, making it impossible to know which meal the youth had refused.

documents all meal refusals in the appropriate log books at each of the DYS juvenile correctional facilities.

IT IS SO ORDERED.

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

DATED: June 4, 2010

EXHIBIT 1**Scioto Juvenile Correctional Facility ("SJCF")****Meal Refusals****November 1, 2009 – February 23, 2010**

	Breakfast	Lunch	Dinner	TOTAL
Nov-09	32	0	0	32
Dec-09	27	0	4	31
Jan-10	15	0	0	15
Feb-10	4	0	1	5
	78 Breakfast Refusals	0 Lunch Refusals	5 Dinner Refusals	83 Total Meals Refused

EXHIBIT 2

**Ohio River Valley Juvenile Correctional Facility (“ORV”)
Meal Refusals
September 2009 – February 2010**

	Breakfast	Lunch	Dinner	TOTAL
Sep-09	14	0	0	14
Oct-09	30	0	4	34
Nov-09	1	0	0	1
Dec-09	4	1	2	7
Jan-10	2	0	0	2
Feb-10	65	10	1	76
	116 Breakfast Refusals	11 Lunch Refusals	7 Dinner Refusals	134 Total Meals Refused

EXHIBIT 3**Circleville Juvenile Correctional Facility ("CJCF")****Meal Refusals****August 2009 – February 2010**

	Breakfast	Lunch	Dinner	TOTAL
Aug-09	20	2	7	29
Sep-09	34	12	8	54
Oct-09	42	3	9	54
Nov-09	72	11	7	90
Dec-09	63	1	4	68
Jan-10	97	7	7	111
Feb-10	27	0	2	29
	355 Breakfast Refusals	36 Lunch Refusals	44 Dinner Refusals	435 Total Meals Refused

EXHIBIT 4

**Indian River Juvenile Correctional Facility ("IRJCF")
Meal Refusal (Results from Log⁴)
August 2009 – March 2010**

	Breakfast	Lunch	Dinner	Total
Aug-09	13	0	4	17
Sep-09	68	26	0	94
Oct-09	43	6	2	51
Nov-09	53	11	16	80
Dec-09	22	7	6	35
Jan-10	94	0	4	98
Feb-10	152	1	8	161
Mar-10	40	4	1	45
	485 Breakfast Refusals	55 Lunch Refusals	41 Dinner Refusals	581 Total Meals Refused

⁴ This is a rough estimate of meals refused by youth confined at IRJCF from August 2009 through March 2010. The log that was submitted to this Court by IRJCF often had illegible entries, did not include a date when the youth refused the meal, and sometimes cut off the time the meal was refused, making it impossible to know which meal was refused by the youth.

EXHIBIT 5

**Indian River Juvenile Correctional Facility ("IRJCF")
Meal Refusals (Results from Charts)
August 2009 – March 2010**

	Breakfast	Lunch	Dinner	Total
Sep-09	83	26	2	111
Oct-09	234	51	1	286
Nov-09	299	59	27	385
Dec-09	396	99	13	508
Jan-10	329	80	25	434
Feb-10	304	73	13	390
Mar-10	32	6	8	46
	1677 Breakfast Refusals	394 Lunch Refusals	89 Dinner Refusals	2160 Total Meals Refused