

MONITORING REPORT FOR THE SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES AND THE STATE OF NEW YORK IN THE MATTER OF *UNITED STATES V. THE STATE OF NEW YORK* and *THE NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES* (U.S.D.C. NORTHERN DISTRICT OF NEW YORK)

**Facility Monitoring Report:
Lansing Residential Center for Girls
Lansing, NY**

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and

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January 13, 2013

**INDIVIDUAL FACILITY MONITORING REPORT:
LANSING RESIDENTIAL CENTER FOR GIRLS
Lansing, NY**

I. INTRODUCTION

This is the eighth monitoring report for the Settlement Agreement between the United States and the State of New York in the matter of *United States v. the State of New York and the New York State Office of Children and Family Services* (U.S.D.C. Northern District of New York), and it describes the monitoring visit to the Lansing Residential Center for Girls (Lansing) on October 2-4, 2012. As noted in the first monitoring report, the Monitoring Team consists of two Monitors, Dr. Marty Beyer, who is responsible for the Mental Health paragraphs of the Settlement Agreement, (hereafter referred to as the MH Monitor) and Dr. David Roush, who is responsible for the Protection from Harm paragraphs (hereafter referred to as the PH Monitor).

This report evaluates numbered Paragraphs 40-57 and 68 in the Settlement Agreement. Specific headings within these groups of paragraphs include Use of Restraints, Use of Force, Emergency Response, Reporting, Evaluation of Mental Health Needs, Use of Psychotropics, Staff Training on Psychotropic Medications and Psychiatric Disabilities, Psychotropic Medication Refusals, Informed Consent, Treatment Planning, Substance Abuse Treatment, Transition Planning, Document Development and Revision, and Quality Assurance Programs.

The Settlement Agreement (Paragraph 61b) provides for *ex parte* communications as an ongoing way for the Monitors to gather information. The Settlement Agreement further stipulates (Paragraph 62d) that the Monitors will provide a draft report to the Parties following the monitoring visit. The Monitors construe the designation of a draft report in advance of a final report to mean that the draft report and the comments provided by each Party are still part of the investigative processes associated with the monitoring visit. Therefore, the Monitors note that statements in a draft report are not final, and they are not wedded to draft report statements. The Monitors acknowledge the option to modify and clarify initial impressions and statements regarding compliance in advance of a final report. Furthermore, the Monitors' final reports apply solely to the Settlement Agreement.

A. Facility Background Information

The Lansing Residential Center for Girls is a non-secure facility for juvenile delinquent females ages 12 through 18 years old. On October 2, 2012, there were 11 girls at Lansing, six on the CRP (revocators) unit and five on the generic unit. One girl had been at Lansing during the monitoring visit six months previously; one girl had been at Lansing in October 2012 had been at Taberg during the Monitors' August, 2012 site visit; one girl had been at Tryon and moved to Columbia when it opened and was at Lansing during the site visit. Seven of the girls at Lansing arrived in the two months prior to this site visit.

The 11 girls ranged in age from 14 to 17 and had been at Lansing from 6 days to 153 days. They were committed for: Assault (6), Grand Larceny (1), Hindering Prosecution (1), Resisting Arrest (1), Criminal Mischief (1) and Criminal Impersonation (1); six are CRPs.

The diagnoses of the girls at Lansing include Anxiety Disorder, Panic Disorder, PTSD, Depression, Obsessive Compulsive Disorder, ADHD, and Insomnia. Seven of the 11 girls are prescribed psychiatric medication: five are prescribed Abilify, two are prescribed Seroquel, and Ambien, Haldol, Sertraline, Trazodone and Zoloft are prescribed for one girl each.

C. Assessment Protocols

The assessments used the following format:

1. Pre-Visit Document Review

The Monitors submitted a list of documents for on-site review. The Monitors worked with OCFS to make the document production and review processes more efficient, especially ways to make the transportation of documents easier for Home Office without compromising the quality of information provided.

2. Use of Data

The Office of Children and Family Services (OCFS) has a good management information system with access to a wide range of data. A further review of the system and its capabilities allowed for the development of Excel spreadsheets that were provided to the Home Office for the regular collection and dissemination of facility data to the Monitors, including the semi-annual Performance-based Standards (PbS) data. The Monitors received the OCFS fourth Six-Month Progress Report on the MAP on December 19, 2012.

The Quality Assurance and Improvement (QAI) Bureau raised questions about some data integrity issues for Lansing, and the recommended corrective action plan reflects an appropriate strategy to address and resolve these data concerns.

3. Entrance Interview

The entrance interview occurred on October 2, 2012 and included the Monitoring Team and OCFS representatives, including key staff members from the facility. The meeting provided an opportunity for introductions, informal discussion of institutional goals and objectives, an overview of the assessment process, a review and discussion of assessment instruments, and the scheduling of the remaining assessment activities. Those in attendance included: Sandra Carrk, Project Manager; Diane Deacon, OCFS Legal; Kathy Fitzgerald, Acting Assistant Director for Treatment; Linda Gaydushek, Education Supervisor; Annette E. Larrier-Fulcher, Facility Director; Edgardo Lopez, Settlement Agreement Coordinator; Jennifer Mack, Assistant Facility Director; Dr. Maria Morog, Psychologist; Ines Nieves, Associate Commissioner; Connie Sargent, Psychologist II; and Beverly Sowersby, Facilities Manager.

4. Facility Tour

Walkthroughs of the facility followed the entrance interview. The Protection from Harm facility tour used copies of fire evacuation floor plans on an 8 ½" x 11" format. Two

Youth Development Aides expressed concern about the number of doors on the living units that did not lock, increasing the risk for safety and security violations on the night shift. A separate walkthrough of the Units with AOD Robert Paoletti revealed fewer doors that did not lock than were reported by YDA staff.

5. On-Site Review

The site visit included a review of numerous documents available at the facility and not included in the pre-visit document request list. These documents included many reports that occurred in the time between the documents prepared for the Monitors and the on-site assessment. The MH Monitor observed two treatment team meetings, Mental Health Rounds, a DBT group and two substance abuse groups, met with the clinicians, and reviewed eight girls' records.

6. Staff Interviews

The Monitors interviewed 21 Lansing staff. In addition to group meetings with staff, the MH Monitor interviewed a YC, a YDA, a clinician, and a nurse individually. The PH Monitor interviewed seven (7) Youth Division Aides (YDAs), one Facility Director, one Assistant Facility Director, one Nurse Administrator, two nurses, two facility trainers, and three Youth Counselor 1. Of the seven YDA staff members who participated in interviews, the average age was 38.8 years old with 9.8 years of experience, and 57% were male.

7. Resident Interviews

The Monitors interviewed eight (8) girls; the MH Monitor interviewed three (3) girls individually and the PH Monitor interviewed five (5) girls with an average age of 15.4 years old and an average length of stay of 1.8 months. Interviews occurred in areas with reasonable privacy from staff. The Monitors selected the youth for interviews.

8. Exit Interview

The exit meeting occurred on October 4, 2012. The Monitors expressed their appreciation for the cooperation and hospitality of the Lansing and OCFS staff. The Team then highlighted areas of importance and concern, but not findings. The exit meeting was a time for questions, clarifications, and explanations of events and impressions before the draft report went to both Parties. Those in attendance included: David L. Bach, QAI Director; Sharon Bell, YCI; Sheryl Benedict, NA; Sandra Carrk, Project Manager; DollBaby Cooper, Youth Recreation Specialist II; Diane Deacon, Legal; Kathy Fitzgerald, Acting Asst Director for Treatment; Shaun Lang, YCI; Shirley Lange, Teacher; Annette Larrier-Fulcher, Facility Director; Edgardo Lopez, Settlement Agreement Coordinator; Jennifer Mack, AD; Maria Morog, Licensed Psychologist; Ines Nieves, Assoc Commissioner; Bob Paoletti, YC1; Melinda Rivera, Bureau of Behavioral Health Services; David Sagatias, QAI Assist Director; Connie Sargent, Psychologist II; and Robert Woods, General Mechanic. Those who participated by telephone included: Jim Barron, Director, Labor Relations; Merle Brandwene, Director, Management and Program Support; Matt Carpenter, Executive Assistant to DJJOY Deputy Commissioner; Erin Cassidy, Executive Assistant to Executive Deputy Commissioner; Lori Clark, Acting Director for Taberg & QA Specialist; Michael Cohen, M.D., Director, Health Services; Pam Kelly, Director, Bureau of Training; Felipe Franco, Deputy Commissioner, DJJOY; Larry Gravett, Director, Special Investigations Unit;

Alyssa Lareau, DOJ Legal; Denise Passarello, QA Specialist; Beverly Sowersby, Facilities Manager; Joe Tomassone, Ph.D., Chief Treatment Services; Jenne Utting, QA Specialist; and Iren Valentine, Director, Bureau of Behavioral Health Services.

D. Preface to Protection from Harm and Mental Health Findings

Lansing has experienced some difficulties that affected progress since the last site visit. For much of the summer, both the Director and Assistant Director were unable to work their regular hours. The population expanded, requiring opening a third unit that necessitated staff working double shifts; restraints increased. Two YDAs retired and the facility did not have sufficient YCs. In the month before the site visit, the facility returned to two units resulting in fewer staff being mandated to work overtime. A new Acting Director for Treatment moved from her position as a BBHS New York Model coach who many staff reported has already made a difference in the program. Group counseling for girls has increased and Lansing is working to manage scheduling problems in order to increase YDA involvement in Mental Health Rounds and support teams. A vocational specialist is involving girls in activities, including serving food in a homeless program. The renovated gym has opened. The number of restraints decreased recently. There are continuing worries for staff over the uncertainties about the facility's future as the Close to Home initiative has resulted in a reduction in the population since New York City non-secure girls are no longer being sent to Lansing (except revocators). Of the current population of 11 residents, three girls from NYC are likely to return there in the coming weeks. It will continue to be difficult to project whether there will be an influx of limited secure youth and/or CRPs simultaneous to the reduction of non-secure youth entering OCFS care. In addition, the recent OMH transfer of an immature chronically mentally ill resident who requires extra staff to manage her difficult problems frustrated staff who wanted program stability to continue and not be so affected by one resident.

Before this site visit, the DJJOY Quality Assurance and Improvement (QAI) Bureau completed a thoughtful review at Lansing, which was more detailed than their pilot review two months before at Columbia. *The Pilot Program Review: Lansing Residential Center for Girls* ("the QAI review") commended Lansing for a reduction in restrains, quality restraint packets, and exemplary staff. The QAI review commended Lansing for the residents' perception of safety. Some girls commented that they felt safer at Lansing than at other facilities (both OCFS and private). The QAI review commended the facility for consistent reduction in restrictive restraints (seated and supine); increasingly Lansing staff are able to restrain residents in a standing position. The majority of Lansing residents reported that staff only used force when needed. The QAI review also commended Lansing for the nurses post-restraint review system, including their medical restraint log that is completed after each post-restraint exam. The Monitors discussed with the QAI staff the continuing interest in analyzing the type of restraint and length of restraint data for each individual youth to note trends during her stay as a progress indicator. As a part of the QAI review process, the PH Monitor participated in an example of how the quality assurance team reviews Restraint Packets and restraint videos. The Restraint Packet 357091 for Youth TH was the subject of the mock audit by the QAI team and the PH Monitor. The Lansing experience was a repeat of the process experienced at Taberg. As a result of the direct involvement and observation of the review process, the PH Monitor has confidence in the

outcomes and findings of the QAI team. The thoroughness of the QAI restraint reviews increases the accuracy and integrity of the QAI team findings.

II. PROTECTION FROM HARM MONITORING

The data on safety indicators related to the Protection from Harm Paragraphs showed improvements, including youth and staff perceptions of safety. Youth uniformly expressed a sense of safety at Lansing. Issues regarding fear came primarily from a fear of other youth and isolated comments about "some staff." All youth identified numerous caring and supportive staff with whom they felt they had a good relationship. The PH Monitor's youth interviews affirmed the initial statements of staff that substantial progress has been made but they are not yet satisfied with all of the outcomes. Of the youth who participated in interviews, they had an average safety rating of 9.0 in response to the question, "On a scale of 1-10 with 10 being the highest, how safe are you in this facility?" but 60% indicated that they had feared for their safety in the last six months, reflecting concerns about past disruptions on the living units. The higher rate of fear for safety was consistent with the threat of fights (within the last 6 months, 80% reported they had been beaten up or threatened with being beaten up). When asked what could be done to make this a better place, their answers had very little to do with issues of safety or physical restraints. Instead, they asked for such things as red and blue yarn and something to help them with sleep and to stop missing classes.

Of the Lansing staff interviewed, 67% indicated that they had feared for their safety at Lansing within the last 6 months, and largely attributed this to staffing problems. Home Office has been investigating the staffing concerns and provided an update of activities at a meeting with the Monitors on June 29, 2012. Staffing continues to be a variable in Protection from Harm considerations. For example, staff described staffing issues as factors in the use of restraints. Restraint Packet 341481 contained a Restraint Monitor report completed by a staff member who was directly involved in the restraint; and under the section for Crisis Response Procedures, the "no" box was checked for the question "Was response proportional and appropriate?" The Restraint Monitor wrote the following is an explanation: "Not enough people to respond to the situation in a timely fashion to assist this writer." One veteran YDA indicated that mandations occur three to four days per week. One YDA approached the PH Monitor before the Exit Interview and stated that she loved her job but that she was physically and emotionally exhausted because of all of the overtime she was working. She said, "Please get us some help!"

The QAI reviews now contain a section that addresses staffing adequacy. Further development of this quality assurance component is an important addition to the sustainability of the changes resulting from the Settlement Agreement. Lansing Administration detailed its staff coverage and assignment strategy. To fill these shifts, the staffing adequacy in October 2012 was 69.7%, depending upon the replacement factor used in the estimate. This percentage was slightly higher than the staffing adequacy calculated during the March 2012 monitoring visit, which was 65.8%. These numbers indicate that staffing adequacy (the availability of staff to fill the shifts in the schedule) has seen only minor improvement over the past 6 months. This would explain the continuing concerns about overtime, exhaustion, and lack of continuity expressed by staff.

A. Use of Restraints

Paragraph 40 states, in part, "The State shall, at all times, provide youth in the facilities with reasonably safe living conditions." Safe living conditions are places where youth are free from the occurrence of or risk of harm, injury, danger, and fear of harm, injury, and danger.

Youth Division Aides (YDAs) are a good source of information. Just as the CPM de-escalation techniques emphasize the prevention of physical restraints (the prevention of the occurrence of or risk of harm, injury, danger, and fear of harm, injury, and danger), part of the staff interview process asked YDAs if they had suggestions about how to prevent physical restraints. In addition to de-escalation, several relevant comments were:

- Disruptions in the schedule cause disruptions on the units when new staff members or different staff members are assigned to the shift. Because youth do not handle change well, the lack of staffing continuity increases the likelihood of disruptive and or acting-out behaviors by youth. The absence of consistency and continuity in scheduling, such as the scheduling of staff at three-day intervals, becomes disruptive to staff and reduces morale. Staff went so far as to suggest that restraints tend to increase when certain key staff members are at the end of their workweek because they are exhausted, perhaps burned-out. As one staff member put it, "When we're okay, the kids are okay, too."
- There needs to be an improved recreation program that increases participation (activity levels) and decreases boredom. Even though staff gave an example of an activity that had all girls participating (the Summer Olympics), the recreation program needs more creativity and enthusiasm.

40. *The State shall, at all times, provide youth in the Facilities with reasonably safe living conditions as follows:*

41. *Use of Restraints. The State shall require that youth must not be subjected to undue restraints. The State shall create or modify policies, procedures, and practices to require that the use of restraints be limited to exceptional circumstances, as set forth below, where all other appropriate pro-active, non-physical behavioral management techniques have been tried and failed and a youth poses a danger to himself/herself or others. Restraints shall never be used to punish youth. Accordingly, restraints shall be used only in the following circumstances:*

- i. Where emergency physical intervention is necessary to protect the safety of any person;*
- ii. Where a youth is physically attempting to escape the boundary of a Facility;*
or
- iii. Where a youth's behavior poses a substantial threat to the safety and order of the Facility.*

PARTIAL COMPLIANCE

COMMENT: One goal appears to be that when staff are fully trained in CPM, and when they are adequately supervised, and when there is an ongoing mechanism to improve

CPM interventions, a physical restraint becomes the last action for the protection of the safety of youth and staff. These prerequisites would mean that youth are free from undue, inappropriate, and punitive restraints or uses of force.

There still are too many physical restraints. Factoring into this determination are the regular analyses of the Home Office-supplied restraint data for Lansing, reviews of restraint packets, reviews of restraint videos, along with an understanding of restraint practices and the challenges presented by Lansing youth. Supplementing this perspective are comments from knowledgeable Lansing staff who understand CPM and who (a) describe the current rates of restraint as too high, (b) describe some restraints as unnecessary due to the need for improved staff skills, e. g., skills to avoid physical restraint associated with the full integration of the New York Model, and (c) set a reasonable and acceptable level (a not undue and not excessive level) of restraints below current practices even when taking into account the unpredictable nature of both the operational circumstances and the Lansing youth.

The Crisis Prevention and Management (CPM) policy and procedure 3247.12 along with PPM 2801.00, and PPM 3247.14 fulfills the requirement that OCFS create a new set of requirements on the use of restraints. During staff interviews, all staff had a working knowledge of the new policy and the physical restraint approach. Staff again provided accurate answers to the questions about these policies and procedures. The responses were consistent with the intent of the Settlement Agreement.

Of the youth who participated in interviews, (a) only two had been involved in a physical restraint within the past 6 months, (b) 60% believed that staff use force only when they really need to, but (c) one of the two girls who had been restrained believed that staff tried to hurt her during the restraint. These numbers combined with other youth-generated responses (“if something is wrong, staff pull you aside and talk to you about it; staff try to calm you down when you’re angry”) to suggest that a majority of staff follows the policies and procedures as intended. This is a pattern that appeared in the evaluation of many of the Protection from Harm paragraphs: Most staff were rated as caring, respectful, and competent while a few seemed to be associated with problems (“some staff overdose on restraints”).

Several concerns existed about the use of physical restraints that were not consistent with the extraordinary circumstances clause in Paragraph 41, and these instances did not appear to be mere technicalities or temporary failures. Because of this, a partial compliance determination is merited for this paragraph. For example, in Restraint Packet 341481, it appeared as if the restraint started following the youth’s damage to a painting belonging to her or another youth. Before the restraint, the youth’s behavior could be described as uncooperative or disruptive as opposed to criteria (i) and (ii) listed above. In addition, the QAI Report stated that multiple restraints lacked evidence that they qualified under either one or both of the extraordinary circumstances, e.g., Restraint Packets 308681, 335182, and 349981.

Further, the State shall:

41. a. *Create or modify and implement policies, procedures, and practices to require that in the limited circumstances when the use of restraints is necessary, staff shall employ*

only the minimum amount of physical control and time in restraints necessary to stabilize the situation.

PARTIAL COMPLIANCE

COMMENT: The policy and procedures are established; the training on the policies and procedures has occurred; and evidence of a corresponding practice includes documentation (written and video), staff reports, and resident reports that are consistent with the policy and procedures. Again, OCFS policies comply with the Settlement Agreement. Lansing administration was familiar with policy and procedure that limit the circumstances when the use of restraints is necessary, and staff continued to provide accurate answers to the questions about policies and procedures related to CPM. The responses were consistent with the intent of the Settlement Agreement.

Restraint data are currently categorized into two (2) types of restraints, those that do not take the youth to the floor (standing restraints), and those that take the youth to the floor (seated and supine restraints) with the range of standing restraint options representing lesser amounts of physical control and, usually, time. OCFS keeps good enough records that permit the restraint data to be disaggregated into these two (2) sets. Additionally, the CSU Restraint Log at Lansing matches the number of Post-Restraint Physical Examinations by the clinic. This provides greater confidence in the accuracy of the use of restraints. The collection and analysis of these data provide one means of determining if the environment or living conditions are a reasonably safe place.

Figure 1. 2012 Rates for Physical Restraints and Youth and Staff Injury

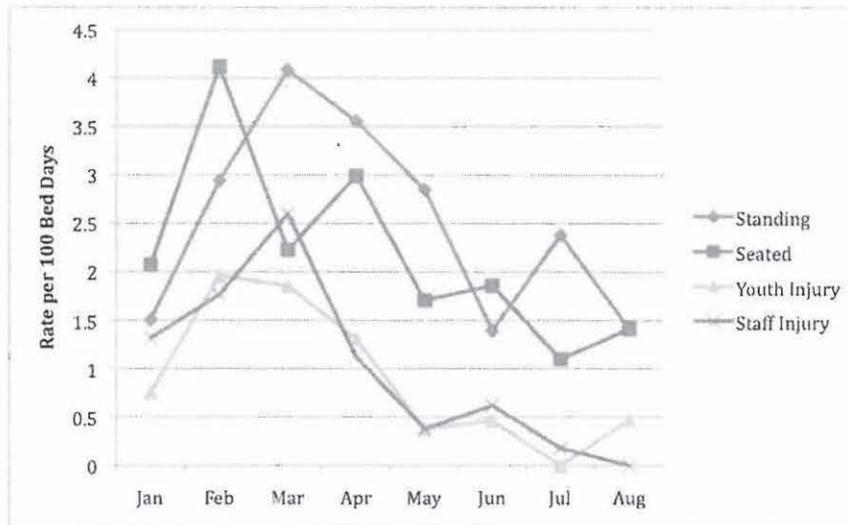


Figure 1 contains relevant incident rate data for 2012. Since January, standing restraints and seated and supine restraints showed a substantial increase (a doubling of the rate) and then a steady decline through August. The reduction in restraints is noteworthy and positive, but the overall improvement since January is small. Similarly, there has been a sustained reduction in the rate of injuries to youth as a result of restraints. The rate of reductions in injuries to staff also showed a positive decline. In August 2012, the rate of

injury to staff was lower than the rate of injury to youth, which does not support the common belief among YDA staff that CPM results in more injuries to staff than youth.

Despite the improvements in the rates of restraints, concerns existed about uses of force that are not in line with the Settlement Agreement. Again, these issues were not isolated or individual examples. They reflected a concern that needs greater attention. For example, the QAI team scored 15 packets in the noncompliance range regarding use of force. For Restraint Packets 306981 and 341481, the QAI review caused SCR reports to be generated.

Restraint Packet 366692 represented a significant concern regarding the Settlement Agreement paragraphs related to physical restraint. The video and the documentation indicated that the youth, following questionable behavior by the YDA, hit the YDA in the jaw with her left hand. In response, the YDA made an aggressive move toward her, which an on-looking YDA described as a punch. Words continued between the youth and staff, and the YDA in question attempted to pull the youth from the sofa. When the youth stood up, the YDA pushed the youth into the corner of the lounge area, put the youth in a headlock with his face and the youth's face only a few inches apart, and then took the youth to the floor, controlling her by placing his knee on her chest while he gained control of her arms. The incident resulted in an investigation and a Notice of Discipline based on guilty findings for (a) Failure to call for assistance, (b) Use of unauthorized physical force, (c) Use of excessive physical force, (d) Striking a resident, and (e) Providing false testimony during interrogation. The intended action was termination of employment, an appropriate response when implemented.

41. b. *Create or modify and implement policies, procedures, and practices regarding the application of restraints to youth at heightened risk of physical and psychological harm from restraints, including, but not limited to, youth who are obese, have serious respiratory or cardiac problems, have histories of sexual or physical abuse, or are pregnant.*

COMPLIANCE

COMMENT: The policy and procedures exist; the training on the policies and procedures has occurred; and staff and resident interviews were consistent with the policy and procedures. Interviews with direct care and health care staff revealed a working knowledge of conditions, circumstances, and plans that limit the restraints to youth due to heightened risk of physical or psychological harm. Interviews with youth confirmed staff's understanding of restrictions as contained in the youths IIP. However, the quality assurance report noted multiple instances where reference to the IIP was missing. This will be addressed under the paragraph for documentation.

41. c. *If face-down restraints continue to be used, create or modify and implement policies, procedures, and practices to require that staff utilize them only in emergencies when less restrictive measures would pose a significant risk to the safety of the youth, other youth, or staff. In addition:*

i. *Face-down restraints shall be employed for only as long as it takes to diffuse the emergency, but in no event shall a youth be restrained in a facedown position for more than three (3) minutes.*

- ii. *Trained staff shall monitor youth for signs of physical distress and the youth's ability to speak while restrained.*
- iii. *Medical personnel shall be immediately notified of the initiation of a facedown restraint position, and the youth shall be immediately assessed by medical personnel thereafter. In no event shall more than 4 hours lapse between the end of a facedown restraint incident and the assessment of the involved youth by medical staff.*

COMPLIANCE

COMMENT: The policy and procedures exist; the training on the policies and procedures has occurred; and staff and resident reports are consistent with the policy and procedures. However, concerns remain about facedown restraints in light of reports from youth that they have been taken to the floor in a facedown or prone position.

The QAI review identified three Restraint Packets in the significant noncompliance range regarding facedown restraints. In one of the restraints, the facedown hold lasted less than 3 minutes with staff moving the youth to a seated position. No mention was made that the use of the facedown hold was "employed for only as long as it takes to diffuse the emergency" as opposed to staff inability to use the CPM technique appropriately. The impression given by the QAI review was that the facedown restraint represented an unauthorized technique and applies to Paragraph 42e, and the identification of such should prompt a referral for Documented Instruction.

Policy 3247.12 describes a "transitional hold" that moves a youth from a supine restraint to a prone position for the purposes of applying handcuffs. In response to the question about when a face-down (prone) restraint is permissible, similar to their March 2012 answers, most Lansing staff responded that a prone restraint is not allowed and that the "transition hold" is not really a prone technique because they only move a youth to her side if the application of handcuffs is necessary.

Previously, the Bureau of Training demonstrated and reviewed for the PH Monitor the new, proposed handcuffing strategy, which would eliminate the need to use the "transitional hold" that exposes a youth to a facedown or prone position during the administration of the handcuffs. The procedure is a slight modification of the two-person seated restraint as the point of departure for the new procedure. Staff at Lansing were not aware of the new technique, which meant that it had not been approved and implemented at the time of the monitoring visit. The new approach represents a creative alternative to the transitional hold.

41. d. Prohibit the use of chemical agents such as pepper spray for purposes of restraint.

COMPLIANCE

COMMENT: policy and procedure clearly prohibit the use of chemical agents such as pepper spray. Resident and staff interviews and direct observations provided no evidence of the use of pepper spray.

41. e. *Prohibit use of psychotropic medication solely for purposes of restraint.*

COMPLIANCE

COMMENT: Policy and procedure regarding physical restraint clearly prohibit the use of psychotropic medication for solely restraint purposes. Resident and staff interviews and direct observations provided no evidence of the use of psychotropic medication solely for restraint purposes.

41. f. *Create or modify and implement policies, procedures, and practices to require that staff are adequately trained in appropriate restraint techniques, procedures to monitor the safety and health of youth while restrained, first aid, and cardiopulmonary resuscitation ("CPR"). The State shall require that only those staff with current training on the appropriate use of restraints are authorized to utilize restraints.*

COMPLIANCE

COMMENT: Printouts from the STAR system for (a) CPM, (b) first aid, CPR, and AED, (c) CPM Refresher #1, (d) CPM Refresher #2, and (e) the New York Model were provided by the Lansing training staff and reviewed line-by-line with them. Regarding the status of employees with up-to-date CPM training, only two staff members did not have up-to-date training regarding CPM refresher training. Both had just returned from Workers Comp. Three staff were not up-to-date on first aid and CPR training. One had just returned from medical leave, another from Workers Comp, and the third was scheduled to be in training the day following the assessment or monitoring visit.

Training continues to exist as one of the strengths in the implementation of the Settlement Agreement. However, care must be exercised to make sure that the training requirements are fulfilled. The expectation is that the training will be up-to-date for a monitoring visit. The memos to the employees who were not up-to-date with their training that specified their restrictions in the participation in a restraint were dated September 28 for October 1. Also, it was a concern that the QAI review noted that staff were not up-to-date with CPM and/or First Aid and CPR training at the time of restraint in 10 Restraint Packets. In addition, Restraint Packet 308681 shows multiple examples of YDA staff who cannot implement the CPM techniques. These types of issues jeopardize a compliance finding.

B. Use of Force

42. *Use of Force. In order to adequately protect youth from excessive use of force at the Facilities, the State shall:*

42. a. *Continue to prohibit "hooking and tripping" youth and using chokeholds on youth.*

COMPLIANCE

COMMENT: The policy and procedures exist; the training on the policies and procedures has occurred; and staff and resident reports are consistent with the policy and procedures. No evidence existed of the use of prohibited physical restraint holds, especially "hooking and tripping" and chokeholds.

Errors sometime occur in the implementation of the CPM techniques. In the midst of the restraint, youth do not always present themselves in the way that the technique was taught in training. In these situations, staff sometimes find themselves implementing a restraint in such a way that it appears to be a violation of a Settlement Agreement Paragraph. Restraint Packet 308681 contained an example where the staff member indicated that she believed she "got an arm around her neck and shoulders." This appeared in the Activity Report and raised some initial concerns that it may have been a chokehold. Based on a review of the video, it appeared more likely that the staff member's use of an unauthorized technique was more a function of her physical limitations. Situations like these raise questions about how obese staff members with physical limitations are able to achieve and sustain a competency-based endorsement to conduct restraints. The Video Review Form (VRF) contained no request for Documented Instruction (DI) for this staff member, and the Restraint Monitor's Report made no reference to her inability to use CPM techniques appropriately.

42. b. *Create or modify and implement a comprehensive policy and accompanying practices governing uses of force, which shall provide, among other things, that the least amount of force necessary for the safety of staff and youth is used.*

PARTIAL COMPLIANCE

COMMENT: Data regarding the use of force are mixed. Of the Lansing staff interviewed, 67% indicated that they had feared for their safety within the past 6 months, 83% reported that they have been investigated for abuse or use of excessive force or inappropriate use of force, and 50% said that they have had a substantiated finding as the result of an investigation. These percentages seem high in comparison to the other DOJ facilities. One staff member said she had been indicated on two separate investigations without any disciplinary action resulting.

As noted in the comments for Paragraph 41a, the QAI team identified 15 Restraint Packets in the noncompliance range, meaning a problem with the use of force. In two instances, QAI reviewed the use of excessive force as punitive. Multiple instances of these findings argue against full compliance.

In discussions with a CSEA Union Representative, he indicated that the union's position is that CPM is a more difficult technique and much harder for staff to implement. He stated that CPM has also proven to be harder on staff, resulting in more injuries. Figure 1 did not include staff injury data for any pre-CPM injuries, but the 2012 rates of staff injuries showed a sizable reduction. Similarly, on a scale of 1 to 10 with 10 being the highest, staff rated their safety at 8.4.

Another union-related concern was the hiring of individuals who, even after passing the competency-based CPM training, are not physically capable of implementing the CPM techniques. Similarly, the failure to use a sufficient amount of force necessary for the safety of staff and youth also applies here. Regarding Restraint Packet 308681, there were two girls fighting plus one girl attempting to get at them. There were three female staff members in the area. The video was replete with examples of inappropriate CPM strategies. As a result of the staff members' inability to implement the restraint techniques, the youth were able to deliver an increased number of kicks and punches to each other and

staff. The situation was only resolved when two physically capable staff members entered the restraints. Ironically, the Documented Instruction in the Restraint Packet was directed toward one of the more physically capable staff members while there was no Documented Instruction for the ones who appeared incapable.

42. c. Create or modify and implement policies, procedures, and practices to require that staff adequately and promptly document and report all uses of force.

PARTIAL COMPLIANCE

COMMENT: The policy and procedures exist; the training on the policies and procedures has occurred; and intermittent evidence of an occasionally sufficient corresponding practice included documentation (written and video), staff reports, and resident reports that were consistent with the policy and procedures. However, documentation problems existed, which need correction.

One substantial problem with documentation had to do with the Restraint Monitor. The QAI review found examples of problems related to adequate and prompt documentation, including missing Restraint Monitor Reports, lack of complete and accurate details, lack of evidence that there was a surveying of environmental factors, and reports filed on multiple restraints when the video showed the restraint monitor was out of position. The QAI review noted similar deficiencies with Activity Reports that lacked sufficient detail, did not reflect what was observed on the video, and reports filed by a staff member that was not present for the restraint.

In Restraint Packet 373387, there was insufficient information about Youth KH following her return from the hospital. There was no documentation of a staff debriefing or processing of the event with her. Regarding her lying on the floor, the video did not show behaviors that would be an imminent threat to safety. However, it did look like staff were talking to her or interacting with her continuously while she was on the floor. There were some language concerns in the documentation. For example, the Activity Report indicated that Youth KH was "defying staff requests." It might have been more accurate to describe her as uncooperative. With a severely troubled mental health youth, interpreting a lack of cooperation with staff requests as a deliberate act of defiance likely missed many of the issues associated with the treatment of such a youth from the perspective of the New York Model.

See the comment section for Paragraph 42a regarding Restraint Packet 308681 and multiple failures to document a staff member's inability on video to use CPM techniques appropriately.

42. d. Create or modify and implement a system for review, by senior management, of uses of force and alleged child abuse so that they may use the information gathered to improve training and supervision of staff, guide staff discipline, and/or make policy or programmatic changes as needed.

PARTIAL COMPLIANCE

COMMENT: The policy and procedures exist; the training on the policies and procedures has occurred; and staff members report a practice that is consistent with the policy and procedures. An SG-18 or above facility administrator completes a review and

logs the information and recommendations on the OCFS 2091 form, which is reviewed by the Facility Director and followed by a Home Office review.

Missing from the implementation of the policy and procedure are protocols or guidance regarding the ways in which information gathered in this process should be used to improve training and supervision and to revise policy or programs. Additionally, protocols for the senior management review of information are "in progress."

42. e. Establish procedures and practices whereby each Facility Administrator or his or her designee will conduct weekly reviews of the use of force reports and videotaped incidents involving uses of force to evaluate proper techniques. Upon this review, staff who exhibit deficiencies in technique(s) shall be prohibited from using force until such staff receive documented instruction on the proper technique(s).

PARTIAL COMPLIANCE

COMMENT: The policy and procedures exist, and there is a practice in place, though it is not consistently timely or sufficient to properly "evaluate proper techniques" or perform "documented instruction" as required by this paragraph. Throughout the monitoring process, this paragraph has become more important because of the "review" and "evaluate" functions contained in this weekly practice. The Facility Administrator review becomes a critical part of the feedback needed to continue the evolution and improvement of CPM and the New York model. With the advent of QAI, it provides another perspective on the types of staff behaviors that are exemplary or in need of improvement. Similarly, reviews of the physical restraints provide an additional opportunity to raise issues related to the prevention of unnecessary restraints. While an unnecessary restraint may more appropriately fall under Paragraph 42b regarding the least amount of control needed to resolve the situation, this Paragraph's review requirement presents the appropriate juncture for the discussion of auxiliary issues that affect the nature and extent of physical restraints.

Because of concerns expressed in previous reports about the Facility Administrator's review of Restraint Packets and videos, Home Office clarified the policy on "Documented Instruction." Staff informally viewed documented instruction as a disciplinary or formal corrective action, so there seemed to be a hesitancy to use it in a way consistent with the PH Monitor's interpretation of the Settlement Agreement paragraph. Paragraph 42e is the Facility Administrator's opportunity to review this new and important procedure (CPM) and to provide a learning tool as a safeguard for youth and staff. That is, it requires Facility Administration to identify the types of behaviors that fit the policy, procedure, and training and also mandates Facility Administration to make learning opportunities for those staff members who have difficulty implementing the new techniques effectively. From the Monitors' perspective, the purpose of Documented Instruction in this paragraph is to create multiple and ongoing opportunities for staff to learn and practice effective implementation of CPM techniques, especially de-escalation.

1. Documented Instruction

The previously mentioned disruptions to the Lansing leadership probably contributed to a deterioration in the quality of the Facility Administration Review of

restraints under Paragraph 42e. More so than in previous visits, the administrative reviews appeared rushed and cursory.

- a. In Restraint Packets 306981, 322582, 325485, 349981, and 355482, appropriate follow-up was not noted by the administration in the review materials, i. e., no Documented Instruction.
- b. Regarding Restraint Packet 373387, the Activity Report contained a statement that prompted significant concern regarding the application of the CPM. A YDA wrote, “[Youth KH] was so out of control and fighting staff that [YDA NC] had to *straddle* [her] securing both arms to gain any bit of control that he could.” (Emphasis added) There was no Video Review Form, so there was no administrative concern noted about this element of the restraint. The documentation of a staff member “straddling” a sexually traumatized youth during a restraint should prompt alerts. This has direct implications for Paragraph 41b. Documented instruction was not noted.
- c. The Restraint Packet 357091 for Youth TH was the subject of the mock audit by the QAI team and the PH Monitor. The review revealed multiple examples of the use of unauthorized techniques. Consistent with other Lansing Restraint Packets, there were documentation deficiencies. For example, on the Administrative Review of Physical Restraint form, it indicated that follow-up action was needed and that Documented Instruction should be part of the follow-up action. However, there was no entry under the “Describe” section that explained the reason for the Documented Instruction.
- d. The QAI review noted that Restraint Packets 308186 and 316983 provided evidence that should have prompted action involving staff being placed on the no-contact list given that allegations of abuse were made. The no-contact list was not updated to reflect these.
- e. In Restraint Packet 366287, the video showed six (6) girls in the day room with two staff. There appeared to be a problem between two youths, AB and BC. Both staff moved AB away from the area and positioned themselves between the girls. When AB stood up, the staff moved her away from Youth BC and the other girls. Youth AB was agitated, but the staff inexplicably allowed her to move back within proximity to Youth BC where she punches Youth BC in the face. This was a situation where the adult protective shield that is supposed to guarantee safety for youth by preventing obvious aggression broke down. There was no Video Review Form in the packet. There was no signature on the Restraint Monitor Report. The packet contained no documentation that identified the failure of the two staff to prevent the assault from occurring. This was an opportunity for Documented Instruction.
- f. In Restraint Packet 341481, the YDA implemented a hook on Youth MI, taking her to the floor facedown. The video also showed a similar takedown shortly following the youth’s release from the previous restraint. The Restraint Monitor Report was completed by the same YDA. The Video

Review Form (VRF) acknowledged the youth's aggressive behaviors but indicated that the youth was taken to the floor in an "apparent prone position." Documented Instruction is pending disciplinary action.

- g. See the comment section for Paragraph 42a regarding Restraint Packet 308681 and the absence of a request for Documented Instruction for a staff member who appeared on video as incompetent to use CPM techniques appropriately.

2. Timeliness of Reviews

The QAI report noted several deficiencies in the timely review of restraints; thus, the weekly review requirement in this paragraph was not consistently followed. In Restraint Packet 317080, the Administrative Review was not completed in a timely fashion established by policy. The review was not completed until more than a week after the incident occurred. In Restraint Packets 306981, 322582, 325485, 349981, and 355482, appropriate follow-up was not noted by the administration during its review, i. e., no Documented Instruction or notation to call an RIR.

42. f. *Train direct care staff in conflict resolution and approved uses of force that minimize the risk of injury to youth. The State shall only use instructors who have successfully completed training designed for use of force instructors. All training shall include each staff member's demonstration of the approved techniques and require that each staff member meet the minimum standards for competency established by the method. Direct care staff skills in employing the method shall be periodically re-evaluated. Staff who demonstrate deficiencies in technique or method shall be re-trained at least every six months until they meet minimum standards for competency established by the method. Supervisor staff who are routinely involved in responding to incidents and altercations shall be trained to evaluate their subordinates' uses of force and must provide evaluation of the staff's proper use of these methods in their reports addressing use of force incidents.*

COMPLIANCE

COMMENT: Training remains a strength of the Protection from Harm Paragraphs. The training on the policies and procedures seemed to have occurred regularly, and the evidence of a corresponding practice from the STARS system was consistent with the requirements of this paragraph. Training records showed that staff members who required retraining for any reason received the training in a timely fashion. Interviews with staff confirmed the staff member's understanding of the training and an awareness of his or her status regarding completeness of the training requirements. Staff members knew when re-training events would occur and in what activities they were permitted to participate.

Coaching is an asset to staff during the transition to CPM and other strategies associated with the New York Model. The Facility Administrator's Review outlined in Paragraph 42e provides a way to use coaching through Documented Instruction (DI) to improve staff skills. However, a somewhat isolated but important concern remains about how an employee receives and sustains Bureau of Training endorsement or competency-

based approval to conduct CPM restraints but then fails to show competence in a Restraint Packet video.

C. Emergency Response

The levels of emergency response seemed good, and the policy and procedure regarding response teams and codes are appropriate.

43. *Emergency Response. The State shall create or modify and implement policies, procedures, and practices relative to staff use of personal safety devices (sometimes referred to as "pins") to call for assistance in addressing youth behavior. To this end, the State shall:*

43. a. *Immediately revoke the December 18, 2007 directive to staff of Finger Lakes to "push the pin."*

NOT APPLICABLE

43. b. *Create or modify policies providing staff with guidelines as to when a call for assistance is appropriate.*

COMPLIANCE

COMMENT: The policy and procedures exist (PPM 3246.02 and PPM 3247.13); the training on the policies and procedures has occurred; and staff and resident reports are consistent with the policy and procedures. All staff confirmed with acceptable accuracy the call for assistance procedures based on the color code indicators, where Code Yellow = personal safety, Code Blue = medical, Code Green = security, Code Gray = mental health issues, and Code White = restraint in progress.

43. c. *Create or modify policies and procedures regarding the appropriateness of the response to the situation presented.*

COMPLIANCE

COMMENT: The policy and procedures exist (PPM 3246.02); the training on the policies and procedures has occurred; and staff reports were consistent with the policy and procedures. The PH Monitor verified the existence of the response team chart in the CSU booth and the log entry of response descriptions in the CSU logbook.

43. d. *Require administrators of each Facility to submit an emergency response plan for review and approval in accordance with statewide policy.*

COMPLIANCE

COMMENT: The monitoring visit included a complete review of the Red Book. The emergency plans contained in the Red Book appeared to meet the requirements of the paragraph. There was nothing in the Red Book about handling a staffing emergency. Home Office indicated that planning for staff coverage is not considered an emergency. It would be helpful to provide additional advice and guidance about what staff should do when staff shortages occur, particularly on the weekends. While there was an up-to-date call roster for on-call administrators, there was no instruction for staff.

43. e. *Train all Facility staff in the operation of the above policy and procedures.*

COMPLIANCE

COMMENT: The policies and procedures referenced in paragraphs 41-43 are addressed primarily in policies 3247.12 and 3246.02. These policies are part of the CPM training, and the STARS system confirms the Lansing staff's successful completion of the training.

D. Reporting and Investigation of Incidents

These paragraphs refer largely to the activities of the Special Investigations Unit (SIU). Most of the comments below reflect aspects of the current reporting and investigative process as they relate to the responsibilities of the individual facility staff.

44. *Reporting and Investigation of Incidents. The State shall adequately report, investigate, and address the following allegations of staff misconduct:*

- i. *Inappropriate use of restraints;*
- ii. *Use of excessive force on youth; or*
- iii. *Failure of supervision or neglect resulting in:*
 - (1) *youth injury; or*
 - (2) *suicide attempts or self-injurious behaviors.*

To this end, the State shall:

44. a. *Create or modify and implement policies, procedures, and practices to require that such incidents or allegations are reported to appropriate individuals, that such reporting may be done without fear of retaliation, and that such reporting be done in a manner that preserves confidentiality to the extent possible, consistent with the need to investigate and address allegations.*

PARTIAL COMPLIANCE

COMMENT: Interviews with staff yielded similar results. No one commented about a reluctance or fear of retaliation when faced with the need to report another worker regarding an alleged incident of an inappropriate use of force or suspected abuse, including nurses. However, Lansing is the only DOJ facility to our knowledge that has a current employee with a finding by SIU of intimidation of a coworker following the coworker's reporting of that employee. Even though the monitoring visit produced no evidence of continued retaliation, the QAI review noted that of the two staff interviewed by the QAI team who had made a report, both stated that they had not been intimidated; but both said they knew someone who had been intimidated.

Regarding the confidentiality of reporting issues, four staff did not think that Home Office did enough to preserve confidentiality surrounding allegations, reporting, and investigations. One staff member mentioned the careless disclosure of what should have been a confidential name on two different investigations. Mistakes of this nature can have a chilling effect on staff assumptions that reporting remains confidential. Concerns about compliance with this paragraph have existed only at Lansing.

44. b. *Create or modify and implement policies, procedures, and practices providing that such incidents or allegations are promptly screened and which establish criteria for prioritizing Facility investigations based on the seriousness and other aspects of the allegation. There shall be a prompt determination of the appropriate level of contact between the staff and youth, if any, in light of the nature of the allegation and/or a preliminary investigation of the credibility of the allegation. The determination shall be consistent with the safety of all youth. The determination must be documented.*

COMPLIANCE

COMMENT: Just as each DOJ facility is different, the Special Investigations Unit (SIU) must apply a standard set of decision-making criteria regarding the prompt determination of the appropriate level of contact between youth and staff based on the nature of the allegation and preliminary investigation findings. So far, that process appears to be implemented satisfactorily. Part of the compliance related concerns are how well these determinations occur in practice. Until recently, facility administration has been generally supportive of the determinations; however, Lansing Administration questioned the decision making surrounding investigations. For example, the determinations that did not make sense to them were the ones that leave an employee on administrative leave for too long. The situation cited here and by other staff was the lingering no-contact status of [REDACTED]. This is an area for Home Office follow-up so that problems do not build and jeopardize compliance.

Two staff also expressed concerns about delays in handling allegations of abuse or excessive force. Their complaint was that Home Office is too slow in timeliness issues that they claimed are covered by the collective bargaining agreement. They maintained that a Notice of Discipline is required within seven days or the staff member is to be removed from special status and returned to his/her unit. Additionally, they expressed concerns about the tardiness and absence of documentation.

44. c. *Create or modify and implement policies, procedures, and practices to require that a nurse or other health care provider will question, outside the hearing of other staff or youth, each youth who reports to the infirmary with an injury regarding the cause of the injury. If, in the course of the youth's infirmary visit, a health care provider suspects staff-on-youth abuse, the health care provider shall immediately take all appropriate steps to preserve evidence of the injury, report the suspected abuse to the Statewide Central Register of Child Abuse and Maltreatment ("SCR"), document adequately the matter in the youth's medical record, and complete an incident report.*

COMPLIANCE

COMMENT: The infirmary program represents a Protection from Harm strength. The policy and procedures exist, and staff and resident interviews were consistent with the policy and procedures. The key issue here was safeguarding a youth's opportunity for a candid conversation during a post-restraint examination (PRE) with a trusted, health care provider, so that she can then more easily provide confidential information regarding the use of force incident, any allegations of excessive use of force, and any injury complaints.

On October 2, 2012, the PH Monitor requested the nursing staff to demonstrate how the PRE occurs. The demonstration was satisfactory. The arrangement of youth and staff