

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

S.H., et al.,	:	Case No. 2:04 cv 1206
	:	
Plaintiffs,	:	JUDGE ALGENON L. MARBLEY
	:	
vs.	:	
	:	
HARVEY J. REED,	:	
	:	
Defendant.	:	

CONSENT ORDER

I. INTRODUCTION

On May 20, 2008, the Court entered a Stipulation for Injunctive Relief (Doc. 108) resolving claims regarding conditions of confinement at facilities housing youth committed to the custody of the Ohio Department of Youth Services. On December 7, 2012, Defendant filed a Motion to Terminate the Stipulation. Doc. 336. As set out in detail below, the parties hereby agree that the Defendant has achieved substantial compliance in many areas covered by the Stipulation and that many of those paragraphs of the Stipulation should be terminated. The parties further agree that as set out in this Order, the Stipulation shall be continued on a very limited basis. A chart detailing the topics to be terminated, the topics to be monitored only for quality assurance, and the topics for which direct monitoring shall be continued for a limited duration, is attached and incorporated herein. The parties agree that for the purpose of this Consent Order and to the extent it may become necessary to resolve any disagreement, which Stipulation paragraph(s) relate to the topics listed under categories II A and II B and II C of the attached chart (Exhibit 1 to the Consent Order) will be determined by Monitor Will Harrell. Finally, the parties agree that

this Consent Order resolves the issues addressed in the Motion by Plaintiff for Specific Performance (Doc. 328) which is hereby withdrawn with prejudice.

II. SUBSTANTIVE REMEDIAL MEASURES

A. Topics and Stipulation Paragraphs Terminated By this Order

The Parties agree that Court enforcement with respect to the listed substantive areas and related Stipulation paragraphs is hereby terminated because the Defendant has achieved substantial compliance and/or there is no current and ongoing constitutional violation in these areas. These terminated topics are listed as such at II A on the attached chart.

B. Topics and Stipulation Paragraphs Limited to Quality Assurance Monitoring

1. Category II B of the attached chart reflects that a number of topics and related Stipulation paragraphs shall be monitored by the designated subject matter expert to determine whether the Defendant has effectively implemented a quality assurance system. The parties have not agreed with respect to whether there are ongoing constitutional violations in these areas but do agree to continue the quality assurance monitoring of these topics. The Monitor will report on compliance in a timely manner in order to recognize substantial compliance as soon as it is achieved.
2. Court Jurisdiction over the topics and related Stipulation Paragraphs listed on the chart under II B shall be terminated after: (1) the Defendant has established and the Monitor has approved a program of quality assurance/improvement (as defined in Stipulation ¶8W) with respect to that topic; and then (2) the Defendant maintains that quality assurance/improvement program in substantial compliance with its terms for a period of three months. The Monitor and appropriate subject matter experts shall work closely with Defendant to, within thirty days of the entry of this order, either

approve the existing quality assurance / improvement or modify and then approve the quality assurance / improvement programs as appropriate. The burden shall be on the Defendant to demonstrate substantial compliance. Notwithstanding the above, court jurisdiction over the topics and related Stipulation Paragraphs listed on the chart under II B shall be terminated on May 20, 2013 with prejudice unless Plaintiffs prove pursuant to the requirements of the PLRA that there is a current and ongoing violation of a federal right requiring the Court's continuing jurisdiction of this topic.

C. Topics and Stipulation Paragraphs With Ongoing Monitoring

1. The Parties agree that the substantive area of Mental Health and the related sub-topics and the special management units/Progress Units specifically identified at II C of the attached chart shall continue to be directly monitored as set forth herein by the designated subject matter experts until substantial compliance has been achieved.
2. The provisions set out in II C shall be terminated and the case closed after the Defendant has substantially complied with these terms for a period of six months. The parties acknowledge the provision of the Prison Litigation Reform Act (P.L.R.A.), 18 U.S.C. § 3626(b)(1)(A)(ii) making relief terminable "1 year after the date the court has entered an order denying termination of prospective relief," and expect that substantial compliance can be achieved within that timeframe. The parties expect that direct monitoring will shift to quality assurance monitoring in this area during the last quarter of 2013.
3. Progress Unit. Notwithstanding the above terms, the parties agree that the terms of the attached Consent Order entered into in *USA v. State of Ohio*, USDC, SD

OH, Case No. 2:08-cv-475 (Doc. 107) (Exhibit 2 to the Consent Order) shall be incorporated by reference into this Order and shall apply regardless of the facility where the Progress Unit may be housed. The Progress Unit currently has approximately 20 youths and clinical staffing that includes three psychologists, one psychiatrist, one psychiatric nurse, and three social workers. The clinical staffing may be reasonably adjusted based on fluctuations in the youth population and/or based on reasonable professional judgment. A psychiatrist or psychologist or staff member approved by a psychiatrist or psychologist shall facilitate the IDT for the youth on the Progress Unit with attendance and input as appropriate pursuant to reasonable professional judgment, from social work, psychology, occupational therapy, medical, education, recreation, unit management and youth specialists. Effective quality assurance/quality improvement shall be established and implemented in the Progress Unit. Finally, the parties agree that plaintiff counsel will reasonably limit visitation to the youth in the Progress Unit to evenings, weekends, or Intersession when possible, so as to not obstruct programming, education, or the delivery of services. If due to an emergency visiting is necessary at other times, Plaintiff counsel will discuss the matter with defense counsel and resolve the matter in a way that minimizes any disruption. Monitoring of the Progress Unit shall be conducted in the same manner and by the same subject matter experts monitoring the Progress Unit pursuant to the Consent Order in the *USA* case. This provision shall be terminated on the same date the Consent Order entered into in *USA v. State of Ohio*, USDC, SD OH, Case No. 2:08-cv-475 (Doc. 107) terminates unless Defendant has not achieved compliance

with all the provisions included herein. Should the Progress Unit be relocated from Scioto Juvenile Correctional Facility before substantial compliance has been achieved, then this order, including all attachments, will remain in place until substantial compliance is achieved at the new location.

4. The burden shall be on the Defendant to demonstrate substantial compliance.

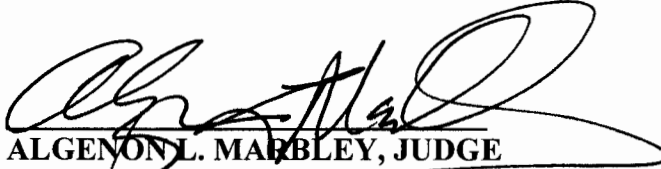
“Substantial Compliance” shall have the same meaning for the purposes of this agreement as it has in *USA v. State of Ohio*.

III. MISCELLANEOUS

- A. Any other remedial topics not listed or not clearly related to a topic under II of this order or on the chart or not addressed herein shall be terminated immediately unless Plaintiffs prove pursuant to the requirements of the PLRA that there is a current and ongoing violation of a federal right requiring the Court’s continuing jurisdiction of this topic.
- B. The Defendant shall continue to compensate the Monitor and the subject matter experts assigned by the monitor to assist with this consent order consistent with the terms of the Stipulation until this Consent Order is terminated. The Monitor shall make every effort to reduce monitoring fees commensurate with the reduced work anticipated as a result of this consent order. The monitoring team shall consist of no more than the monitor, assistant to the monitor, and seven subject matter experts.
- C. The Defendant shall continue to pay Plaintiffs’ counsel fees and costs consistent with the terms of the Stipulation until the Stipulation is terminated. The fees for 2012 will not exceed the fees paid for services in 2011.
- D. The Parties agree that this Consent Order complies in all respects with the requirements of 18 U.S.C. § 3626(a)(1)(A), and that the record in this case may serve as the factual and

legal basis for a Court order issued pursuant those requirements. Based on the record before it, the Court finds that the prospective relief provided by this Consent Order is narrowly drawn, extends no further than necessary to correct the constitutional violations and is the least intrusive means of doing so. The Court shall retain jurisdiction to enforce this Consent Order's terms and shall have the power to enforce the Consent Order through specific performance and all other remedies permitted by law. The parties agree, however, that any dispute shall first be submitted to the Monitor for a ruling and may only be appealed pursuant to FRCP 53. Accordingly, the parties further agree that Defendant's Motion to Terminate the Stipulation (Doc. 336) is hereby resolved.

IT IS SO ORDERED


ALGENON L. MARBLEY, JUDGE
United States District Court

DATE: January 18, 2013

Stipulated and Agreed:

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