

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	06-CV-673-GKF-FHM
)	
STATE OF OKLAHOMA, et al.)	
)	
Defendants.)	
)	

**UNITED STATES’ EMERGENCY MOTION TO ENFORCE CONSENT DECREE,
MOTION TO MODIFY CONSENT DECREE
AND INCORPORATED MEMORANDUM OF LAW**

The United States of America moves pursuant to Federal Rule of Civil Procedure 60(b)(5) and the Court’s inherent judicial powers for entry of an Order requiring Defendants to comply with the Consent Decree entered in this action on September 9, 2008 (Doc. 258) and to extend the term of the Consent Decree beyond the three-year term to which the parties had agreed in order to permit Defendants to comply with the Consent Decree. Defendants, through the Oklahoma Office of Juvenile Affairs (“OJA”), have refused to provide the United States with access to records regarding a recent incident of youth-on-youth violence between youth recently transferred from the L.E. Rader Center to one of its replacements, the Central Oklahoma Juvenile Center (“COJC”). This serious incident reportedly resulted in one youth’s emergency hospitalization for severe brain injury. Defendants also have refused the United States access to records and onsite inspection of COJC and the Southwest Oklahoma Juvenile Center (“SWOJC”), the two secure facilities that have been used to replace the L.E. Rader Center and to which most youth formerly held at the L.E. Rader Center have been transferred since April 2011.

Defendants' actions violate Paragraph 103 of the Consent Decree, which guarantees the United States "full and complete access" to the L.E. Rader Center and any secure facility used to replace Rader. More importantly, Defendants' denial of access to information regarding the transfer of youth from the L.E. Rader Center to its two replacement facilities and regarding youth who have been harmed at those facilities poses an immediate threat to the health and safety of youth in OJA's custody, and will continue to do so in the absence of intervention by this Court. In support of this Motion, the United States provides as follows:

I. Factual and Procedural Background

1. The United States brought this action on December 15, 2006, pursuant to the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, to enjoin Defendants from depriving youth confined at the L.E. Rader Center of the rights, privileges, or immunities secured to them under the Constitution or laws of the United States. In its Amended Complaint, the United States alleged, among other things, that Defendants engaged in a pattern or practice of failing to ensure that youth at the L.E. Rader Center are adequately protected from harm and from undue risk of harm, including abuse by other youth at Rader. (*See* Doc. 65 ¶ 17).

2. The United States entered into a Consent Decree with Defendants that was entered as an Order of this Court on September 9, 2008. (*See* Doc. 258).

3. The Consent Decree requires Defendants to implement remedial measures in the areas of Protection from Harm (Doc. 258 ¶¶ 35–60); Mental Health Care, Including Prevention of Suicide and Self-Harm (*id.* ¶¶ 61–82); Special Education (*id.* ¶¶ 83–92); and Investigations and Quality Assurance (*id.* ¶¶ 93–97).

4. The Consent Decree applies to youth housed at “Rader,” defined as “the L.E. Rader Center located at 13323 W. Highway 51, Sand Springs Oklahoma, *or any secure facility that is used to replace Rader.*” (*Id.* ¶ 27) (emphasis added).

5. The Consent Decree also provides that “DOJ and its experts shall be allowed full and complete access to Rader, all facility and OJA records related to Rader and this Consent Decree once every six (6) months.” (*Id.* ¶ 103).

6. Pursuant to its right of access per Paragraph 103, the United States requested records and noticed an onsite inspection of the L.E. Rader Center for February 2–3, 2011. *See Ex. A* at 2–6 (Letter from Shaheena Ahmad Simons to Dorothy Brown (December 30, 2010)). Due to a winter storm, the parties by mutual agreement cancelled the February inspection. *See id.* at 7 (Email from Dorothy Brown to Shaheena Ahmad Simons (January 31, 2011)). The United States informed the State of its intent to reschedule the inspection during the spring or early summer 2011. *Id.*

7. On April 14, 2011, the United States learned through news media reports of OJA’s plan to close the L.E. Rader Center by September 30, 2011. *See Associated Press, Rader Center for Juvenile Offenders to Close*, Apr. 14, 2011, <http://muskogeephoenix.com/statenews/x325990815/Rader-center-for-juvenile-offenders-to-close> (attached as **Ex. B**). OJA Executive Director Gene Christian reportedly stated that “the 50 juveniles at Rader will be transferred to other juvenile centers in the State.” *Id.*

8. The State informed the United States of the Rader Center’s anticipated closure by email on April 18, 2011. *See Ex. A* at 8–10 (Email from Dorothy Brown to Shaheena Ahmad Simons (Apr. 18, 2011)).

9. On April 19, 2011, the United States requested information regarding OJA's plans for transferring youth and programs from the L.E. Rader Center in light of its anticipated closure. *See id.* at 11–14 (Email from Shaheena Ahmad Simons to Dorothy Brown (Apr. 19, 2011)).

10. During a conference call on May 3, 2011, the United States inquired as to the State's plans for transferring youth from the L.E. Rader Center. OJA suggested that it may use the Tulsa Jail or another adult facility as a Behavioral Management Unit ("BMU"). The United States expressed concern about this suggested transfer and again requested that OJA produce its transition plan for the United States to review and to provide technical assistance to ensure the safe transfer of youth from the L.E. Rader Center.

11. On May 19, 2011, the United States learned through news media reports that OJA requested legislation that would allow OJA to contract with the Tulsa Jail to house violent juvenile offenders. *See* Barbara Hoberock, *OJA-Tulsa Jail Bill is Advanced*, Tulsa World, May 19, 2011, http://www.tulsaworld.com/news/article.aspx?subjectid=504&articleid=20110519_16_A11_OKLAHO782808 (attached as **Ex. C**). *See also* Gavin Off, *Some Rader Youths Could Land in Tulsa Jail After Center Closes*, Tulsa World, May 22, 2011, http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20110522_11_A1_TheTu199232 (attached as **Ex. D**); Randy Krehbiel, *Bill Curbing Uninsured Accident Victims Goes to Governor: Juvenile Offenders*, Tulsa World, May 20, 2011, http://www.tulsaworld.com/news/article.aspx?subjectid=16&articleid=20110520_16_A7_OKLAHO414125 (attached at **Ex. E**) ("The bill is in response to the expected closing this fall of the L.E. Rader Center in Sand Springs. Rader has the state's only maximum-security juvenile unit.").

12. On May 23, 2011, the United States again asked OJA to provide a copy of the State's post-L.E. Rader transition plan. *See Ex. A* at 15 (Email from Shaheena Ahmad Simons to Dorothy Brown (May 23, 2011)).

13. Having received no response from the State regarding the transition plan, the United States once again requested a copy of the plan on June 1, 2011. At that time, the United States again expressed concern with news media reports of the State's plans to use adult jail facilities to house violent juvenile offenders. *See id.* at 16–17 (Email from Shaheena Ahmad Simons to Dorothy Brown (June 1, 2011)).

14. On June 2, 2011, OJA finally produced a draft copy of its post-L.E. Rader transition plan. *See id.* at 18–19 (Email from Dorothy Brown to Shaheena Ahmad Simons (June 2, 2011)).

15. By letter to the State on June 8, 2011, the United States provided feedback on the proposed post-L.E. Rader transition plan. Specifically, the United States advised that the proposed plan did not in any detail consider the need to increase staffing at COJC or SWOJC to adequately serve youth with more intensive treatment and supervision needs. The United States expressed concern that the proposed transition plan did not in any way address how OJA would accommodate youth who were in special programs, such as Rader's Intensive Treatment Program ("ITP") and Sex Offender Treatment Program, in the medium or low security placements at COJC or SWOJC. In light of these and other concerns, the United States warned that a failure to plan adequately for these elements of the transition would place transferred youth at risk of harm and endanger degradation of conditions at COJC or SWOJC. In order to ensure that the transfer of youth from the L.E. Rader Center to COJC or SWOJC would be accomplished without compromising overall youth safety, the United States offered to provide

OJA with technical assistance with its transition plan and asked that OJA provide more comprehensive details on the mental health and educational services that would be provided to youth, transferred together with recent Performance-Based Standards data and monthly reports from COJC and SWOJC. *See id.* at 20– 21 (Letter from Shaheena Ahmad Simons to Dorothy Brown (June 8, 2011)).

16. On June 9, 2011, the United States advised the State that because OJA had already begun transferring youth from the L.E. Rader Center in accordance with its plan to shut down the facility by September 30th, the physical on-site inspection of the Center that was to be rescheduled for summer 2011 would no longer be an efficient use of the Government’s resources or serve the purposes of comprehensive compliance review under the Consent Decree. To better utilize the Government’s resources and the expert consultants’ time, the United States requested to conduct an on-site inspection of COJC and any part of the Tulsa Jail that might be used as a BMU for youth transferred from the L.E. Rader Center. *See id.* at 22–24 (Email from Shaheena Ahmad Simons to Dorothy Brown (June 9, 2011)).

17. Having received no response from the State regarding the requests to access COJC and the Tulsa Jail, *see id.* at 25–28 (Email from Dorothy Brown to Laura L. Coon (June 16, 2011) (advising that the State Attorney General had not responded to the United States’ requests for access)), the United States wrote the State on June 22, 2011, reiterating its requests from the June 8th letter and asking for additional documentation of the State’s level of compliance under the Consent Decree. *See id.* at 29–32 (Letter from Shaheena Ahmad Simons to Dorothy Brown (June 22, 2011)). Once again, the United States offered to provide technical assistance on the transitioning of youth from the L.E. Rader Center to prevent erosion of the

tenuous improvements made at the L.E. Rader Center and to ensure the safety of youth in OJA's custody when transferred to replacement juvenile facilities. *See id.*

18. The State produced most of the requested compliance documents on July 22, 2011. The State did not, however, provide any of the policies, procedures, and forms for the Diagnostic and Evaluation ("D&E") Program at the L.E. Rader Center, as the State had already terminated that program and resumed its use of the mobile assessments that were in place at the time the Consent Decree was entered in 2008. The State also declined the United States' offer of technical assistance in that regard. *See Ex. A* at 33–35 (Letter from Dorothy Brown to Shaheena Ahmad Simons (July 22, 2011)).

19. By the same letter, the State also advised that it would not produce any of the requested Performance-Based Standards data and monthly reports from COJC and SWOJC, stating that this information falls outside the parameters of the Consent Decree. *See id.*

20. On August 1, 2011, the United States learned through news media reports that the last youth had been transferred from the L.E. Rader Center, the State's only maximum-security juvenile facility. *See* Barbara Hoberock, *Last Juvenile Transferred from Rader*, Tulsa World, Aug. 1, 2011, http://www.tulsaworld.com/news/article.aspx?subjectid=326&articleid=20110801_326_0_OKLAHO614139 (attached as **Ex. F**); Associated Press, *The Last of the Juvenile Offenders Housed at the LE Rader Center Leave, Facility to be Razed*, The Republic, Aug. 2, 2011, <http://www.therepublic.com/view/story/c94d6c19f2db480f841be8aea890c57d/OK-Rader-Closing/> (attached as **Ex. G**).

21. On August 11, 2011, the United States learned through news media reports that, during the prior week, a boy transferred from the L.E. Rader Center to COJC as part of the Rader closing plan was severely beaten by another youth in a vicious attack that left the boy with a

serious brain injury. *See* Randy Ellis, *Oklahoma Agency Denies Facilities are Ill-Equipped to Handle Violent Youths*, NewsOk, Aug. 11, 2011, http://newsok.com/oklahoma-agency-denies-facilities-are-ill-equipped-to-handle-violent-youths/article/3593405?custom_click=rss (attached as **Ex. H**). According to the report, a Rader employee who asked to remain anonymous advised that COJC and SWOJC are not well equipped to handle the extremely violent juveniles and juvenile sex offenders who have been transferred there during the last several weeks. *Id.* That employee also reportedly advised that other “[e]mployees at Rader have been getting ‘desperate calls’ from employees of the other institutions [COJC and SWOJC] asking how to deal with transferred juveniles.” *Id.*

22. Immediately upon learning of these reports, the United States contacted the State on August 11, 2011, and requested details regarding the circumstances of the injury and an update on the injured child’s condition. *See Ex. A* at 36 (Email from Shaheena Ahmad Simons to Dorothy Brown (Aug.11, 2011)).

23. The United States followed up with a letter to the State on August 15, 2011, reiterating its request for details about the youth-on-youth altercation and again expressing concerns that OJA has not adequately planned for the management of Rader youth—many of whom have intensive mental health and security needs—at medium-secure facilities like COJC and SWOJC. The United States asked that the State reconsider its refusal to provide documents or allow access to the facilities where youth transferred from the L.E. Rader Center have been placed, emphasizing that such review and inspection serves the parties’ shared interest in ensuring the safety of youth in OJA’s care. *See id.* at 37–38 (Letter from Laura L. Coon to Dorothy Brown (Aug. 15, 2011)).

24. On August 23, 2011, the State responded in no uncertain terms that it would not reconsider the United States' request to inspect the facilities where youth from the L.E. Rader Center have been transferred and would not provide any information regarding the injured youth who was the subject of the August 11th news report or regarding any other incidents occurring at other OJA facilities to which Rader youth have been transferred. *See Ex. A* at 39–40 (Letter from Dorothy Brown to Laura L. Coon (Aug. 23, 2011)).

25. On August 29, 2011, the United States learned from news media reports that the two juveniles involved in the youth-on-youth altercation reported August 11th were in the sleeping rooms at the medium-security COJC. *See* Randy Ellis, *Nighttime Attack Exposes Security Weakness in Oklahoma's Juvenile Detention System*, NewsOk, Aug. 29, 2011, <http://newsok.com/nighttime-attack-exposes-security-weakness-in-oklahomas-juvenile-detention-system/article/3599254> (attached as **Ex. I**). Unlike the ITP Unit that previously existed at the L.E. Rader Center, according to the Executive Director of OJA, the sleeping rooms at COJC “are cubbyholes off a large community room. . . . [that] do not have doors and can't be locked.” *Id.* State legislative leaders are also reportedly “concerned about the incident and whether a situation exists that endangers the safety of state juveniles and employees,” but the OJA Executive Director reportedly said that “juvenile and medical confidentiality laws prevent him from releasing any information about the names or ages of the two boys or the extent of the victim's injuries or current condition.” *Id.*

26. According to most recent news media reports, the OJA Executive Director—contrary to OJA's previous representations made to the United States—now “believes serious consideration should be given to isolating a section of an adult jail, like the Tulsa jail, and staffing it with juvenile staff members and juvenile programs to handle violent adult youth.” *Id.*

II. Argument

The terms contained in the Consent Decree (Doc. 258) are incorporated into this Court's Order of September 9, 2008, and thus are fully enforceable through the equitable powers and authority vested in this Court. *See Frew v. Hawkins*, 540 U.S. 431, 441 (2004) ("When a federal court has entered a consent decree under *Ex parte Young*, the law's primary response to these concerns has its source . . . in the court's equitable powers and the direction given by the Federal Rules of Civil Procedure."); *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 378 (1992) ("A consent decree no doubt embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected in, and enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.") *See also Floyd v. Ortiz*, 300 F.3d 1223, 1226 (10th Cir. 2002) ("A trial court retains jurisdiction to enforce consent decrees").

The scope of the district court's equitable powers under the Consent Decree extends not only to enforce the Consent Decree's terms, but also to modify material provisions of the decree if changed circumstances warrant such modification. *See David C. v. Leavitt*, 242 F.3d 1206, 1210 (10th Cir. 2001) ("[A] court's equitable power to modify its own order in the face of changed circumstances is an inherent judicial power that cannot be limited simply because an agreement by the parties purports to do so.").

This equitable power is reflected in Federal Rule of Civil Procedure 60(b)(5), which provides that a court may relieve a party from an order when applying it prospectively is no longer equitable. *See Rufo*, 502 U.S. at 380–81, 112 S. Ct. at 758–59 (explaining that Rule 60(b)(5) "permits a less stringent, more flexible standard" and that the approach taken by the

federal courts “in implementing and modifying such decrees has demonstrated that a flexible approach is often essential to achieving the goals of reform litigation”).

The Tenth Circuit has recognized that in exercising its broad powers to modify its own orders, a Court “is not limited to modification of ambiguous provisions,” but may modify even bright-line termination dates where additional time is necessary to affect the goals of the decree. *David C. v. Leavitt*, 242 F.3d at 1211. *See also South v. Rowe*, 759 F.2d 610, 613 (7th Cir. 1985) (“Of course, the parties could not agree to restrict the court’s equitable powers to modify its judgment enforcing the consent decree, including the two-year limitation period, in light of ‘changed circumstances.’”).

Here, the Consent Decree guarantees the United States “full and complete access to Rader.” (Doc. 258 ¶103). “Rader” is defined in the Consent Decree as “the L.E. Rader Center located at 13323 W. Highway 51, Sand Springs Oklahoma, *or any secure facility that is used to replace Rader.*” (*Id.* ¶ 27) (emphasis added). “Replace” means “to assume the former role, position, or function of; substitute for (a person or thing).” *Replace Definition*, Dictionary.com, <http://dictionary.reference.com/browse/replace> (last visited Aug. 29, 2011). The juvenile facilities to which the State of Oklahoma has transferred youth formerly housed at the L.E. Rader Center—particularly COJC and SWOJC—are secure facilities that have been used to “replace” Rader. Therefore, United States’ right of access to “Rader” pursuant to the Consent Decree extends to these and any other facilities that the State has used to transfer youth from Rader since it announced its intent to close that facility in April 2011. The State’s refusal to allow the United States to access records or to inspect these facilities violates Paragraph 103 of the Consent Decree.

The State's denial of access has not been without consequence. While the United States has been seeking access to the other facilities to which youth have been transferred, youth have been transferred without adequate implementation of a plan to ensure the safety and security of youth and facility staff at the Rader replacement facilities. Indeed, a youth recently transferred from Rader to COJC has reportedly suffered a severe brain injury as a result of a violent assault by another youth, who reportedly had assaulted that youth while the two were housed at Rader. Notwithstanding the Consent Decree's terms providing for the protection of youth from violence by other youth and the right of the United States and its expert consultants to access records regarding such incidents at Rader—which by definition includes COJC—the State has unequivocally refused the United States' requests for documentation related to this incident and to any other incident that may have occurred at the facilities. Indeed, in the absence of a court order to produce this information, the United States is forced to rely on news media reports and confidential sources for information as to what is occurring at the Rader replacement facilities. Without this information and details regarding the transfer of youth to other state facilities, the United States is unable to assess the safety of transferred youth, who appear to be at serious risk of harm. As one of the United States' expert consultants advised in her most recent compliance report:

Due to the unique delinquency histories and clinical needs of many Rader youth, such as sex offending behavior, it must be stressed that the practices implemented at Rader under this provision [III. A. 36. Safe Housing and Supervision] should be continued wherever those youth are subsequently placed in order to ensure the safety of the Rader youth being transferred and other youth housed with them. Because COJC and SWOJC lack maximum security features, staffing will likely need to be enhanced to ensure the safety of residents at those facilities.

Anne M. Nelsen, *Monitoring Compliance Report: Protection from Harm 5* (Aug. 30, 2011)

(attached as **Ex. J**). Throughout the three-year term of the Consent Decree, the State has never

achieved substantial compliance with the terms of the Safe Housing and Supervision provision. *See id.* at 3–4 (documenting State’s level of compliance throughout the Consent Decree).¹ Nor has the State ever achieved substantial compliance with the terms of the Internal Classification and Unit Transfers Provision (III. A. 52). *Id.* at 4. Indeed, in Ms. Nelsen’s latest report, she explained how the State has failed to implement her recommendations made in previous compliance reports related to initial screening decisions and classification:

In my previous reports, I did recommend that the initial placement decision be made earlier than the two weeks after admission as allowed in the Rader procedure. I still believe that Rader, and presumably, other OJA facilities, have sufficient information, as indicated by the extensive screening that is required by procedure, to make initial classification decisions as part of the admissions process, and should not need to wait two weeks. Prompt classification decisions would help to achieve safety in placement.

Id. at 19–20.

In the area of mental health services, the State has likewise failed to achieve substantial compliance with important provisions of the Consent Decree designed to ensure that youth with serious mental illness and at risk of suicide are adequately assessed. As Dr. DePrato explained with respect to the State’s failure to achieve substantial compliance with Paragraph 76 (Mental Health Assessment), “there is no evidence of a mental health assessment format, procedure, or report that is consistent with this provision.” Debra K. DePrato, *Mental Health Compliance Report* 26–27 (Aug. 30, 2011) (attached as **Ex. K**).

Psychological testing is one possible component of a mental health assessment, not a stand alone, as outlined in the materials sent by Rader. This has been noted on each and every site visit, with recommendations made and technical assistance offered each visit. I

¹ A “Substantial Compliance” (SC) rating means that the “State is complying with all major components of the provision. The facility’s practices address the requirements of the provision for most of the youth, most of the time. Policies are comprehensive and appropriately detailed and staff consistently implements them. The facility quickly rectifies episodic problems and minimizes program disruption. Isolated incidents of non-compliance do not preclude a finding of substantial compliance. At the same time, temporary compliance during a period of sustained non-compliance does not constitute substantial compliance.” **Ex. J** at 3.

requested a format and example of a Mental Health Assessment, but none was offered in the materials. This is an essential process for mental health clinicians to perform at any institution whether upon intake or at any time during the youth's stay.

Id. at 27.

Furthermore, the United States is concerned about the State's reported intent to send some juvenile delinquents to adult jail facilities, notwithstanding representations made in its June 2, 2011 email. News reports since that time indicate that the OJA Executive Director has advocated for the use of the Tulsa Jail as a collocated facility, and legislation lobbied for by OJA was enacted this spring that would permit the transfer of youth to adult facilities. As the United States has informed the State, research shows that youth housed in adult correctional facilities have the highest suicide rates of all inmates in jails: those juveniles are 36 times more likely to commit suicide in adult jail than in a juvenile detention facility. *See* Federal Advisory Committee on Juvenile Justice, 2008 Annual Report 10, *available at* <http://www.facjj.org/annualreports/FACJJ%20Annual%20Report%2008.pdf>. Research also indicates that "transferring youth to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth." *Id.*

The United States files this Emergency Motion for Access because it cannot allow youth to remain under the risk of imminent harm while attempting to persuade the State to comply with the terms of the Consent Decree and provide information about the facilities to which youth have been transferred. "Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, a consent decree may be enforced. *Frew*, 540 U.S. at 440.

The United States also requests that the Court modify the Consent Decree to extend its term beyond the three-year termination date provided in Paragraph 114. As explained above, the United States has not been able to access records or information related to the transfer of youth

from the L.E. Rader Center to other state facilities despite its attempts over the last several months. The L.E. Rader Center contained the State's only maximum-security beds for juveniles, and the United States has not been provided with details about the policies and procedures implemented at COJC and SWOJC to address the mass transfer of youth with intensive needs from the L.E. Rader Center. It is impossible that the United States would receive this information and be able to provide any assessment or technical assistance by September 9, 2011, which is the current termination date. In addition, the review conducted by the United States' expert consultants of Rader compliance documents submitted on July 22, 2011 indicate many areas where the State remains non-compliant—areas in which the State has never achieved substantial compliance throughout the three-year term of the Consent Decree. *See* Kelly Dedel, *Fifth Compliance Report: Investigations, Suicide Precautions, Quality Assurance* 3 (Aug. 30, 2011) (attached as **Ex. L**) (recording State's level of compliance during Consent Decree's term and showing ratings of non-compliance (NC) with Paragraph 93 (Investigations) for 3/5 rating periods, Paragraph 94 (Quality Assurance Programs and Action Plans) for 4/5 rating periods, and Paragraph 95 (Quality Assurance Team) for 4/5 rating periods); Anne M. Nelsen, *Monitoring Compliance Report: Protection from Harm* 5 (Aug. 30, 2011) (attached as **Ex. J**) (recording the State's level of compliance with Paragraph 52 (Internal Classification and Unit Transfers) during entirety of Consent Decree's term at only Partial Compliance). *See also* Debra K. DePrato, *Mental Health Compliance Report* 7–8 (Aug. 30, 2011) (attached as **Ex. K**) (finding that, by the end of the Consent Decree's term, the State achieved only partial compliance with 14/20 provisions.).

The State's continued non-compliance with these terms, coupled with the events that have transpired over the last several months constitute sufficiently changed circumstances that

warrant equitable modification of the Consent Decree to extend the three-year expiration date. *See David C. v. Leavitt*, 242 F.3d at 1212–13 (affirming the district court’s exercise of its equitable power to modify the termination provision of the consent decree due to the State’s failure to achieve substantial compliance with several provisions of the decree at the end of the four-year period).

WHEREFORE, the United States respectfully requests that this Court grant this Emergency Motion to Enforce the Consent Decree and Motion to Modify Consent Decree and enter an Order:

1. Directing Defendants to produce comprehensive details on the mental health and educational services provided to youth transferred from the L.E. Rader Center to COJC, SWOJC, or any other secure facilities used to “replace” Rader, as well as plans for staffing and supervision of these youth;
2. Directing Defendants to produce recent Performance-Based Standards data and monthly reports from COJC and SWOJC; *and*
3. Directing Defendants to allow the United States and its expert consultants full and complete access to Rader, as defined in the Consent Decree, and all facility and OJA records related to Rader and this Consent Decree, including but not limited to all records regarding the youth involved in the youth-on-youth assault at COJC reported on August 11, 2011.

DATED
Washington,

this 1st day of September, 2011
District of Columbia

Respectfully submitted,

FOR THE UNITED STATES:

THOMAS SCOTT WOODWARD
United States Attorney
Northern District of Oklahoma

THOMAS
Assistant
Civil

E. PEREZ
Assistant Attorney General
Rights Division

WYN DEE BAKER, OBA No. 465
Assistant United States Attorney
Special
United States Attorney's Office
Northern District of Oklahoma
110 West 7th Street, Suite 300
Tulsa, Oklahoma 74119
(918) 382-2700

Chief

LAURA
Special

JONATHAN M. SMITH
Litigation Section

s/Laura L. Coon
L. COON
Counsel
Special Litigation Section

SHAHEENA

U.S.
Civil
Special
950
Washington,
(202)

AHMAD SIMONS
MARLYSHA MYRTHIL
Trial Attorneys
Department of Justice
Rights Division
Litigation Section
Pennsylvania Avenue, N.W.
D.C. 20530
514-6255

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Emergency Motion to Enforce Consent Decree and Motion to Modify Consent Decree was electronically filed with the Clerk of the United States District Court for the Northern District of Oklahoma on this 1st day of September, 2011, using the CM/ECF System, which will provide notice of such filing to all parties.

s/Laura

U.S.
Civil
Special
950
Washington,
(202)

L. Coon
LAURA L. COON
Special Counsel
Special Litigation Section
Department of Justice
Rights Division
Litigation Section
Pennsylvania Avenue, N.W.
D.C. 20530
514-6255
laura.coon@usdoj.gov