

THE UNITED STATES OF AMERICA

Plaintiff,

v.

CIVIL ACTION NO. 94-2080 CC

COMMONWEALTH OF PUERTO RICO

Defendants,

Monitor's Compliance Ratings
Third Quarter 2016

Provision	P	S	R	T	D	G	Comment
Compliance Category and Rating Definitions							
Compliance Category P	This category concerns <u>Policy Compliance</u> as required by Settlement Agreement paragraph 45. "Y" means that there are sufficient written policies and procedures in place so that, if they were implemented, compliance would be achieved. A "Y" also means that there are no policies and procedures in place that are inconsistent with the provision.						
Compliance Category S	This category concerns <u>Staffing Compliance</u> as required by Settlement Agreement paragraph 48. "Y" means that there are sufficient authorized and filled positions so that compliance could be achieved. Temporary vacancies are acceptable, provided that functional coverage is provided while the position is vacant, and the process of replacing the employee proceeds promptly.						
Compliance Category R	This category concerns <u>Resource Compliance</u> as required by Consent Order paragraph 44. "Y" means that there are sufficient funds, equipment and supplies and space that compliance can be achieved.						
Compliance Category T	This category concerns <u>Training Compliance</u> as required by Settlement Agreement paragraph 45. "Y" means that the necessary training has been provided, and that the training informs the employees as to how to implement the provision involved.						
Compliance Category D	This category concerns <u>Documentation Compliance</u> as required by Settlement Agreement paragraph 101. "Y" means that there is procedures and forms in place and in use to document whether compliance is being achieved or not. A "Y" can be assigned when the documentation accurately shows non-compliance.						
Compliance Category G	This category concerns <u>General Compliance</u> - the overall achievement of compliance with the provision involved.						
Compliance Rating Definitions	"Y" means that compliance is achieved. "N" means that compliance is not yet achieved. "#" means that the Monitor has not determined whether compliance has been achieved or not. "I" means that the category is inapplicable to the provision involved.						

Provision	P	S	R	T	D	G	Comment
Facility Provisions							
<p>C.O. 41: Within ninety (90) days of the filing of this Consent Order, Defendants shall repair all defective plumbing in the facilities in this case. The defective plumbing shall be repaired first at Mayaguez, Ponce Industrial, Ponce Detention and Humacao.</p>	Y	Y	Y	I	Y	Y	<p>A final approved Roadmap was developed for this provision. Based on observations over the course of the past two years, and recently received updated documentation from NIJ for the period January 2013 through August 2015, substantial progress has been made in both documenting and addressing plumbing repairs in a timely manner.</p> <p>The Monitor's Office filed a compliance memorandum for this provision as part of the 2015 Q-3 Quarterly Report.</p> <p>USA has responded that "The comments raise no concerns for the United States only insofar as they apply to CD Bayamon, CTS Ponce, CTS Villalba, and CTS Humacao. The parties have held discussions on the developments concerning Consent Order paragraph 41 and Settlement Agreement paragraph 29."</p>
<p>S.A. 29. Each new facility shall be built in accordance with: (1) the American Correctional Association's (hereinafter "ACA") standards in effect at the time of the construction; (2) the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 and 47 U.S.C. §§ 225 and 611, and the regulations thereunder; and (3) all Commonwealth fire codes and regulations.</p>	Y	I	I	I	Y	Y	<p>A final approved Roadmap was developed for this provision and NIJ has submitted all the documentation required for compliance with this provision. The monitor is satisfied that the evidence submitted by NIJ meets the requirements of the roadmap and supports compliance. The Monitor's consultant has transmitted to USDOJ all the evidence on which he has relied, discussed same in two conversations, and obtained answers to questions posed by USDOJ and provided those clarifications to USDOJ.</p> <p>The Monitor's Office filed a compliance memorandum for this provision as part of the 2015 Q-3 Quarterly Report.</p> <p>USA has responded that "The comments raise no concerns for the United States only insofar as they apply to CD Bayamon, CTS Ponce, CTS Villalba, and CTS Humacao. The parties have held discussions on the developments concerning Consent Order paragraph 41 and Settlement Agreement paragraph 29."</p>

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<p>S.A.31. Existing facilities expected to be occupied by juveniles beyond Fiscal Year 1996-1997 shall conform to applicable federal, state and/or local building codes.</p>	Y	N	N	N	N	N	<p>There are still life and fire safety code and ADA violations that have not been remedied to date. NIJ has not allocated sufficient resources to support compliance with this provision nor is there documentation at this juncture to support a pathway to compliance. The Monitor's office and the functional team have, however, discussed a potential Roadmap for compliance with this provision, including utilizing the checklists developed for SA 29 as a foundation for further evaluation. We also met in March with a new team of engineers who are consultants to DCR who are to develop a strategy that may pave the way for a roadmap for eventual compliance with this provision. They were planning to review existing drawings and the documentation developed for SA 29 as well as tour the existing facilities prior to the next functional team meeting.</p> <p>The Monitor's Consultant had hoped to meet with the Commonwealth's engineer during his most recent site visit in early July. However, the contract for the firm had not yet been finalized for the current fiscal year, so that meeting will need to be deferred to the next site visit in the 4th quarter..</p>

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<p>S.A. 34. In order to properly equip and swiftly evacuate the facilities in the event of a fire or other emergency, in each facility, Defendants shall provide sufficient staff with appropriate keys to unlock exit doors in all buildings occupied by juveniles. The keys shall be color coded and notched or otherwise readily identifiable. Defendants shall also store a backup set of emergency keys at a place accessible at all times to staff on duty on all shifts.</p>	N	#	#	#	#	N	<p>The NIJ Fire Safety Officer has revised the procedures for emergency key control based on the review by the monitor’s office. Future on-site visits will determine if further revisions are necessary.</p> <p>Presently, Humacao is testing if current staffing are sufficient to unlock housing room doors in compliance with current life safety codes. Preliminary data indicates that housing units can be safely evacuated in less than two minutes. The Monitor is reviewing the weekly results of this real time simulation process. In addition, NIJ is developing new documentation that shows sufficient staff with proper communication capabilities are always working in the Mini Housing Control stations on all shifts to operate the control panels to remotely unlock all exit doors in Humacao, Villalba, Ponce and CD Bayamon. Furthermore, sufficient staff must be documented to ensure swift evacuation from all occupied spaces within each facility.</p> <p>NIJ has completed the initial process to properly color code and notch emergency keys and also to store them in accessible secure locations for staff access on all shifts. Monitor’s consultants continue to work with the parties to identify necessary compliance documentation and expectations for a Roadmap.</p> <p>The monitor’s consultants toured all four facilities in the Spring to determine if the new procedures for utilizing emergency keys where youth are located are appropriate and that the emergency key requirements of this provision are in compliance. A report on the site visits is included with this quarterly report. Since the time of the tours that generated the report, NIJ has been very responsive in correcting many of the issues noted in the report. The Monitor’s Consultant has spot checked some of the corrections on subsequent site visits and has seen improvements. NIJ is preparing a document that describes these corrections and will have those for our review during the 4th quarter. The Monitor’s Consultant will review those and will plan another tour to determine full compliance once all the other documents required for compliance for this provision, such as training of staff, are submitted to the Monitor’s Consultant.</p> <p>The current relevant policies are conceptually acceptable, but need operational specifics to assure compliant implementation.</p>

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<p>S.A. 35. Defendants agree that designated exit doors in all facilities will be maintained in operable condition and shall be readily unlocked in case of an emergency.</p>	N	#	#	#	#	N	<p>NIJ has improved its ability to maintain operable exit doors from living units that can be readily unlocked in emergency situations. The Monitor’s consultants will work with the parties to identify necessary compliance documentation expectations for a Roadmap to identify and define compliance.</p> <p>NIJ is now documenting on a weekly basis its monitoring and inspections made by the fire safety officers at each facility documenting that all exit doors are maintained in operable condition and can be readily unlocked. The process for documentation has been agreed to with the Monitor and Functional team and documentation began in August 2014. The Monitor’s office observed this documentation being utilized at several facilities and in practice and was satisfied with the progress of compliance. The monitor is also waiting for additional training curriculum documentation. A draft Roadmap for this provision was completed in consultation with the Functional Team and was presented to USA for comments. The Monitor’s Office received those comments and also shared them with the functional team members. As noted in the emergency key report related to S.A. 34, the Monitor’s Consultant did observe some issues relating to emergency exits. In the subsequent site visits to the same facilities, there were no apparent issues observed in spot checking emergency exit doors in the housing units.</p> <p>The current relevant policies are conceptually acceptable, but need operational specifics to assure compliant implementation; this will be determined as part of the roadmap process.</p>

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<p>S.A. 37. AIJ policy shall ensure safety for juveniles and staff by requiring compliance with fire safety code requirements. Specific emergency plans shall be developed and copies made available to staff members. There shall be ongoing training programs and emergency procedures shall be reviewed and updated annually.</p>	Y	N	Y	#	#	N	<p>NIJ's Fire Safety Officer has <u>verbally</u> reported that he had been providing ongoing training in all emergency procedures to the fire safety coordinators in 2011,2012 and 2013, although there is incomplete documentation to substantiate this. NIJ has submitted some of the necessary documentation indicating that ongoing training for all staff was performed in 2011 and 2012 as well as the lesson plans and training compliance for 2014. The Monitor and Functional Team have agreed to focus primarily on the training curriculum and number of staff trained in 2014 and 2015 as those time frames are more pertinent to determine compliance with this provision.</p> <p>NIJ has supplied documentation that emergency procedures are reviewed and updated annually. Documentation has also been provided showing that copies of the emergency plans are available to staff at all facilities.</p> <p>A Final Roadmap for this provision has been agreed to by NIJ and USA. The Monitor's consultants continue to work with the parties to assemble the necessary compliance documentation expectations for the Roadmap. The Monitor's Office is waiting for the updated training data to support compliance with this provision.</p>

Provision	P	S	R	T	D	G	Comment
Policies and Procedures							
<p>S.A. 45. Within one year of the approval of this agreement by the Court, Defendants agree to provide an agency policy and procedure manual governing all operational aspects of the institutions. Within eighteen months of the approval of this agreement by the Court, Defendants shall further insure that the facilities are strictly operated within these policies and procedures and that all staff have been trained accordingly.</p>	Y	I	I	#	#	N	<p>The Monitor agrees that the agency maintains a policy and procedure manual as required by this provision, although whether it governs all aspects of running the facilities as required has not yet been confirmed. Moreover, in the rest of this table, policies and procedures are rated as a compliance problem for many of the provisions in this case. See the compliance rating in Column T, which identifies when a training deficiency is a factor in compliance. While having developed and routinely updated a manual is a factor in compliance, the provision also clearly requires that the facilities be strictly operated within these policies and this implementation requirement's scope and accuracy have not yet been established.</p>

Provision	P	S	R	T	D	G	Comment
Staffing							
<p>S.A. 48. Defendants shall ensure that the facilities have sufficient direct care staff to implement all terms of this agreement. Direct care staff supervise and participate in recreational, leisure and treatment activities with the juveniles. Compliance can be demonstrated in either of two ways.</p> <p><u>48.a Method one:</u> Defendants may provide documentation of consistent supervision by not less than one (1) direct care worker to eight (8) juveniles during day and evening shifts and not less than one (1) direct care worker to sixteen(16) juveniles during normal sleeping hours.</p> <p><u>48.b Method Two:</u> Defendants may develop, and submit to the court for approval, an alternate staffing roster for any facility in this case. The roster shall be based on a study that shall specify fixed posts and the assignment necessary to implement the terms of this agreement, taking into consideration the physical configuration and function of spaces, the classification and risk profiles of youths involved, the incident patterns in the settings involved, the routine availability in the settings of other categories of staff, and the overall number of direct care positions necessary to consistently achieve the coverage proposed. Once a plan is approved for a facility, defendants shall document the employment of the necessary overall numbers of direct care staff, and the ongoing deployment of such staff in accordance with the plan.”</p>	N	N	N	N	Y	N	<p>The Commonwealth has the choice to demonstrate compliance according to method 48.a or 48.b. They have informed the Monitor that they do not intend to select method 48.b and that their legal position is that this language should be struck from the Settlement Agreement as superfluous. The Monitor agrees.</p> <p>For the 3rd quarter of 2016, all of the facilities submitted the staffing youth ratio reports requested.</p> <p>6:00 am- 2:00 pm shift: 87% of events, 20% increase since Second Quarter reporting period 2:00 pm- 10:00 pm shift: 74% of events, 13% increase since Second Quarter reporting period 10:00 pm- 6:00 am shift: 100% of events, 0% increase since Second Quarter reporting period</p> <p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>While compliance with the terms of this provision is not likely for some time, Monitor’s consultants are working with the parties to identify necessary compliance documentation expectations for compliance.</p>
<p>January 2009 Stipulation Paragraph 1: All necessary steps shall be taken immediately to ensure the reasonable safety of youth by providing adequate supervision of youth in all facilities operated by, or on behalf of, the Defendants.</p>	Y	N	N	N	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations Sections 115.313, 115.364. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p>

<p>January 2009 Stipulation Paragraph 2: All necessary steps shall be taken to provide sufficient direct care staff to implement the Consent Decree and adequately supervise youth, pursuant to Paragraph 48.</p>	N	N	N	N	N	N	<p>The requirement that 50 YSOs be hired each month was terminated by the Court on September 13, 2011 (Docket 991)</p> <p>No new YSOs were hired during the 3rd Quarter of 2016.</p>
<p>January 2009 Stipulation Paragraph 3: Defendants will include as direct care staff all social workers assigned to its institutions, once such staff receive forty (40) hours of pre-service training, pursuant to Paragraph 49 of the Consent Decree. The same shall also receive annual training as direct care staff, pursuant to Paragraph 50 of the Consent Decree.</p>	#	#	#	#	#	#	<p>The Commonwealth has decided not to employ this provision to enhance coverage. However, the provision remains as a future option. Unless and until the Commonwealth determines that they want to apply this provision, the Monitor's Office will not Monitor the provision. The choice to not implement this provision is not non-compliance. The struck part of the provision references a provision that has been terminated.</p>
<p>January 2009 Stipulation Paragraph 4: All persons hired to comply with Paragraph 48 shall be sufficiently trained, pursuant to Paragraph 49 of the Consent Decree, before being deployed. Defendants shall deploy all duly trained direct care staff, pursuant to Paragraph 49, to juvenile facilities in a timely manner.</p>	#	#	#	#	#	#	<p>The phrases in this provision that refer to Paragraph 49 are struck because that provision has been terminated.</p>
<p>January 2009 Stipulation Paragraph 5: On the fifth day of every thirty-day period commensurate with the Order approving this Stipulation, Defendants shall submit a report to the Monitor and the United States providing the following: a. the number of current direct care staff, by position classification, at each facility; b. the number of qualified direct care staff hired during the previous period; c. the number of hired direct care staff in the previous period who were hired and have received pre-service training, pursuant to Paragraph 49; and d. the juvenile facilities where the direct care staff who were hired in the previous quarter and have received pre-service training, pursuant to Paragraph 49, have been deployed or assigned.</p>	N	N	N	N	N	N	<p>The struck part of the provision references a provision that has been terminated.</p> <p>The report was not provided during the Third Quarter of 2016.</p>

Provision	P	S	R	T	D	G	Comment
Training							
<p>S.A. 50. Defendants shall ensure that current and new facility direct care staff are sufficiently well-trained to implement the terms of this agreement. Each direct care staff, whether current or new, shall receive at least forty (40) hours of training per year by qualified personnel to include, but not be limited to, the following areas: CPR (cardiopulmonary resuscitation); recognition of and interaction with suicidal and/or self-mutilating juveniles; recognition of the symptoms of drug withdrawal; administering medicine; recognizing the side-effects of medications commonly administered at the facility; HIV related issues; use-of-force regulations; strategies to manage juveniles' inappropriate conduct; counseling techniques and communication skills; use of positive reinforcement and praise; and fire prevention and emergency procedures, including the fire evacuation plan, the use of keys, and the use of fire extinguishers.</p>	Y	N	N	N	N	N	<p><u>Compliance tables documenting training within the agency as required in this stipulation have not been submitted to the Monitor since 2011, despite repeated requests.</u></p> <p>The Functional Team Meeting for the third quarter was canceled. Nevertheless, copies of the training calendar examined at the institutions demonstrated that training sessions identified in the stipulation including CPR were ongoing. The projection below likely improved but the data were not available. They will be addressed in the fourth quarter FT meeting.</p> <p>During the previous quarter IDECAHR reported that 99% of the 601 security officers had received training. Those in compliance with the 40- hour requirement are only 5% but that number will increase significantly in the coming year.</p> <p>During the FT meeting for the previous quarter, IDECAHR submitted a training calendar with specific dates for the CPR and other life safety training. The curriculum employed was developed and approved by the Red Cross and was delivered by certified instructors assigned from the adult correction academy. Content included theory and practice with CPR protocol, the use of defibrillators and other first responses. Each of the three instructors was both DOC officials and certified EMTs or paramedics. Instruction was offered over 8 hours. Compliance tables will be delivered to the Monitor soon after the 2016 training data are collected and organized.</p> <p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as "PREA" is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA. A review of the training sessions during the quarter revealed that PREA training is being offered within the institutions.</p>
Classification							

Provision	P	S	R	T	D	G	Comment
<p>S.A. 52. At both the detention phase and following commitment, Defendants shall establish objective methods to ensure that juveniles are classified and placed in the least restrictive placement possible, consistent with public safety. Defendants shall validate objective methods within one year of their initial use and once a year thereafter and revise, if necessary, according to the findings of the validation process.</p>	N	#	#	#	N	N	<p>NIJ, with the support of consultants, has conducted a validation study of the classification process for detention and committed and detention youth,</p> <p>Documentation has been provided for the classification of youth for detention, as well as for committed youth, for the months of the 3rd quarter 2016.</p> <p>For the 3rd quarter, there were 145 detention admissions of which 52% (76) were classified as low; .28% (40) were classified as moderate; 0% (0) was classified as severe, 1% (2) Released, and 19% (27) as NA..</p> <p>While compliance with the terms of this provision is not likely for some time, Monitor's consultants are working with the parties to identify necessary compliance documentation expectations.</p> <p>NIJ has conducted a classification validation study on committed and detention youth, which was implemented in June 2016.</p>

Provision	P	S	R	T	D	G	Comment
Mental Health and Substance Abuse Treatment							
<p>S.A. 59. Defendants, specifically the Department of Health (ASSMCA), shall provide an individualized treatment and rehabilitation plan, including services provided by AIJ psychiatrists, psychologists, and social workers, for each juvenile with a substance abuse problem.</p>	Y	Y	Y	#	#	N	<p>During this quarter, records reviewed included individualized treatment plans inclusive of rehab and, as needed, treatment for substance abuse. Intensive chart reviews indicate that CPR has been adhering to Policies and Procedures for the delivery of mental health and behavioral modification services – including clinical intervention for those youth in mental health crisis (who expressed suicidal ideation). The expected level of clinical intervention is being delivered and the scope of services, inclusive of substance abuse services is being delivered as per the review of the documentation of said services. There were no reported staff vacancies for mental health, substance abuse and behavior modification. The review of cases thus far and documentation of appropriate and expected clinical care indicates adherence to policies and procedures. The Mental Health Monitor encourages NIJ leadership to continuously recruit mental health staff, especially psychiatrists as economic conditions (delays in payments to contracted mental health staff) can create vacancies and potential delays in youth receiving the mental health services they need.</p> <p>The Mental Health Monitor finds consistently that mental health services are being delivered as per the plan of care. While an on-site visit was not conducted in the 3rd Quarter of 2016, prior findings in interviewing youth found consistency in the delivery of care and the plan as it was written. Prior visits and in person interviews of the minors did not alarm the Mental Health monitor that standard practices for the delivery of mental health services were not being provided. Youth reported seeing the psychiatrist, they could report what medication they were taking and reported they saw the social worker or psychologist for individual treatment as well as participating in therapeutic groups and didactics. The Mental Health monitor remains concerned regarding staffing shortages should a psychiatrist leave and has therefore requested that NIJ consider constant recruitment and /or additional hours to prevent burn out and should a vacancy occur. That being said, the Mental Health monitor will report on site visit conducted in the fourth quarter of 2016 and ratings will reflect the current state of mental health staffing.</p> <p>The Mental Health Monitor was waiting for indication of Suicide Training and Trauma informed training to mark this as in compliance. (Now received) She has since requested</p>

Provision	P	S	R	T	D	G	Comment
							<p>evidence of Substance Abuse Training.</p> <p>More time is needed to review a sufficient number of records over a longer period of time to determine overall compliance with this provision.</p>
<p>C.O. 29: Defendants shall maintain an adequate 48 bed residential mental health treatment program which provides services in accordance with accepted professional standards, for juveniles confined in the facilities in this case in need of such services as determined by a qualified child and adolescent psychiatrist as part of a qualified interdisciplinary mental health team.</p>	#	#	#	#	N	N	<p>It is the understanding of the Mental Health Monitor that the 48 bed residential mental health treatment program provision was original developed, and then reaffirmed by joint stipulation of the parties in 2007, when the overall NIJ youth census was substantially higher. The Mental Health Monitor recommends a review of this provision for possible revision (i.e. decrease from the 48 bed requirement) given the significant decrease in census. While there is a policy and procedure in place, the Mental Health Monitor is withholding a “Y” rating for this area given that the policy and procedure could change if we stay with the 48 beds. Similarly, other ratings in this category could change following a full review and recommendation for the appropriate number of residential treatment beds.</p>
<p>C.O. 34. Within 160 days of the filing of this Consent Decree, Defendants shall train all staff whose responsibilities include supervision of the juveniles regarding the effective recognition of suicidal and/or self-mutilating behaviors.</p>	Y	Y	Y	Y	Y	Y	<p>The Monitor’s Office filed a compliance memorandum for this provision as part of the 2015 Q-3 Quarterly Report.</p> <p>A motion for termination is pending before the Court.</p>

Provision	P	S	R	T	D	G	Comment
<p>C.O. 36. Within 120 days of the filing of this consent Order, Defendant Juvenile Institutions Administration shall provide continuous psychiatric and psychology service to juveniles in need of such services in the facilities in this case either by employing or contracting with sufficient numbers of adequately trained psychologists or psychiatrists, or by contracting with private entities for provision of such services. The continuous psychiatric and psychological services to juveniles in need of such services to include at a minimum, a thorough psychiatric evaluation. The continuous psychiatric and psychological services to juveniles in need of such services to include at a minimum diagnostic tests before prescription of behavior-modifying medications.</p>	Y	Y	Y	#	#	#	<p>All vacancies have been filled and NIJ leadership report constantly recruiting qualified staff in order to keep a pool of available mental health staff for hire.</p> <p>The Mental Health Monitor implores that all mental health, substance abuse and social work staff be retained and that there is consideration for increasing Psychiatric coverage especially for CTS Ponce where the PUERTAS program is located. This consideration is for the plan for continuous coverage should a vacancy occur and there is no evidence thus far that the minors are not receiving the care indicated by the psychosocial and psychiatric evaluations of the mental health staff at intake and on-going (during transitions).</p> <p>Preliminary chart reviews indicate psychiatrist orders for blood work in accordance with NIJ Policies and Procedures for psychotropic medications. During this quarter, the <i>Massachusetts Youth Screening Instrument-Version 2</i> (MAYSI-2) was implemented at the end of August utilizing the newly created Policy and Procedure for MASI-2 implementation. The MAYSI-2 is a paper pencil measure that is used within juvenile detention facilities to identify youth in need of mental health services. The Mental Health Monitor will receive a listing of all youth (males) who have been screened and will review for consistency between screening results, plan developed and services provided. The Mental health Monitor needs more time to review an adequate number of charts over a longer period of time to determine overall compliance with this provision.</p>

Provision	P	S	R	T	D	G	Comment
<p>S.A. 63. For each juvenile who expresses suicidal or self-mutilating ideation or intent while incarcerated, staff shall immediately inform a member of the health care staff. Health care staff shall immediately complete a mental health screening to include suicide or self-mutilation ideation for the juvenile. For each juvenile for whom the screening indicates active suicidal or self-mutilating intent, a psychiatrist shall immediately examine the juvenile. The juvenile, if ever isolated, shall be under constant watch. Defendants shall develop written policies and procedures to reduce the risk of suicidal behavior by providing screening for all juveniles at all points of entry or re-entry to AIJ's facilities and/or programs and by providing mechanisms for the assessment, monitoring, intervention and referral of juveniles who have been identified as representing a potential risk of severe harm to themselves. Treatment will be provided consistent with accepted professional standards.</p>	Y	Y	Y	#	#	#	<p>There is evidence of mental health staff being immediately informed and of mental health screenings being immediately completed. The Mental Health Monitor was able to view documented compliance with constant watch. Mental Health intervention for those youth reviewed indicated treatment consistent with standard practice for at risk youth per chart reviews.</p> <p>Consistent with standard practice, the youth expressing suicidal ideation or self-mutilation intent is assessed for safety first and foremost and at NIH typically by the medical staff who alert the mental health professional (if not with the youth at the time) via telephone. There is evidence that during the regular work day, the mental health staff evaluate the youth immediately or ASAP (i.e. within 24 hours). There is evidence that the psychiatrist consults with the nursing staff immediately if active suicidal intent. During regular work hours the psychiatrist sees the youth ASAP. More time is needed to review more records to indicate consistency in this practice. Mental health monitor reported on specificity of reviewed records in prior reports and continues to monitor a sample of records remotely.</p>
<p>S.A. 72. All juveniles receiving emergency psychotropic medication shall be seen at least once during each of the next three shifts by a nurse and within twenty-four (24) hours by a physician to reassess their mental status and medication side effects. Nurses and doctors shall document their findings regarding adverse side effects in the juvenile's medical record. If the juvenile's condition is deteriorating, a psychiatrist shall be immediately notified.</p>	#	#	#	#	N	N	<p>Thus far, the Mental Health Monitor notes that emergency psychotropic medications seem to be rarely utilized by the psychiatrists. The Mental Health Monitor requires more time to adequately assess full compliance with this provision.</p>

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<p>S.A. 73. Defendants, specifically AIJ, shall design a program that promotes behavior modification by emphasizing positive reinforcement techniques. Defendants, specifically AIJ, shall provide all juveniles with an individualized treatment plan identifying each juvenile's problems, including medical needs, and establishing individual therapeutic goals for the juvenile and providing for group and/or individual counseling addressing the problems identified. Defendants, specifically AIJ, shall implement all individualized treatment plans.</p>	Y	Y	Y	#	N	N	<p>Defendants, have designed a program that promotes behavior modification by emphasizing positive reinforcement techniques. The Mental Health Monitor has reviewed the Behavior Modification Policies and Procedures, has interviewed youth on site visits, has attended the Behavior Modification Committee meetings with youth and staff and has received evidence of incentives being delivered to youth.</p> <p>The overall rating is not being determined to be in full compliance as a determination needs to be made regarding youth in detention vs. custody and the interpretation of this into the existing policies and procedures. The Mental Health Monitor has requested more refinement in the Behavior Modification Plans to ensure each youth has individual interventions listed in the Plan of Care vs. general interventions by the entire mental health, social work, education and behavior modification teams. Thus, the Training is not listed as “Y” in compliance and will remain # until such time that this manner is resolved. Policies, Staffing numbers and resources are adequate to comply with this provision. However, more time is needed over a longer period of time to assess overall compliance as noted above.</p>

Provision	P	S	R	T	D	G	Comment
Discipline							
<p>S.A. 74. Defendants shall specify the rules of the facilities with a complete list of possible punishments for violations of such rules in the handbook described in ¶ 47 above. Written notice of any rule violation, a hearing before a facility staff person not involved in the investigation of the violation, and an appeal to the facility director shall be provided to a juvenile prior to any punishment being imposed, except that Defendants may administratively segregate a juvenile in emergency or life threatening situations. In the event of an emergency, when circumstances make it inappropriate to hold a hearing prior to segregation, a hearing shall take place within forty eight (48) hours from the time of segregation.</p>	Y	Y	I	Y	Y	Y	<p>This provision was terminated by the Court on December 10, 2014 after the parties filed a joint motion to terminate this provision on July 11, 2014.</p>

Provision	P	S	R	T	D	G	Comment
<p>S.A. 77. In no event is physical force justifiable as punishment on any juvenile. The use of physical force by staff, including the use of restraints, shall be limited to instances of justifiable self-defense, protection of self and others, to maintain or regain control of an area of the facility, including the justifiable protection of significant property from damage; and prevention of escapes; and then only when other less severe alternatives are insufficient. A written report is prepared following all uses of force and is submitted to administrative staff for review. When force, including restraint, is used to protect a youth from self, this must be immediately referred to the medical area for medical and mental health evaluation and any necessary treatment.</p>	N	N	I	#	N	N	<p>This quarter once again revealed several positive trends concerning use of force. There were no large scale incidents again this quarter (an indicator of “leader in-fighting.” The largest scale incident occurred at Humacao (7 youth). The volume of use of force incidents decreased significantly compared to the 2nd Quarter: 17 use of force incidents involving 30 youth this quarter compared with 28 incidents involving 44 youth in Q-2. Incidents occurred as follows: Bayamon (0); Humacao (7); Villalba (2); Ponce (8). Medical staff notations indicated that two youths were possibly injured and treated at the facility in the course of use of physical restraint being employed, although none due to OC exposure or mechanical.</p> <p>In the 2nd quarter, OC was used against 3 youth in 1 incident at Humacao. In this 3rd quarter, OC was used in 5 of 7 force incidents at Humacao although not once in the 10 other such incidents in the other three facilities. The increased use of OC is directly attributable to staff safety concerns in view of the fact that razor blades were used by youth or found by staff near incidents with increasing frequency.</p> <p>The Monitor’s consultant reviewed the majority of use of force incident report packages (including Cernimiento review forms and all incident reports) as well as videos (4) from Ponce, and OISC investigations emanating from use of force incidents at Humacao. These reviews show that the facilities are routinely referring cases for investigation although the review of investigations revealed a flaw in the agency policy, whereby it provided conflicting direction to investigators whether they should issue specific factual findings and conclusions or not. DCR has corrected this issue now in practice, requiring specific findings of fact and conclusions as to whether employees violated policy or training and a final policy should be promulgated by the 4th Quarter.</p> <p>Revised policies and procedures, current training materials and evidence of training completion are the first steps toward DCR demonstrating compliance with this provision.</p>

Provision	P	S	R	T	D	G	Comment
Abuse and Maltreatment Investigation and Management							
<p>S.A. 78.a Defendants shall take prompt administrative action in response to allegations of abuse and mistreatment, including steps to protect and treat the victim, steps to preserve evidence and initiate investigation, steps to isolate, separate, and sanction youth and/or staff involved in misconduct or criminal conduct. Defendants’ policies, procedures, and practices shall clearly define all incidents that must be reported, to include, at a minimum, allegations of: abuse, mistreatment, neglect, and excessive use of force, inappropriate use of restraints, sexual misconduct, and assaults. Defendants shall provide for confidential means of reporting suspected abuse and mistreatment, without fear of retaliation for making such report.</p>	Y	N	N	#	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA. Policies have been updated to comply with this provision.</p> <p>Evidence was preserved in 60% of applicable cases sampled. Suspected youth were separated from their victim(s) in 100% of the cases assessed. Additional information about compliance can be found in the case assessment tables in the main report.</p>
<p>S.A. 78.c Within 24 hours of knowledge of a potential abuse incident, the report shall be transmitted to the Commonwealth Police for investigation, the Department of Family Services for statistical reporting, the Department of Corrections, and the AIJ administration. For serious incidents involving allegations of: abuse; neglect; excessive use of force; death; mistreatment; staff-on-juvenile assaults; injury requiring treatment by a licensed medical practitioner; sexual misconduct; exploitation of a juvenile’s property; and commission of a felony by a staff person or juvenile, the AIJ administration shall also notify SAISC within 24 hours of knowledge of the potential incident, and 1 hour for any juvenile death, and SAISC shall conduct an administrative investigation.</p>	Y	Y	Y	#	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>The timeliness of initial reporting to PRPD by AIJ, based on AIJ records assessed in the case assessment process (Attachment E Section B of the main QR report) , is 95%</p> <p>The Commonwealth Police do not fully respond to the Monitor’s information requests for case analysis information. There are reports provided for about half of the cases, and much information is missing.</p> <p>Cases were promptly referred to OISC in 95% of sampled cases based on OISC records. (The conducting and completion of the investigations is assessed in P78.e below.)</p>

Provision	P	S	R	T	D	G	Comment
<p>S.A.78.d Within 24 hours, AIJ shall prepare and forward a copy of each incident report together with the AIJ preliminary investigation to the Police Department, the Department of Family Services, the Department of Corrections, and the AIJ Administration. Every 30 calendar days, AIJ, SAISC and the Commonwealth Police shall report to the Defendant Department of Justice and AIJ the status of each investigation including final determinations and associated administrative and criminal actions. Defendants shall implement appropriate policies, procedures, and practices to ensure that incidents are promptly, thoroughly, and objectively investigated. AIJ, SAISC, and Defendant Department of Justice shall consult throughout an investigation. If Defendant Department of Justice indicates an intent to proceed criminally, any compelled interview of the subject staff shall be delayed until Defendant Department of Justice concludes the criminal investigation, but all other aspects of the investigation shall proceed. Defendant Department of Justice shall review and investigate allegations of serious incidents following a preliminary investigation by the Puerto Rico Police Department.</p>	N	#	#	#	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p>
<p>S.A. 78.e Administrative investigations of serious incidents shall be conducted by SAISC and completed within 30 days of SAISC’s receipt of the referral. Administrative investigation of incidents classified as less serious may be conducted internally by appropriate facility staff and shall be completed within 20 days of witnessing or discovering an incident.</p>	Y	#	#	#	N	N	<p>For the most recent quarter, 91% of OISC case investigations were completed within 30 days and one took 31 days and 1 took 32 days. 100% of Level One case investigations were completed within 20 days at the facilities.</p>

Provision	P	S	R	T	D	G	Comment
<p>S.A. 78.f Defendants shall implement investigation standards in conformance with applicable law, including, at a minimum: photographing visible injuries; preserving and analyzing evidence; conducting separate, face-to-face, private interviews of the alleged victim, perpetrator, and all possible witnesses, with a record of the questions and answers. Whenever there is reason to believe that a juvenile may have been subjected to physical sexual abuse, the juvenile shall be examined promptly by outside health care personnel with special training and experience in conducting such assessments.</p>	N	N	Y	N	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>There is an internal process to review investigation quality. No formally-adopted standards have been submitted to the Monitor’s Office. Training may be insufficient if the policies are not in place which would be the topic of the training.</p> <p>NIJ has recently adopted a very structured investigation report template for use of force cases addressing standards set forth in this provision and in others. It is considering revising and adapting the template for non-use of force investigations. The Monitor supports this concept.</p>
<p>S.A. 78.g Every administrative investigation shall result in a written report explicitly providing: a description of the alleged incident, including all involved persons and witnesses and their role; a description and assessment of all relevant evidence; and proposed findings. Defendants shall ensure that there are sufficient numbers of demonstrably competent staff to timely complete competent and thorough administrative investigations. Responsibilities of investigators shall be clearly designated.</p>	N	N	Y	#	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>For the most recent quarter, 20 of 22 OISC case investigations were completed within 30 days, and one took 31 day and one took 32 days.</p> <p>There is an internal process to review investigation quality and the Monitor and Deputy Monitor are reviewing the instrument that was developed and is used. No formally-adopted standards have been submitted to the Monitor’s Office. Training may be insufficient if the policies are not in place which would be the topic of the training.</p> <p>OISC cases have been identified that do not contain “proposed findings.”</p>

Provision	P	S	R	T	D	G	Comment
<p>S.A. 78.h AIJ shall conduct case management, for tracking which includes identification of findings and outcomes and dates of stages of case processing, and for oversight of further administrative actions including analysis to identify and implement corrective actions designed to avoid recurrence of incidents. At the conclusion of an administrative investigation, SAISC shall provide copies of the investigation report to AIJ and Defendant Department of Justice. AIJ's quality assurance personnel shall analyze the report and, as appropriate, identify corrective action to address operational, systemic, or other problems identified in the report and ensure that such action is taken.</p>	N	N	Y	#	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as "PREA" is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>A new tracking table has been designed and the table in recent QRs is based on the revised table.</p> <p>One area of concern is the final section of the tracking table, Section G, that is intended to track prosecutorial determinations. This section has two quarters of entries indicating no cases and the one quarter indicates 9 cases.</p>
<p>S.A. 78.i Any employee, staff member or contractor who is criminally charged for offenses involving the abuse or mistreatment of juveniles, excessive force on juveniles, sexual misconduct with juveniles, or any other offense relating to the safety and welfare of juveniles, shall be immediately separated from having contact with detained or committed juveniles, including removal of any such person from exercising supervisory authority over any staff in AIJ facilities, while the criminal investigation or process is pending. Defendants may take additional administrative actions as they deem appropriate.</p>	Y	Y	Y	Y	Y	Y	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as "PREA" is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>A Compliance Memorandum for this provision was submitted to the Court with the 2015 Third Quarterly Report.</p> <p>USA has filed objections to the compliance memorandum.</p>

Provision	P	S	R	T	D	G	Comment
<p>Separation Order, of December 4, 2006: Any employee, staff member, or contractor who is criminally charged in the future for offenses involving the abuse or mistreatment of juveniles, excessive use of force on juveniles, sexual misconduct with juveniles, or any other offense relating to the safety and welfare of juveniles, shall be immediately separated from having contact with detained or committed juveniles, including the removal of any such person from exercising supervisory authority over any staff in AIJ facilities, while the criminal investigation or process is pending.</p> <p>For any criminal proceeding that is filed in the future, the same information shall be provided to the Monitor and the United States within fifteen (15) days after its filing.</p> <p>The order also required two reports to be filed by December 19, 2006. These were filed at the time.</p>	Y	Y	Y	Y	Y	Y	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>It is the view of the Monitor that if compliance is achieved for S.A. 78(i), that the underlying evidence might also support compliance with this order.</p>

Provision	P	S	R	T	D	G	Comment
Protection and Isolation							
<p>S.A. 79. Juveniles shall be placed in isolation only when the juvenile poses a serious and immediate physical danger to himself or others and only after less restrictive methods of restraint have failed. Isolation cells shall be suicide resistant. Isolation may be imposed only with the approval of the facility director or acting facility director. Any juvenile placed in isolation shall be afforded living conditions approximating those available to the general juvenile population. Except as provided in ¶ 91 of this agreement, juveniles in isolation shall be visually checked by staff at least every fifteen (15) minutes and the exact time of the check must be recorded each time. Juveniles in isolation shall be seen by a masters level social worker within three (3) hours of being placed in isolation. Juveniles in isolation shall be seen by a psychologist within eight (8) hours of being placed in isolation and every twenty-four (24) hours thereafter to assess the further need of isolation. Juveniles in isolation shall be seen by his/her case manager as soon as possible and at least once every twenty-four (24) hours thereafter. A log shall be kept which contains daily entries on each juvenile in isolation, including the date and time of placement in isolation, who authorized the isolation, the name of the person(s) visiting the juvenile, the frequency of the checks by all staff, the juvenile's behavior at the time of the check, the person authorizing the release from isolation, and the time and date of the release. Juveniles shall be released from isolation as soon as the juvenile no longer poses a serious and immediate danger to himself or others.</p>	#	#	#	#	#	#	<p>The Mental Health Consultant continues to receive a listing of all youth in Transitional Measures (TM) and Protective Custody (PC) weekly; periodically, the Monitor's Consultant randomly selects youth from these lists and reviews their medical record for compliance with delivery of mental health services and compliance with policies and procedures. Findings are consistent with current policies and procedures for delivery of mental health services.</p> <p>The number of TM placements (19) decreased substantially from the previous quarter (45). The number of TM placements at Humacao decreased from 25 last quarter to 16 this quarter. Villalba's number also decreased from 11 to 0, TM placements at Ponce decreased from 3 to 1, and CD Bayamon was 6 last quarter and decreased to 2. The system-wide number of PC placements increased marginally from 5 last quarter to 6.</p> <p>During this quarter, the Monitor's Operations consultants continue their long-standing practices of assessing documentation of reviews of youth on TM/PC status, logs of activities and services provided, 15 minute room checks, out of room opportunities and other conditions of confinement as set forth herein and in P 80. The Monitor's consultants reviewed and provided to the parties case summaries for 9 TM cases and 1 PC case from the 3rd Quarter, constituting half of the active TM cases this quarter. 7 of the 9 TM cases involved room confinement for longer than 70 days.</p> <p>In the 3rd Quarter, the Operations Functional Team met and DCR agreed to develop a pilot program designed to significantly mitigate the degree of room confinement for youths on Transitional Measures status. The contours of the pilot were shared with the Monitor's Consultants toward the end of the 3rd Quarter with the premise being that two program modules would be instituted at Humacao in early October (4th Quarter) and TM youths would spend all waking hours in the program module while only sleeping in their "home modules". There would be no routine room confinement for these youth. Youths would receive many services in the dayroom, while generally receiving education in the school area. Policies and procedures will be revised once the Humacao TM Pilot Program is implemented. The Monitor's consultants will continue to review the room confinement status of youth on TM or PC status who are not assigned to the Pilot Program, e.g., <u>Sumariados</u> at Humacao, PC youth at Bayamon, etc.</p>

Provision	P	S	R	T	D	G	Comment
							<p>The Monitor’s consultants continue to have unresolved questions about the intent of this provision as a mental health one or otherwise. Nevertheless, the Monitor’s view is that the frequency, conditions and duration of room confinement is a valid and important consideration and these issues have been the focus of monitoring.</p> <p>Defendants’ legal position concerning Transition Measures and Paragraph79 can be validated or invalidated based on compliance information for SA 79 and 80. Therefore we are offering no findings about compliance with provision. The Monitor’s consultants for Operations, Mental Health and Classification will be conferring with the parties about how to interpret and operationalize this provision.</p> <p>Although this has been an ongoing process, the Monitor’s Consultants, in the next Quarterly Report, will attempt to assess compliance with each of the 12 items that Plaintiffs have identified as the key components comprising this provision as it relates to youth who are in some form of room confinement.</p>

Provision	P	S	R	T	D	G	Comment
<p>S.A. 80. The terms of this agreement relating to safety, crowding, health, hygiene, food, education, recreation and access to courts shall not be revoked or limited for any juvenile in protective custody.</p>	N	N	#	#	#	N	<p>During this 3rd quarter, the Monitor’s operations consultants continue their long-standing practices of assessing compliance with the service/access requirements for youth on TM/PC status. Documentation reviews were conducted to include logs of activities and services provided, out of room opportunities and other conditions of confinement to assess the degree to which TM/PC status youth are receiving services comparable to all other youth. Of the services listed in this provision, limits on the quantity of education services remains the primary areas of deficit although, according to the Monitor’s education consultant, education staff at Humacao decided to develop their own instructional plan for the eligible TM youths (those who do not have 4th year completed). Rather than provide 20 minute individual sessions, they gather the group in the afternoon and offer one hour and forty minutes with each subject teacher giving a group lesson. This approach has been approved by NIJ and seems to be working well, although it may be modified once the TM pilot program is initiated.</p> <p>A pilot program to be implemented for TM youth in the 4th Quarter will likely increase out of room time from only a few hours a day to all waking hours, the same as all other youth. (See discussion of the pilot above in P 79) Further study is necessary relative to ways to meet the requirements of this provision for youth who are on PC status.</p> <p>Current policy does conceptually address the specific terms of this provision for both TM and PC statuses, although it is currently under review and is being modified by NIJ once the pilot program is implemented. The pilot will operate pursuant to an administrative directive during its pilot period.</p>

Provision	P	S	R	T	D	G	Comment
Education and Vocational Services							
<p>S.A. 81. Defendants, specifically the Department of Education, shall provide academic and/or vocational education services to all juveniles confined in any facility for two weeks or more, equivalent to the number of hours the juveniles would have received within the public education system. Specifically, this education shall be provided 5 (five) days per week, 6 (six) hours per day, 10 (ten) months per year. AIJ shall provide adequate instructional materials and space for educational services. Defendants shall employ an adequate number of qualified and experienced teachers to provide these services.</p>	#	N	N	I	N	N	<p>The school year was delayed a week until August 18. Because of teacher vacancies, a modified schedule was implemented in each institution except for the young women in CD Bayamon.</p> <p>Vocational opportunities are available in the CTS institutions for all students but there continues to be a deficiency in the CD institutions. NIJ revised the vocational programs during the previous school year, adding a civics/ethics course for the Bayamon and Villalba detention students since the agency believes it is a valid substitution for traditional vocational education. The Monitor's educational consultant maintains that in both locations civics/ethics cannot be reasonably considered vocational education. The number of vocational shops at Ponce was reduced from four to two but NIJ plans to add a barber shop next semester.</p> <p>Whether adult education is suitable for NIJ youth continues to be a concern of the monitor's consultant.</p>
<p>S.A. 86a. Defendants, specifically the Department of Education, shall abide by all mandatory requirements and time frames set forth under the Individuals with Disabilities Education Act, 20 USC §§ 1401 <u>et seq.</u> Defendants shall screen juveniles for physical and learning disabilities.</p>	#	Y	Y	I	N	N	<p>The Monitor and consultants are working with NIJ officials to develop an instrument for periodic case reviews to more fully document the level of compliance with this provision.</p> <p>Compliance with 86a requires compliance with 86b.</p>
<p>S.A. 86b. The screening shall include questions about whether the juvenile has been previously identified by the public school system as having an educational disability, previous educational history, and a sufficient medical review to determine whether certain educational disabilities are present, such as hearing impairments, including deafness, speech or language impairments, visual impairments, including blindness, mental retardation, or serious emotional disturbances adversely affecting educational performance.</p>	#	Y	Y	I	N	N	<p>The Monitor's assessment of special education and mental health services for the 2013 3rd quarter revealed that when a special education student drops out of the community public school before confinement in the agency institutions, he is not always re-evaluated for those services in the institution but is listed as "inactive."</p> <p>The Monitor and consultants are working with NIJ officials to develop an instrument for periodic case reviews to more fully document the level of compliance with this provision.</p> <p>Compliance with 86b requires compliance with 86a.</p>

Provision	P	S	R	T	D	G	Comment
<p>S.A. 87. If a juvenile has been previously identified as having an educational disability, Defendants shall immediately request that the appropriate school district provide a copy of the juvenile's individualized education plan ("IEP"). Defendants shall assess the adequacy of the juvenile's IEP and either implement it as written if it is an adequate plan or, if the IEP is inadequate, rewrite the plan to make it adequate, and then implement the revised IEP.</p>	#	Y	Y	I	N	N	<p>Compliance with the first part of the stipulation remains high in that the agency institutions request IEPs and special education files from the community public schools. The request is frequently ignored or results in late delivery preventing compliance with the second part requiring assessment of the documents' adequacy. This is particularly the case in the detention institutions. The need to re-certify students who dropped out in the community also applies here.</p> <p>The monitor and consultants are working with NIJ officials to develop an acceptable mental health/special education assessment instrument for periodic case reviews to more fully document the level of compliance with this provision and other special education and mental health provisions</p>
<p>S.A. 90. Defendants shall provide appropriate services for juveniles eligible for special education and related services. Defendants shall provide each such juvenile with educational instruction specially designed to meet the unique needs of the juvenile, supported by such services as are necessary to permit the juvenile to benefit from the instruction. Defendants shall coordinate such individualized educational services with regular education programs and activities.</p>	#	Y	Y	I	N	N	<p>Since all special education students are mainstreamed with those not certified, they receive the equivalent adult education as the others except for those in protective custody or in transition. See note to S.A. 81 as to the appropriateness of adult education. See note to S.A. 94 about protective custody and transitional compliance. See note to S.A. 87 about the development of a mental health/special education assessment.</p> <p>There are no educational services offered to special education or other students who have completed the 4th year as NIJ does not consider them part of the agreement. The NIJ education director agreed that this policy should be re-examined and indicated he would prepare some recommendation for 4th year completers in the next quarter.</p>

Provision	P	S	R	T	D	G	Comment
<p>S.A. 91. Qualified professionals shall develop and implement an IEP reasonably calculated to provide educational benefits for every juvenile identified as having a disability. When appropriate, the IEP shall include a vocational component.</p>	#	Y	Y	I	N	N	<p>Certified special education teachers provide education services to youth. NIJ revised the vocational programs during the previous school year, adding a civics/ethics course for the Bayamon detention students. NIJ also added the civics/ethics class for the Villalba detention youth since the agency believes it is a valid substitution for traditional vocational education. The Monitor's educational consultant maintains that in both locations civics/ethics cannot be reasonably considered vocational education.</p> <p>As demonstrated in the Monitor's 2013 3rd quarter assessment of special education and mental health services, there continues to be a system wide gap in communication between education and mental health staff. Prescriptions written into the IEP fall into a "one size fits all" admittedly written by educators with scant consultation with mental health staff. It should be noted that in the pilot assessment and that for the 3rd quarter, staff stated that consultation increased significantly. Nevertheless, mental health personnel rarely participate in the COMPUS which prepares and recommends implementation of the IEP.</p> <p>Road map development activity will continue into the next quarter. See note in reference to related services such as mental health and substance abuse in SA 87.</p>
<p>S.A. 93. Services provided pursuant to IEPs shall be provided year round. Defendants shall ensure that juveniles with educational disabilities receive a full day of instruction five (5) days a week.</p>	#	N	N	I	N	N	<p>Students eligible for special education services did not receive services from the end of May to the beginning of August. Nevertheless, as part of the June camping program, credit-bearing courses were offered in science and English. Some of the students involved were enrolled in special education. Although this does extend the school year for some, NIJ does not believe there are students who meet the prerequisites for year round education. The monitor's office disagrees that there are no such students.</p> <p>The Monitor and consultants are working with NIJ officials to develop an instrument for periodic case reviews to more fully document the level of compliance with this provision.</p>

Provision	P	S	R	T	D	G	Comment
<p>S.A. 94. Juveniles shall not be excluded from services to be provided pursuant to IEPs based on a propensity for violence or self-inflicted harm or based on vulnerability. Juveniles in isolation or other disciplinary settings have a right to special education. If required for institutional security, services provided pursuant to IEPs may be provided in settings other than a classroom.</p>	#	N	N	I	N	N	<p>A recent review of services provided for youth in transition or protective custody, showed that youth are not receiving services comparable to youth who are not in isolation. (See also comments for S.A. 90 and SA 80).</p>
<p>S.A. 95. When an IEP is ineffective, Defendants shall timely modify the IEP.</p>	#	Y	Y	I	N	N	<p>All special education positions are filled. The modified school program this school year negatively affects all students, including those in special education.</p> <p>A systematic assessment has not yet been completed by the Commonwealth and provided to the Monitor’s Office for review.</p> <p>The process of preparing a roadmap for this provision was initiated earlier, but was postponed for some time until CO 34 and SA 91 were complete. Activities in this regard have not resumed.</p>
Funding and Implementation							
<p>C.O. 43 Until this order is fully implemented, Defendants shall submit to the Legislature of the Commonwealth each fiscal year a report wherein the required sums of money will be established so as to implement this Consent order.</p>	I	I	N	I	N	N	<p>The Commonwealth legal position is that the required report is the agency budget request. The budget request is not routinely provided to the Monitor or the United States.</p> <p>It is also not established that the budget identifies the “required sums of money” to “implement the order.”</p> <p>The budget has been, in fact, insufficient to implement the requirements of the decree. There are many provisions in non-compliance with category “R” specified as one of the factors. These are provisions where lack of resources is a factor in non-compliance.</p> <p>Monitor’s consultants are prepared to work with parties to identify necessary compliance documentation expectations for a Roadmap.</p>