

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

JERRY M., *et al.*,

Plaintiffs,

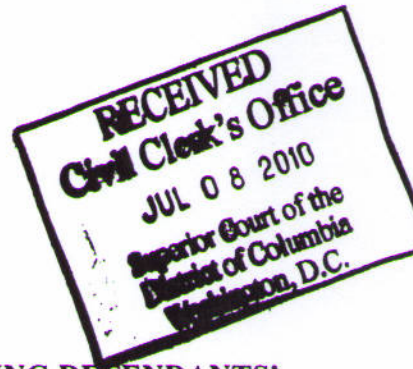
v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1519-85

J. Dixon



**THE SPECIAL ARBITER'S REPORT TO THE COURT REGARDING DEFENDANTS'
PROGRESS TOWARD MEETING CERTAIN REQUIREMENTS OF THE
REVISED FINAL APPROVED AMENDED COMPREHENSIVE WORK PLAN**

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Appendix A: Exhibits 1 - 26 and Appendix B: Exhibits 1 - 6)

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This report summarizes the Special Arbiter’s findings and related recommendations concerning certain performance standards required by the January 2010 Revised Final Approved Amended Comprehensive Work Plan¹ (“January 2010 Work Plan”) related to the use of the Youth Services Center (“YSC”) as a facility for detained youth, the educational program at the New Beginnings Youth Development Center (“NB”), and the structured recreational activities afforded to youth in secure confinement. A draft version of this report was provided to the parties for review and comment on June 9, 2010, and a revised draft on July 2, 2010.² The

¹ The Revised Final Approved Amended Comprehensive Work Plan [hereinafter January 2010 Work Plan] was filed on January 26, 2010. It supersedes the Final Amended Comprehensive Work Plan [hereinafter December 2007 Work Plan] approved by the Court on December 5, 2007.

² In light of the parties’ comments and follow-up investigations, the Special Arbiter made subsequent revisions which were shared with the parties. Appendix A includes the exhibits submitted to the parties in the initial draft version of this report. The parties’ comments on this report, and some related documents, are contained in Appendix B [hereinafter App. B]. The documents in the appendices have been redacted in the final version of this report to remove information that is or may be subject to confidentiality protections. Unless designated by a reference to App. B, all citations to the exhibits included in the Appendix refer to Appendix A. Defendants’ comments on the Draft Report [hereinafter Defendants’ Comments] are included as App. B, Ex. 1, Defendants’ Comments to the Special (continued...)

Special Arbiter has considered and addressed the parties' comments, to the extent appropriate, in this report.

The findings in this report are limited to three critical performance standards. As explained below, the evidence shows that the defendants have improved certain management practices and made very significant progress in the areas addressed by this report. As a result, the Special Arbiter will recommend that the Court vacate, at least in part, each of the performance standards addressed herein in the event the parties file a joint motion for vacatur. Monitoring with respect to other Work Plan requirements is ongoing. And while there are substantial challenges related to other Work Plan performance standards which defendants must overcome, there is evidence of continued progress toward meeting certain, but not all, core requirements. The Special Arbiter expects to report on these matters, and on the status of the population analysis required by the Court's March 24 and May 11, 2010 orders, before the end of the calendar year.

I. BACKGROUND AND SUMMARY OF FINDINGS

In July 2008, the first report issued by the Special Arbiter following the Court's approval of the December 2007 Work Plan attributed the progress that occurred under earlier work plans to several reform strategies. Among other initiatives, these strategies included: 1) the reorganization and restructuring of the District's juvenile justice agency into a cabinet-level agency with increased funding; 2) a demonstrable investment in the agency's workforce including recruiting and hiring a core group of experienced and talented executive and mid-level

Arbiter's July 7, 2010 Report to the Court Regarding Defendants' Progress Toward Meeting Certain Requirements of the Revised Comprehensive Workplan, submitted July 7, 2010. Defendants' comments are included in Appendix B. Defendants' comments on previous drafts have not been included in the Appendix. Plaintiffs' comments on the Draft Report [hereinafter Plaintiffs' Comments] are included as App. B, Ex. 2, July 6, 2010 correspondence from Alan A. Pemberton to Grace M. Lopes.

managers; and 3) the implementation of operational changes in the agency through building basic infrastructure and improving business practices.³

The recent progress toward meeting several Work Plan requirements described in this report is linked to these early reform strategies which have begun to positively impact programs and service delivery for youth housed at the YSC and NB. For example, the reorganization and restructuring of the Department of Youth Rehabilitation Services (“DYRS”) included separately housing the detained and committed populations in two distinct facilities. Among other things, this enabled the defendants to create an educational program for committed youth enrolled in the model unit program at NB that meets their needs in a way that was not possible when the two populations were comingled in one facility. Similarly, improvements in key aspects of the recreation program at the YSC and NB have been predicated on the sustained attention of facility managers. Indeed, the YSC’s managers were able to accomplish this despite persistent overcrowding at unprecedented levels for protracted time periods.

It is noteworthy that progress in these areas was sustained, and, in some instances, performance improved, despite the January 2010 change in the DYRS executive leadership. Historically, these types of changes have undercut or delayed progress. However, in this instance, there was a smooth transition in the executive management of the agency and no apparent impact on defendants’ progress toward meeting the Work Plan’s requirements.

This report presents the Special Arbiter’s findings related to Goal II.A.1.a., which requires that the YSC predominantly house detained youth; Goal IV.A.1.-4., which sets forth minimum standards for measuring the adequacy of the educational program afforded to youth housed at NB; and, Goals VI.A.1.a. and b., which address requirements related to structured

³ See *The Special Arbiter’s Report to the Court Regarding Defendants’ Progress Toward Meeting the Requirements of the Comprehensive Work Plan*, filed July 16, 2008 [hereinafter *July 2008 Report*] at 3-6.

recreation for youth in secure confinement.⁴ The findings related to each Goal are summarized below.

The evidence demonstrates that the YSC was operated predominantly as a facility for detained youth throughout the performance period as required by Goal II.A.1.a., and this performance was sustained for an additional six-month period. Contrary to the requirements established by the performance standard, committed youth at the YSC were not housed separately from detained youth, and they did not participate in separate programs. Moreover, very few committed youth were housed at the facility for longer than 45 days. Nonetheless, the Special Arbiter finds that the intent of Goal II.A.1.a. has been satisfied in light of the small number of committed youth housed at the YSC relative to the number of detained youth, the fact that the parties did not intend for this performance standard to prohibit the housing of “detained/committed” youth at the YSC, and the low number of committed youth housed at the facility for more than 45 days. For these reasons, the Special Arbiter recommends that the Court vacate Goal II.A.1. in its entirety.

In addition, the evidence shows that the defendants have satisfied the intent of each of the performance standards incorporated in Goals IV.A.1.-4., and are providing, through a contract with the Maya Angelou Academy (“Academy”), an exceptional, high quality and appropriate individualized education for general and special education students enrolled in the model unit program at NB. However, additional progress is needed in order to satisfy the requirements of Goals IV.A.2., 3., and 4. for youth housed at NB who are on awaiting placement status.

⁴ The performance standards for Goals II.A.1.a. and VI.A.1.a. were evaluated initially pursuant to the notice and review process informally approved by the Court during 2009. See *Status Report Regarding the Work Plan Process, Staffing, Population Levels and Related Matters at the Youth Services Center and at the New Beginnings Youth Development Center*, filed October 20, 2009 [hereinafter *October 2009 Report*] at 6-8 for a detailed description of the notice and review process.

Accordingly, the Special Arbiter recommends that the Court vacate Goals IV.A.1. in its entirety, as well as Goals IV.A.2., 3., and 4., insofar as each subsection applies to youth enrolled in the model unit program. Following the defendants implementation of a series of improvements to the educational program offered for youth on awaiting placement status, that have been agreed upon by the parties and endorsed by the Special Arbiter and her expert consultant, the Special Arbiter will reevaluate the educational program offered to youth on awaiting placement status at NB to determine whether Goals IV.A.2., 3., and 4. have been satisfied and thereafter report to the Court and the parties on her findings.

Finally, the evidence establishes that defendants have satisfied the performance standard requirements for Goals VI.A.1.a. and b., to the extent these subsections require that youth at the YSC and NB participate in at least one hour of “large muscle” activity on a daily basis.⁵ Moreover, the required performance level has been sustained for an additional six-month period. Although there has been improvement, the evidence does not establish that the second required hour of structured recreational activity is consistently provided to all youth at NB and the YSC on a regular basis. In light of the foregoing, the Special Arbiter recommends that the court vacate Goals VI.A.1.a. and b. to the extent each requires that youth at the YSC and NB participate in at least one hour of “large muscle” activity on a daily basis.

II. METHODOLOGY

Except as noted herein,⁶ the Special Arbiter’s assessment of defendants’ progress is based on the methodology prescribed in the Work Plan. The Appendix to this report provides detailed

⁵ See *infra* note 131 for the Work Plan’s definition of large muscle activity.

⁶ In certain instances, limitations in the records maintained by the defendants rendered it impractical or impossible to perform the required quantitative analysis. See, e.g., *infra* pp. 42-43 and note 135.

information related to the methodology used to conduct the required assessments.⁷ Managers and line staff from DYRS, the District of Columbia Public School (“DCPS”), and the Academy were interviewed or consulted during the course of these assessments. Youth in DYRS custody and DYRS contractors also were interviewed.

Regular site visits to the YSC and NB were conducted throughout the prescribed performance periods and thereafter. Relevant documents, memoranda, and other records were reviewed and analyzed, including: daily population reports and reports related to legal status and lengths of stay for youth at the YSC and NB; academic credentials and other relevant personnel records concerning teaching staff at the Academy; class schedules and daily attendance records prepared by the Academy and DCPS; documents related to the core curriculum, individual education plans (“IEPs”) and individual learning plans (“ILPs”) for youth at NB; descriptive materials, including contracts and budget documents related to the Academy’s program at NB; logbooks and other records from NB and the YSC housing units and gymnasiums, including paper and electronic records maintained by recreational staff and incident reports. In addition, the Special Arbiter consulted with an expert in educational programs in juvenile confinement facilities regarding many aspects of the assessment related to Goal IV requirements. Additional interviews, document review and data analyses were conducted in the wake of the parties’ comments on the draft version of this report.

⁷ The assessments were supervised by the Special Arbiter and Mark Jordan. They were conducted principally by Mark Jordan who was assisted by Mia Caras and Lee Coykendall. Their respective credentials and experience are well known to the parties and the Court. However, the assessments related to Goals IV.A.2.b., IV.A.3. and IV.A.4. were conducted by the Special Arbiter’s expert educational consultant, Carol Cramer Brooks, who was assisted by the Special Arbiter and her staff. Ms. Cramer Brooks’s background and experience are addressed *infra* p. 12 and note 24.

III. FINDINGS

This section presents the Special Arbiter’s findings related to Goals II.A.1.a., IV.A.1.-4., and VI.A.1.a. and b. Each Goal, the related performance standards and corresponding citations are set out verbatim below in bold typeface.

II. Goal Two: Defendants shall operate secure facilities for discrete populations. The YSC shall generally house youth with orders for secure detention and youth with orders for shelter house placement who are awaiting assignment to a shelter house. [NB]⁸ shall generally house committed youth, including committed youth with orders for secure detention and committed youth with orders for shelter house placement who are awaiting assignment to a shelter house. In the event it becomes necessary to transfer any detained youth to [NB], the detained youth shall be housed in a unit separate from committed youth, and shall participate in programs and receive services separate from the committed youth.

Between August 1995 and mid-June 2007, detained and committed youth were housed together in generally overcrowded housing units at Oak Hill Youth Center (“Oak Hill”) with access to a limited number of services and programs. This significantly undercut defendants’ ability to meet many core Consent Decree requirements, which in large part, are derived from distinctions between the rehabilitative purpose of commitment and the short-term goals of detention.⁹ The opening of the YSC at the end of 2004 was an essential step toward enabling the defendants to house detained and committed youth in separate facilities, a predicate to delivering the required services and programs to address the individual needs of detained and committed youth.

⁸ Pursuant to the Work Plan, all references to “OHYC” are intended to be applicable to NB. January 2010 Work Plan at 9 n. 9. Because Oak Hill has closed, NB has been substituted for OHYC in the text of each Goal and performance standard set forth in this report.

⁹ July 24, 1986 Consent Decree [hereinafter Consent Decree] at §IV.A.1.-2. Pursuant to the Consent Decree, defendants’ goal for securely detained youth is “to provide a humane environment in which short-term educational, recreational and emotional needs are met”; “prepare recommendations on individual needs for disposition”; and “maintain” each detained youth “to prevent his deterioration during his period of detention.” *Id.* at A.2. In contrast, according to the Consent Decree, institutional programs for committed youth are based on the goal of habilitation which recognizes that committed youth have “many educational, emotional, vocational, familial, recreational and social needs.” *Id.* at A.1.

Initially, Goal II of the Work Plan was comprised of two indicators designed to measure, over prescribed time periods, whether Oak Hill operated as a facility for committed youth¹⁰ and the YSC operated as a facility for detained youth. Because the defendants substantially exceeded the benchmark and performance standards related to Oak Hill's committed population, on February 27, 2009, the Court granted a motion to vacate Goals II.A.1.b.(i) and (ii) of the Work Plan.¹¹

In July 2008, the Special Arbiter reported that defendants also had exceeded the benchmark requirement in Goal II.A.1.a.(i), which relates to the housing of detained youth at the YSC.¹² As explained below, because defendants have satisfied the corresponding performance standard in Goal II.A.1.a.(ii) and sustained this performance for a six-month period, if the parties elect to submit a joint motion for vacatur, the Special Arbiter recommends that the Court vacate Goals II.A.1.a.(i) and (ii). In effect, this would result in eliminating Goal II from the Work Plan.

A. Indicators for Goal Two

1. Separate Housing (Conditional)¹³

a. Defendants shall generally house detained youth at the YSC. (Conditional)

ii. Performance Standard: For a six-month period beginning three months before the opening of the New Facility, defendants shall generally house at the YSC youth with orders for secure detention and

¹⁰ For purposes of determining whether the benchmark and performance standard for Goal II.A.1.b. have been satisfied, the cohort referred to as "committed-detained" youth (*i.e.*, committed youth with orders for secure detention and committed youth with orders for shelter house placement who are awaiting assignment to a shelter house) is included in the Work Plan's definition of committed youth for Goal II.A.1.b. The benchmark standard for Goal II.A.1.b.(i) and performance standard for Goal II.A.1.b.(ii) are reproduced for the Court's convenience and included in the Appendix to this report as Ex. 1.

¹¹ See Order dated February 27, 2009, granting Joint Motion to Vacate Goals II.A.1.b. and III.B.1.a.(i), filed October 15, 2008; see also *July 2008 Report* at 43, 45-46 (recommending vacatur based on a finding that defendants' exceeded the Work Plan's benchmark and performance standards and sustained such performance for a six-month period with respect to the housing of committed youth at Oak Hill). The performance standard was not applicable to NB.

¹² *Id.* at 43-44.

¹³ The performance standards included in the Work Plan are designated as mandatory or conditional exit criteria. If the principal Goals of the Work Plan have been achieved, the defendants must satisfy all mandatory performance standards and some combination of the conditional performance standards before the Court may consider a request to dismiss this lawsuit. January 2010 Work Plan at 4-5.

youth with orders for shelter house placement who are awaiting assignment to a shelter house, as established by 85 percent of the midnight counts for this six-month period. If committed youth are housed at the YSC during this period, each shall be housed and participate in programs separate from the detained youth. Committed youth may not be housed at the YSC for longer than 45 days.

Status of II.A.1.a.(ii): The evidence shows that the YSC generally housed detained youth during the prescribed performance period. The committed youth housed at the facility during this period were not housed separately, and they did not participate in separate programs. However, throughout the performance period, there were very few committed youth relative to the number of detained youth housed at the facility.¹⁴ Because the parties did not intend for this performance standard to prohibit the defendants from housing dual status youth at the YSC, for purposes of this assessment, the “detained/committed” cohort have been considered to be detained youth.¹⁵ Moreover, recent data related to length of stay indicate that very few youth were housed at the YSC on committed status for longer than 45 days. In fact, the average length of stay for committed youth during the six-month period ending March 31, 2010 was approximately 11 days.

The YSC daily population reports reflect the status of all youth housed in the facility on the midnight count. Daily population reports for February 28, 2009 – August 28, 2009, the six-month period assessed by the performance standard, were used to calculate the percentage of committed youth housed at the YSC. Analysis of the population reports establishes that for the

¹⁴ Primarily, three factors have contributed to the housing of committed youth at the YSC: 1) the absence of secure housing for committed girls; 2) the need to segregate committed youth on protective custody status from other youth at NB and the related limitations in NB’s physical plant; and 3) the need to house a youth on medical hold status in the YSC medical suite. Defendants recently announced that they will open a small staff-secure group home for committed girls. The program will be operated in conjunction with Howard University’s School of Social Work. Although initially limited to six girls, the program is clearly necessary and may have some impact on reducing the lengths of stay for committed girls at the YSC. Stakeholders report that due to limitations in the placements available for committed girls, many girls are held at the YSC pending disposition until placements can be identified. The Special Arbiter expects to review data from multiple sources regarding this issue and make a determination as a result of the population analysis required by the March 24, 2010 Order issued in this case.

¹⁵ See *July 2008 Report* at 44 n. 101. For purposes of this assessment, “detained/committed” youth were considered to be detained and overnights were excluded from the analysis.

182 midnight counts that occurred during the performance period, committed youth were housed at the YSC on 135 days, or 74 percent of the days, during the performance period.¹⁶ Generally, committed youth were not housed separately from detained youth, and they did not participate in separate programs.¹⁷ The YSC does not maintain separate housing or separate programs for committed and detained youth. However, during 90 percent of the 135 days on which committed youth were housed at the YSC, there were three or fewer committed youth housed at the facility.¹⁸ The average daily population of detained and committed youth at the YSC during the performance period was 96 youth, excluding overnights. Thus, nearly all youth housed at the YSC during the performance period were detained youth.

Due to limitations in the available data, the Special Arbiter was unable to determine whether the length of stay of committed youth housed at the YSC during the performance period exceeded 45 days. However, analysis of more recent data, for the period October 1, 2009 – March 31, 2010, indicates that only 21 committed youth were housed at the YSC at any point during the period, and only two of those youth were housed at the facility more than 45 days.¹⁹

The evidence shows defendants have continued to use the YSC predominantly as a facility for detained youth. Analysis of the daily population reports for the 182-day period between October 1, 2009 and March 31, 2010, indicates that one or more committed youth were housed at the YSC on 81 days or 45 percent of the days during the period, and that on 101 nights,

¹⁶ Ex. 2, Chart prepared by the Office of the Special Arbiter, Separate Housing, YSC Population (Not Including Overnights), by Day and Status, February 28 – August 28, 2009, illustrates this finding.

¹⁷ Analysis of YSC housing assignment records for 67 committed youth-nights at the YSC during 30 of the 135 days committed youth were housed at the facility shows that in 29 of the 30 days that were sampled, committed youth were not housed separately from detained youth.

¹⁸ Ex. 3, Chart prepared by the Office of the Special Arbiter, Distribution of Number of Days with Committed Youth Housed at YSC, February 28, 2009 – August 28, 2009, depicts this finding.

¹⁹ App. B, Ex. 3, Chart prepared by the Office of the Special Arbiter, Length of Stay Housed at YSC as Committed Youth, October 1, 2009 to March 31, 2010; App. B, Ex. 4, Chart prepared by the Office of the Special Arbiter, Length of Stay at YSC of Youth Who Were Committed While Housed at the YSC, October 1, 2009 – March 31, 2010.

or 55.5 percent of the nights analyzed, committed youth were not housed at the facility.²⁰ This represents an improvement over the earlier period that was analyzed. And although committed youth were not housed separately and did not participate in separate programs, in the instances when there were committed youth housed at the YSC, there were never more than three youth.²¹

This performance standard requires that for 85 percent of the midnight counts during the performance period, defendants generally housed detained youth, including youth with orders for secure detention and youth with orders for shelter house placement, at the YSC. As explained above, analysis of the relevant population data indicates that the defendants have satisfied this standard. Indeed, during the performance period, on 90 percent of the 135 days during the 182-day performance period that committed youth were housed at the YSC, there were never more than three committed youth housed at the facility.

By comparison, during the second 182-day period analyzed, there were 40 percent fewer nights with committed youth housed at the YSC, and on nights when committed youth were housed at the facility, the average number was lower. In addition, only one committed youth was housed at the facility on 62 of the 81 nights that committed youth were housed at the YSC during the second period that was analyzed. Although the defendants have not segregated committed youth from the detained youth housed at the YSC, in light of the small number of committed youth housed at the YSC relative to the number of detained youth during the two six-month periods analyzed, the fact that the parties did not intend for this indicator to prohibit defendants from housing “detained-committed” youth at the YSC, and the fact that recent data related to the

²⁰ Ex. 4, Chart prepared by the Office of the Special Arbiter, Separate Housing, YSC Population (Not Including Overnights), by Day and Status, October 1, 2009 – March 31, 2010, illustrates this finding.

²¹ The population data indicate that on five nights during the period, or 2.7 percent of all nights analyzed, there were three committed youth at the facility. On 14 nights, or 7.7 percent of all nights analyzed, there were two committed youth housed at the facility, and on 62 nights, or 34.1 percent of the nights that were analyzed, there was one committed youth housed at the facility. Ex. 5, Chart prepared by Office of the Special Arbiter, Distribution of Number of Days with Committed Youth Housed at YSC, October 1, 2009 – March 31, 2010, reflects these findings.

length of stay of committed youth indicates that their length of stay has rarely exceeded 45 days, the Special Arbiter finds that the intent of this performance standard has been satisfied.

For these reasons, the Special Arbiter recommends that if the parties elect to submit a joint motion for vacatur, the Court should vacate Goals II.A.1.a.(i) and (ii).

IV. Goal Four: [NB] and YSC educational programs shall meet the basic requirements for a free and appropriate education.

The Goal IV indicators assess the educational program at NB and the YSC differently. The assessment presented in this report is limited to the educational program at NB. The Special Arbiter expects to report on the educational program at the YSC during the forthcoming school year.²²

Pursuant to the process contemplated by the Work Plan,²³ the Special Arbiter engaged Carol Cramer Brooks, an expert in educational programs for youth in secure confinement, to assist with the assessment of the NB educational program. As evidenced by her curriculum vitae, which is included in the Appendix to this report, Ms. Cramer Brooks has substantial experience and expertise in evaluating educational programs in juvenile detention and commitment facilities.²⁴ Ms. Cramer Brooks's assessment, which was conducted during the latter part of 2009 and the first quarter of 2010, culminated in a report on her findings that was submitted to the Special Arbiter in early March 2010 and provided to the parties with the initial

²² According to the informal notice and review process that has been agreed upon by the parties and approved by the Court, *see October 2009 Report* at 6-8, defendants have indicated that they expect the YSC educational program to be ready for the assessment required by Goal IV.B.1.a. during the next school year. The Special Arbiter's informal monitoring indicates that defendants have made efforts to address certain deficiencies in the YSC educational program that were identified by Dr. Leone during the assessment he conducted pursuant to Goal IV.B.1.a. of the December 2007 Work Plan. These deficiencies are described in the Special Arbiter's July 2008 Report. *See July 2008 Report* at 65-68.

²³ January 2010 Work Plan at Goal IV.A.4.; *see also* Order dated December 26, 2006.

²⁴ Ex. 6A, Curriculum vitae of Carol Cramer Brooks.

draft version of this report.²⁵ The Special Arbiter fully adopts the findings set forth in the report. Following the submission of Ms. Cramer Brooks's report, the Special Arbiter conducted supplemental evaluation and monitoring which also informed the findings described below. Moreover, in the wake of the parties' comments on the initial draft version of this report, the Special Arbiter conducted additional interviews, record reviews, and data analysis and also consulted with Ms. Cramer Brooks.

The findings related to Goal IV should be considered in light of the record which evidences significant and long-standing deficiencies in the educational program for youth housed in DYRS-operated secure facilities. Indeed, in 1998, after years of substantial non-compliance with the Consent Decree's educational requirements, a receiver was appointed to assume control over the educational program at Oak Hill Youth Center ("Oak Hill").²⁶ Although the order imposing the receivership was ultimately vacated on appeal,²⁷ critical deficiencies in the educational program for committed youth were not disputed, including a high percentage of uncertified teachers,²⁸ deficiencies in the educational assessment process,²⁹ and significant inadequacies in special education services.³⁰ Thereafter, many fundamental limitations in the educational program persisted and were exacerbated by overcrowding as well as by the fact that detained and committed youth with different educational needs often cycled rapidly in and out of the same facility.

The relatively recent transformation in the educational program for securely committed youth has been remarkable. Following the introduction of the Work Plan process, during 2005

²⁵ Ex. 6B, Report submitted to the Special Arbiter by Carol Cramer Brooks, March 1, 2010.

²⁶ Order dated September 16, 1998 at 59.

²⁷ *District of Columbia v. Jerry M.*, 738 A.2d 1206, 1214 (D.C. 1999).

²⁸ Order dated September 16, 1998 at 39-40.

²⁹ *Id.* at 44.

³⁰ *Id.* at 43, 46.

and 2006, the Special Arbiter reported on continuing critical deficits in the educational program for committed youth, including high levels of disorder, a climate of violence, chronic student attendance problems, and the absence of a functional administrative infrastructure. Basic management and accountability systems had not been effectively implemented, and as a result the school environment was, at best, chaotic, and at its worst, very dangerous, presenting an unreasonable risk of harm to students and staff. In July 2007, defendants adopted a new approach to the educational program at Oak Hill, contracting with the See Forever Foundation to assume the operation of the facility's school. In an effective partnership with many DYRS managers and line staff, the school's administrators and teachers made quick and demonstrable changes that affected the climate and culture of the school. By mid-2008, the Special Arbiter found the school was infused "with a dynamic, creative team of teachers and an approach to learning that [had] changed significantly the Oak Hill educational experience for many youth."³¹

At the time that the See Forever Foundation assumed responsibility for the school, the composition of Oak Hill had changed due to the opening of the YSC, and an overall reduction in the size of the detained population in secure confinement. By July 2007, the population of Oak Hill was approximately 40 percent of its size just three years earlier, and it was comprised exclusively of committed youth. Lower population levels of exclusively committed youth simplified the design and implementation of the facility's new educational program. Nevertheless, as the Special Arbiter has reported, periodic population increases, particularly among the population of youth awaiting placement decisions, created significant program delivery challenges for the school staff.³²

³¹ *July 2008 Report* at 53-54.

³² *Id.* at 61.

Following the closure of Oak Hill, the See Forever Foundation assumed operation of the school at NB, the Maya Angelou Academy (“Academy”). As explained in Ms. Cramer Brooks’s report, the Academy provides an extraordinary educational program for youth enrolled in the model unit program at NB, representing for this cohort of students “one of the best programs in a confinement facility” that Ms. Cramer Brooks has ever seen.³³ Ms. Cramer Brooks reports that the educational program for the model units is distinguished by the commitment of the Academy’s leadership and staff, the positive relationships they have developed with the students,³⁴ the formulation of effective learning strategies, a well-defined curriculum, a low teacher-to-student ratio, and the energy and creativity teachers bring to the classroom.³⁵

The Academy is in session each weekday, and until very recently, for half of the day on Saturday.³⁶ In addition to core academic classes in English, math, science and social studies, the Academy offers GED and GED-preparation classes to a small number of eligible students who are at least 17 years of age. All students are required to take classes in the Academy’s career institute which offers courses in art, woodworking/shop, and until recently, advocacy.³⁷ The Academy operates a program designed to reward positive student behavior and recognize outstanding student contributions during periodic award ceremonies that showcase a wide array of student talent. The Academy also has provided support to model unit students prior to their release from NB and during the early stages of their transition to the community.³⁸

³³ Ex. 6B at 17.

³⁴ Ms. Cramer Brooks notes that DYRS staff assigned to the model units display a similar commitment to the youth in the model unit program. *Id.* at 1.

³⁵ *Id.*

³⁶ Saturday classes were recently discontinued as the result of a budget cut imposed by the defendants.

³⁷ The advocacy class will be eliminated as part of the recent budget cuts.

³⁸ The level of support is expected to decrease due to staffing cuts engendered by the recent reduction in the Academy’s budget.

As noted above, in July 2008, the Special Arbiter reported on significant operational challenges related to youth who were housed in Oak Hill's awaiting placement units, finding that the quality of the educational program for these youth was compromised by unplanned increases in the size of the awaiting placement population.³⁹ The evidence shows that the defendants have not addressed these shortcomings effectively. Ms. Cramer Brooks concluded that "[a]s successful as the Academy is with model unit scholars, this success does not translate to the Awaiting Placement population."⁴⁰ Indeed, at least until very recently, youth housed in NB's awaiting placement unit have not attended school on a consistent basis, and they have not been subject to behavioral expectations and a reward system to monitor and control their behavior.⁴¹ Contrary to Work Plan requirements, at the time of the assessment conducted by Ms. Cramer Brooks and the Special Arbiter, neither ILPs nor IEPs for special education-eligible students on awaiting placement status were developed. Moreover, Ms. Cramer Brooks found that the curriculum was not adapted to their needs, which differ substantially from youth enrolled in the model unit program.⁴² For these reasons, Ms. Cramer Brooks found that students on awaiting placement status at NB do not receive an individualized education.

Goal IV.A.3. requires the defendants to develop individualized plans for each student's educational services, goals and objectives within 45 days of admission to NB, and Goal IV.A.4. requires the Special Arbiter's expert to assess whether the plans have been implemented, as

³⁹ See, e.g., *July 2008 Report* at 10, 14, 54 and 61.

⁴⁰ Ex. 6B at 1.

⁴¹ The Special Arbiter reported previously that defendants planned to implement a behavior management program for youth on awaiting placement status during September 2008. *July 2008 Report* at 33-34. Although there is a critical need for an effective behavior management program for youth on awaiting placement status, the program has not been implemented.

⁴² Ex. 6B at 16. In their comments on the draft version of this report, defendants specifically dispute some of these findings. Because the parties have worked with the Special Arbiter to resolve disputes related to this and other issues regarding students on awaiting placement status that were identified by Ms. Cramer Brooks, the Special Arbiter will address defendants' comments, if appropriate, during a future reassessment of defendants' performance. See *infra* pp. 35-36 and App. B, Ex. 6, *infra* note 117 for further information regarding the reassessment.

required. During the comment period on the initial draft version of this report, in response to Ms. Cramer Brooks's findings regarding the educational program for students on awaiting placement status, the defendants maintained that the Special Arbiter should limit her assessment of the Goals IV.A.3. and 4. performance standards to students housed at NB for 45 days or more. Relying on Ms. Cramer Brooks's findings related to students housed at the facility for 45 days or longer, defendants reasoned that these performance standards would have been satisfied if the assessment excluded students with lengths of stay under 45 days. The Special Arbiter is not persuaded by defendants' interpretation of the performance standard, which would operate to exclude from the assessment virtually all youth on awaiting placement status.

In order to resolve this matter in a manner that is likely to result in a timely and appropriate remedy, the Special Arbiter has worked with the parties, the Academy's principal and Ms. Cramer Brooks on crafting an agreement to address these issues. Plaintiffs did not take a position with regard to the interpretation of the Goals IV.A.3. and 4. performance standards, but they supported this approach as a constructive way to address the educational needs of youth on awaiting placement status. The agreement is intended to result in prompt improvements to the educational program offered to youth housed at NB on awaiting placement status and guide a reassessment of the educational program that is offered to them. The parties and Special Arbiter agree that, if implemented, these improvements will satisfy the Goals IV.A.3. and 4. requirements for all awaiting placement youth housed at NB.

For the reasons set forth above, and described more fully below, the Special Arbiter recommends that the Court vacate Goals IV.A.1. in its entirety, as well as Goals IV.A.2., 3. and 4., insofar as each subsection applies to youth enrolled in the model unit program. In light of the overall progress that has been made, very recent improvements in school attendance for awaiting

placement youth, defendants' contention that some educational practices related to this cohort are currently different from the practices evidenced during Ms. Cramer Brooks's site visit, and the parties' agreement concerning improvements in the educational program for youth on awaiting placement status, the Special Arbiter and her expert will conduct an additional review during the current calendar year to determine whether the requirements of Goals IV.A.2., 3. and 4. have been satisfied for youth on awaiting placement status.

A. Indicators for Goal Four: The [NB]Educational Program

1. Staffing (Conditional)

- a. Teaching staff at [NB]who are teaching core courses (*i.e.*, English, Mathematics, Social Studies and Science) shall hold an undergraduate or graduate degree and have achieved a passing grade in the Praxis 2 in the core subject areas they teach or shall hold a full or provisional teaching certification in the core subject areas they teach. (Conditional)**
- ii. Performance Standard: By September 1, 2009 and thereafter, 90 percent of the teaching staff who are teaching core courses shall hold an undergraduate or advanced degree and have achieved a passing grade in the Praxis 2 in the core subject areas they teach or shall hold a full or provisional teaching certification in the core subject areas they teach.**

Status of IV.A.1.a.(ii): This indicator is intended to measure whether the students who participate in the educational program at NB are taught core courses by qualified and competent teachers. The evidence establishes that 77 percent of the teachers who taught core courses during the current school year⁴³ have the requisite post-secondary degree and have achieved a passing grade in the Praxis 2 in either the core subject area that they teach or in special education, or hold a full or provisional teaching certification in the core subject area that they teach or in special education.⁴⁴ Although this falls short of the performance standard, there is

⁴³ For purposes of this report, the term "current school year" refers to the school year ending June 2010.

⁴⁴ The December 2007 Work Plan initially included two indicators related to the credentials of the teaching staff: one indicator required teaching staff to have attained full or provisional teaching certification, or have a pending application for certification, and the other required teachers of core courses to teach only in the areas in which they were certified or in areas in which they had a pending application for certification. December 2007 Work Plan at (continued...)

other evidence of the fundamental strength of the teaching staff that the Special Arbiter has considered, which supports her determination that the intent of this performance standard has been satisfied. These matters are explained more fully below.

A review of the class schedule, staff interviews, and site observations indicate that during the current school year, 13 teachers at the Academy were assigned to teach core courses,⁴⁵ including one part-time faculty member and an administrator who also teaches some core classes.⁴⁶ The Special Arbiter's review of the credentials for the 13 teachers assigned to teach core courses during the school year indicates that seven have a post-secondary degree and have passed the Praxis 2 in either the core subject they are assigned to teach or in special education, and three are certified in either the core subject they are assigned to teach or in special education.⁴⁷ The remaining three teachers who have taught core subjects during the current school year have post-secondary degrees, but they do not meet all of the qualification standards.⁴⁸ Thus, 77 percent of the staff currently assigned to teach core course have satisfied the Work Plan's qualification standards. In light of the 90 percent measurement required by this performance standard, this is the equivalent of two teachers below the required number.

One of the most significant strengths of the educational program at NB is the teaching staff. Indeed, as part of her assessment of the Academy's educational program, Ms. Cramer

IV.A.1.a. and b. Following consideration of the Special Arbiter's baseline findings, *see July 2008 Report* at Ex. 10A and 55, defendants filed a motion to modify these requirements. Defendants explained that modification was necessary in order to align the Work Plan's teacher qualification requirements more closely with the qualification standards applicable to the District's charter schools and also to provide defendants with the flexibility to hire skilled teaching staff who might not have a traditional teaching background. Memorandum of Points and Authorities in Support of Defendants' Motion to Modify Goals IV.A.1.a. and b., filed July 18, 2008, at 2.

⁴⁵ In addition, three teachers are assigned to the Academy's career institute program. Because of a budget reduction that affects the next school year, Academy staff report that the career institute program will be modified during the next school year.

⁴⁶ The part-time faculty member is a special education teacher. She teaches for 40 hours every two weeks. In addition to her administrative duties, the director of special education also teaches some classes.

⁴⁷ Two of the three certified teachers are certified in special education.

⁴⁸ Two of the three teachers have masters' degrees in education and the third has a bachelor's degree.

Brooks recognized the substantial contribution that is made on a daily basis by the teaching staff.⁴⁹ In this regard, Ms. Cramer Brooks observed that the Academy’s teachers bring “energy and creativity to their daily lessons,” “appear extremely committed” to the students,⁵⁰ appropriately implement the curriculum,⁵¹ and “have mastered the use of the Smart Board, a dynamic, multi-use teaching tool available in every classroom.”⁵² Classroom observations and other monitoring activities underscore these findings. Academy teachers have been observed consistently working with students inside and outside of the classroom on an array of imaginative activities designed to motivate students and engage them in the learning process.⁵³ For these reasons, the Special Arbiter finds that the intent of this performance standard has been satisfied.

- b. **The ratio of special education teachers to students receiving special education services at [NB] shall be one special education teacher to up to but no more than ten students (1:10) identified and served in special education. (Conditional)**
 - ii. **Performance Standard: By September 30, 2008 and thereafter, the ratio of special education teachers to students receiving special education services at [NB] shall be no more than 1:10. For purposes of this standard, each vacant special education teacher position shall be counted as filled for up to 60 calendar days following the start of the vacancy.**

Status of IV.A.1.b(ii): The average daily population at NB during the current school year has been 53 youth.⁵⁴ According to the director of the Academy’s special education program, between 40 and 55 percent of the youth at NB have special education needs.⁵⁵ Thus, at any given time, between 21 and 29 youth at NB are eligible to receive special education services.

⁴⁹ Ex. 6B at 1.

⁵⁰ *Id.*

⁵¹ *Id.* at 5-6.

⁵² *Id.* at 1.

⁵³ For example, teachers work with students on preparing presentations for the award programs that are held on several occasions each semester.

⁵⁴ Ex. 7, Chart prepared by the Office of the Special Arbiter, Total New Beginnings Population, September 1, 2009 – May 24, 2010.

⁵⁵ This range is consistent with record reviews conducted in connection with Ms. Cramer Brooks’s site visit.

The Academy employed four special education teachers who met the qualification requirements of Goal IV.A.1.a. during the current school year.⁵⁶ In addition, a fifth teacher provided special education instruction on a part-time basis.⁵⁷

With limited exceptions, the Academy uses a full inclusion model for delivering instruction to students who receive special education services.⁵⁸ Each class at the Academy is co-taught by a general education teacher and either a special education teacher or a teaching assistant.⁵⁹ Additional teachers and teaching assistants also provide pull-out or push-in services,⁶⁰ as appropriate, on a one-on-one or small group basis. With the exception of GED and pre-GED classes, which enroll a very small number of students, classes at the Academy are organized by housing unit and thus rarely, if ever, have more than 11 students.⁶¹

As noted above, the Academy employs one part-time and four full-time special education teachers. This staffing level, combined with the Academy's instructional practices⁶² and small

⁵⁶ Two teachers have post-secondary degrees, and both have passed the Praxis 2 in special education. Two additional teachers are certified in special education.

⁵⁷ This teacher is not certified in special education. The Academy provided documentation from 1986, which indicates that the teacher was eligible for certification in special education in Maryland based on the completion of credit requirements.

⁵⁸ This, of course, may not be appropriate for all students. Significantly, Ms. Cramer Brooks notes: "The Academy is, at the very least, responsible for having enough flexibility in its program design to meet whatever levels of service are required by the youth receiving special education services." Ex. 6B at 12.

⁵⁹ The teaching assistants are recent college graduates who are members of the Academy's Leadership Corp.

⁶⁰ Pull-out programs take a student outside of the regular classroom to afford an opportunity for more intensive instruction in a small group or individualized setting. Push-in services are provided by special education teachers and instructional aids who work in the general education classroom with students who receive special education services and collaborate with the general and special education teachers who are conducting the class.

⁶¹ A review of DYRS population records for October 1, 2009 – May 25, 2010 indicates that the maximum number of youth assigned to a housing unit at NB is 11. There are occasions when youth attend classes with a different housing unit, but this is not a common practice.

⁶² As a supplement to the co-teaching of core classes by a general education teacher and a special education teacher or instructional aid, both pull-out and push-in services are provided to special education students, as appropriate.

class size, establish that the 1:10 ratio of special education teacher to special education student has been satisfied during the current school year.⁶³

- c. **The average teacher to general education student ratio at [NB] shall be no more than 1:15 with no single class exceeding 1:17. Classes with a teacher to general education student ratio of more than 1:12 also shall be staffed with an instructional assistant or trained youth care worker who serves as an instructional assistant. (Conditional)**
 - i. **Performance Standard: By December 31, 2007 and thereafter, the ratio of teacher to general education students at [NB] shall be no more than 1:15, no single general education classes shall exceed 1:17, and all general education classes with more than 12 students also shall be staffed by an instructional aid or youth care worker. For purposes of this standard, each vacant teacher position shall be counted as filled for up to 60 calendar days following the start of the vacancy.**

Status of IV.A.1.c.(ii): The Academy employs 13 teachers, including two part-time special educators, who teach core courses.⁶⁴ As noted above, the average daily population at NB during the current school year has been 53 youth,⁶⁵ and 45 to 60 percent of the students at the Academy are general education students. Thus, at any given time, between 24 and 32 general education students are enrolled in the Academy. Based on the number of general education students typically enrolled in the Academy and staffing levels, the average teacher-to-student ratio is between 1:3 and 1:4. Class size does not exceed 1:15, and all classes are staffed by one teacher and an instructional aid or another teacher. For these reasons, the performance standard has been satisfied.

2. **Instruction** (Conditional)

- a. **Students shall attend school on regularly scheduled school days, excluding days on which staff development and special planned activities prevent youth**

⁶³ The adequacy of the Academy's special education teacher staffing level is underscored by Ms. Cramer Brooks's finding that IEPs are being implemented for students who receive special education services and are housed in the model units. *Id.* at 15.

⁶⁴ Some of these teachers also teach GED or pre-GED courses, and three additional teachers have provided instruction in art, woodworking/shop, and advocacy in the Academy's career institute. In addition, on occasion, the Academy's principal teaches a class.

⁶⁵ Ex. 7, *supra* note 54.

from attending school, or weather conditions prevent staff from traveling to the school. (Conditional)

- ii. Performance Standard: By September 1, 2008, and thereafter, 90 percent of the youth housed at [NB] shall attend school on regularly scheduled school days, excluding days on which staff development and special planned activities prevent youth from attending school, or weather conditions prevent staff from traveling to school.**

Status of IV.A.2.a.(ii): The Special Arbiter's review of attendance records maintained by the Academy for six months within a seven-month period starting on September 1, 2009 and ending on March 26, 2010,⁶⁶ indicates that 89.15 percent of the youth housed at NB attended school on regularly scheduled school days.⁶⁷ Analysis of attendance rates in terms of housing unit assignments indicates there is a substantial disparity between attendance rates for youth housed in the model units and youth housed in the awaiting placement unit at NB. Indeed, according to the Academy's attendance records, during the six-month period subject to review, over 95 percent of the youth housed in the model units attended school on regularly scheduled school days in contrast to just under 60 percent of the youth assigned to the awaiting placement unit.⁶⁸ Combined with data obtained from interviews and site observations, the Academy's attendance records establish that youth participating in the model unit programs attend school at rates that appear to conform with, or exceed, the performance standard. In contrast, however, the evidence indicates that attendance rates for youth on awaiting placement status have fallen

⁶⁶ The November 2009 attendance records were not analyzed.

⁶⁷ Ex. 8, Charts prepared by the Office of the Special Arbiter, Average Daily Attendance Rate at Maya Angelou Academy, September 1, 2009 – October 30, 2009 and December 1, 2009 – March 26, 2010, showing 89.15 percent of youth housed at the facility attended school; Comparison of Average Daily Attendance Rates at Maya Angelou Academy for Youth on AP Units and Model Units, September 1, 2009 – October 30, 2009 and December 1, 2009 – March 26, 2010, comparing attendance rate of 95.53 percent for youth on model units to attendance rate of 59.29 percent for youth awaiting placement.

⁶⁸ Ex. 9, Charts prepared by the Office of the Special Arbiter, Daily Attendance Rate at Maya Angelou Academy for Youth Housed in Model Units, September 1, 2009 – October 30, 2009 and December 1, 2009 – March 26, 2010; Daily Attendance Rate at Maya Angelou Academy for Youth Housed in AP Units, September 1, 2009 – October 30, 2009 and December 1, 2009 – March 26, 2010. These charts illustrate the stark difference in attendance rates between the two cohorts.

significantly short of the performance standard; however, since February 2010, these rates have begun to trend upward.⁶⁹ These findings are explained more fully below.

As a general matter, NB organizes classes by housing unit. Thus, all youth enrolled in NB's five model unit programs attend classes with the other youth housed in their model unit program with two exceptions: 1) the handful of youth housed in a model unit who participate in GED or pre-GED classes attend separate classes; and 2) youth who are on awaiting placement status but housed on a model unit due to a shortage of bed space on the awaiting placement unit attend classes with the youth on the model units on which they are housed.

The Academy uses first period attendance as the basis for reporting whether a student attends school for an entire school day.⁷⁰ Although this practice could result in over-counting or under-counting attendance⁷¹ relative to the standards applicable to DCPS,⁷² it is noteworthy that the quality of the attendance data maintained by the Academy, particularly for youth housed in the awaiting placement unit, has improved considerably since the Special Arbiter's December 2007 baseline evaluation. Indeed, at the time the baseline evaluation was conducted, limitations in the available attendance records prevented the Special Arbiter from calculating a reliable

⁶⁹ App. B, Ex. 5, Chart prepared by the Office of the Special Arbiter, Average Daily School Attendance Rate at New Beginnings, by Month, Model Units and AP Unit, showing a steady increase in attendance rates for this cohort between February 2010, when the rate was 56.1 percent, and May 2010, when the monthly rate was 92.5 percent.

⁷⁰ Ex. 10, excerpt from November 13, 2009 submission prepared for the Special Arbiter at the initiative of the Maya Angelou Academy's principal, Attendance Calculations at Maya Angelou Academy.

⁷¹ For example, a student may attend his first period class and be recorded as attending school for the entire day despite the fact he did not attend any other classes that day, or conversely, a student may miss the first period class and be counted as absent for the day despite the fact he attended all classes that were held after the first period.

⁷² In September 2009, DCPS school attendance policy was governed by the *District of Columbia Municipal Regulations* ("DCMR") Title 5, Chapter 21, available at <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=5-E2103>, which specified that unexcused absences from three different classes during the same day was considered a half-day absence and unexcused absences from four different classes during the same day constituted a full-day absence. D.C. Mun. Regs, tit. 5, §§2103.1 – 2103.2 (2006). On November 20, 2009, the State Superintendent of Education adopted new regulations related to school attendance, Title 5, Subtitle A, Chapter 21 of the DCMR, entitled "Compulsory Education and School Attendance," available at <http://www.dcregs.dc.gov/Gateway/NoticeHome.aspx?NoticeID=65589>. Section A-2102.1 states: "Any absence, including an absence from any portion of the day, without a valid excuse shall be presumed to be an unexcused absence." The regulation also establishes a six-hour minimum instructional day requirement. D.C. Mun. Regs, tit. 5, §A-2100.5 (2009).

baseline school attendance rate for the youth housed in the awaiting placement units.⁷³

Moreover, although the attendance records maintained by the Academy neither reflect actual attendance rates for the full school day nor precisely reflect actual attendance according to program enrollment status (*i.e.*, youth enrolled in the model unit program or youth on awaiting placement status),⁷⁴ the records appear sufficiently reliable for purposes of assessing facility-wide and unit-based school attendance practices.

Attendance records for the six-month period during the current school year that were analyzed indicate that there has been significant improvement in attendance rates for youth housed in the model units since the December 2007 baseline assessment was conducted. The December 2007 assessment found overall attendance rates of 81 percent for youth housed in the model units.⁷⁵ The Special Arbiter's analysis of attendance data for the current school year found that attendance rates for youth housed in the model units was 95 percent, nearly a 15 percent increase above the 2007 baseline. As discussed above, although this rate may not represent a precise measurement of attendance rates for youth who participate in the model unit program, it is consistent with site observations as well as interview data which establish that

⁷³ See *July 2008 Report* at 61 and 62. In fact, the baseline school attendance rates for youth in the awaiting placement units at Oak Hill could not be calculated because of limitations in the attendance data that were maintained by the Academy at that time. *Id.* Although the Special Arbiter recommended additional analysis of attendance rates for the awaiting placement youth, the parties elected to forgo any additional baseline assessment. The performance standard for attendance rates was agreed upon by the parties and ultimately approved by the Court in an order dated January 16, 2008. See *Motion for Approval of a Proposed Benchmark and a Performance Standard Subject to the Prospective Development Process Specified in the Final Amended Comprehensive Work Plan*, filed December 21, 2007. Academy staff reported in November 2009 that “[a]n immense amount of time is spent trying to get accurate attendance daily, particularly for the Awaiting Placement youth.” Ex. 10, *supra* note 70.

⁷⁴ Attendance data maintained by the Academy are organized by housing unit. One housing unit is dedicated exclusively to youth on awaiting placement status. Although the awaiting placement unit occasionally housed more than 10 youth, generally, whenever the unit exceeds its intended capacity of 10 youth, awaiting placement youth are housed on model housing units. Because there is no practical and accurate method for distinguishing between youth housed on model housing units who are enrolled in a model unit program from those youth who are merely housed on a model unit while awaiting placement, the Special Arbiter could not calculate precise facility-wide attendance rates according to program enrollment status.

⁷⁵ The analysis was based on a sample from 28 school days between September 18 and October 26, 2007. See *July 2008 Report* at Ex. 10D for a more detailed description of the baseline assessment.

students housed in the model units are predominately students enrolled in the model unit program.

In contrast, the attendance data for the six-month period during the current school year that were analyzed establish an attendance rate of 59 percent for the students housed in the awaiting placement unit.⁷⁶ Indeed, up to the time of her assessment, Ms. Cramer Brooks found that awaiting placement youth “sporadically attend school.”⁷⁷ She cited evidence of a “group” response to the youth housed on the awaiting placement unit: “[t]hey all go to school or no one goes to school, regardless of the number of youth responsible for an incident.”⁷⁸ Moreover, as noted above, Ms. Cramer Brooks concluded that youth housed in the awaiting placement unit “do not experience the same level of commitment from staff, access to programming, or behavioral expectations and norm setting.”⁷⁹ This has a very significant impact on many aspects of the facility’s operations. In fact, a review of incident reports, housing unit logbooks, site observations and interviews with Academy and DYRS staff and youth demonstrate, in large part, that the historically low attendance rates for awaiting placement youth have been fueled by behavioral issues.⁸⁰ This is a long-standing concern, which the Special Arbiter has described in

⁷⁶ This is also generally consistent with site observations and interview data related to this period.

⁷⁷ Ex. 6B at 16. Ms. Cramer Brooks noted that neither DYRS nor Academy staff could provide her with accurate documentation of when youth on awaiting placement status attended school and for what reasons they did not attend. It appears Ms. Cramer Brooks was referring to attendance records for each class period as distinguished from the first period attendance records.

⁷⁸ *Id.*

⁷⁹ *Id.* at 1.

⁸⁰ *See, e.g.*, Incident Report No. 6230, December 2, 2009, youth on awaiting placement status allegedly threatened and assaulted several Academy staff members with a shank made from plastic spoons and was suspended from school and referred for disciplinary proceedings; Incident Report No. 6314, December 9, 2009, youth on awaiting placement status allegedly refused to enter classroom, ran around the hallway and jumped over a cubicle in the school, was apprehended, but ran outside through a door that was not secured, injured his knee, and was ultimately removed from school and taken back to his housing unit; Incident Report No. 6808, January 22, 2010, youth on awaiting placement status who allegedly left classroom, ran around the school, turned over furniture, attempted to assault staff and was removed from the school building and taken back to his housing unit; Incident Report No. 6849, January 27, 2010, youth on awaiting placement status suspended from school the day before for allegedly assaulting staff, destroying property and failing to follow staff directives sustained injury requiring emergency room treatment during incident involving destruction of property on the housing unit the next day; Incident Report No. (continued...)

several prior reports.⁸¹ It has substantial implications for this performance standard and other Work Plan requirements. As noted above, very recent attendance data show an encouraging upward trend in school attendance rates for youth housed in the awaiting placement unit. The recent improvements in attendance appear to be attributable to more focused and sustained management attention to these matters. The Special Arbiter will continue to monitor and report on attendance rates for youth housed in the awaiting placement unit to ensure their school attendance continues to improve and the rates contemplated by the Work Plan are maintained over time.

For these reasons, the Special Arbiter recommends that the Court vacate Goal IV.A.2.a. to the extent it applies to attendance rates for youth housed on the model units.

- b. The District of Columbia Public Schools' ("DCPS") standards-based curriculum shall serve as a guide for the [NB] school curriculum in all core areas such as English or language arts, social studies, mathematics, and science. (Conditional)**

Status of IV.A.2.b.: At the Special Arbiter's request, Ms. Cramer Brooks evaluated the Academy's program in relation to this Work Plan requirement,⁸² concluding that this performance standard has been achieved. For the reasons set forth below, the Special Arbiter adopts Ms. Cramer Brooks's findings.

The Academy has developed a curriculum for the four core subject areas: English, social studies, math, and science. The curriculum has been adapted to make it culturally relevant and responsive to the needs of the students at NB. It is organized into eight modular units. Each unit takes approximately one month to complete. Because student lengths of stay at NB do not

7756, April 22, 2010, following alleged riot on awaiting placement unit, all youth housed in the unit were not permitted to attend school the next day.

⁸¹ See, e.g., *Status Report Regarding the Population at the Youth Services Center and Oak Hill Youth Center*, filed December 11, 2008, at 5-6; *July 2008 Report* at 33-34.

⁸² Ex. 6B at 4-6.

precisely overlap, this structure is designed to increase the likelihood that students in the model units will complete full units of study before transfer out of the facility. Requirements are adjusted for students who enroll in the school during the course of a unit of study. The units of study are thematic and cross-curricular.⁸³ Each unit of study has corresponding lesson plans that are designed to be completed within one month.

Ms. Cramer Brooks reviewed each of the Academy's core subject curricula and found that the curriculum is aligned with multiple standards from a number of subject areas in the DCPS standards-based curriculum.⁸⁴ Consistent with best practices in the confinement education context, Ms. Cramer Brooks found the curriculum identifies "power standards"⁸⁵ as well as grade-level expectations and objectives to drive instruction.⁸⁶ Moreover, based on classroom observations, Ms. Cramer Brooks found that the Academy's teaching staff was implementing the curriculum.⁸⁷

Although defendants do not concede any modifications to the curriculum are necessary to satisfy Work Plan requirements for youth on awaiting placement status housed on model units, defendants expect to implement modifications to the curriculum that is used for youth who are housed in the awaiting placement unit to address concerns identified by Ms. Brooks that are described more fully below.⁸⁸ In light of these concerns, which the Special Arbiter shares, the Special Arbiter recommends that the Court vacate this subsection only insofar as it relates to

⁸³ The curriculum is divided into the following units of study: Relationships, Systems, Power, Change, Justice, Choice, Ethics and Dreams. *Id.* at 4.

⁸⁴ *Id.* at 5.

⁸⁵ According to Ms. Cramer Brooks, "power standards" are designed to "reflect critical knowledge, skills and abilities for instruction in short-term instructional units." *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* The deviations Ms. Cramer Brooks identified were deemed acceptable. For example, two of the nine classes Ms. Cramer Brooks observed were science classes in which teachers departed from the curriculum to honor a science-related national awareness day. *Id.*

⁸⁸ See *infra* p. 36 and App. B, Ex. 6, *infra* note 117.

youth enrolled in the model unit program. The Special Arbiter will monitor defendants' progress implementing the curricular modifications for youth on awaiting placement status and report to the Court and the parties on her findings.

3. **Individualized Plans for Each Student** (Mandatory for special education students; conditional for general education students)
 - a. **Individualized plans for each student's educational services, goals, and objectives, including vocational classes or programs as appropriate, shall be developed for all general education and special education students within 45 days following each student's admission to [NB].**
 - ii. **Performance Standard: By September 1, 2009 and thereafter, or by such earlier date as defendants indicate, in writing, that this standard has been met, no less than 90 percent of all students shall have individualized plans within 45 days of their arrival at [NB]. For special education students who enter [NB] with an existing individual education plan ("IEP"), this standard may be met by reviewing the student's current IEP and modifying or adapting it, as appropriate for implementation.**

Status of IV.A.3.a.(ii): At the Special Arbiter's request, Ms. Cramer Brooks evaluated performance relevant to this Work Plan requirement.⁸⁹ She found that IEPs are generally reviewed, modified or adapted as appropriate for youth eligible for special education services who are enrolled in the model unit program within 45 days of admission to NB.⁹⁰ In addition, Ms. Cramer Brooks concluded that notwithstanding the fact that the ILPs developed for general education students after enrollment in a model unit program do not constitute the individualized plans required by this performance standard, through a combination of alternative measures, the intent of this Work Plan requirement is satisfied for general education students enrolled in the model unit program. However, Ms. Cramer Brooks found this performance standard has not been satisfied for either general or special education students who are on awaiting placement status at NB. The Special Arbiter fully adopts Ms. Cramer Brooks's findings.

⁸⁹ Ex. 6B at 6-14.

⁹⁰ Ms. Cramer Brooks raised certain concerns related to the timeliness of IEP development that are addressed *infra* p. 34.

Ms. Cramer Brooks's findings related to the awaiting placement population are particularly significant because this cohort constitutes a sizeable portion of NB's population. Analysis of DYRS population data starting near the point the Work Plan process began indicates that the average number of admissions to NB and its predecessor, Oak Hill, has nearly quadrupled, from an average of 18 youth per month during the last six months of 2004, to a high of slightly over 68 youth per month during the first four months of 2010.⁹¹ At least since November 2009, youth on awaiting placement status have comprised between 20 and 40 percent of NB's overall population, and, at times, these youth have constituted nearly half of the facility's overall population.⁹² Instead of being confined to one 10-bed housing unit, an assumption that currently undergirds the design of NB's programs, awaiting placement youth are housed routinely on NB's model units.⁹³ As the Special Arbiter has reported previously, this phenomenon, combined with the transient nature of the awaiting placement population, has substantial implications for virtually all operations at NB, including the educational program.⁹⁴

The educational program at NB was designed primarily to address the individual academic strengths and needs of both general and special education students who are enrolled in the model unit program. Following admission, youth are initially placed at NB on "awaiting placement" status. Defendants report that these youth are housed at NB pending the completion

⁹¹ Ex. 11, Chart prepared by the Office of the Special Arbiter, Committed Admissions to Oak Hill Youth Center and New Beginnings Youth Center, by Month, July 2004 – April 2010. According to data provided by the defendants on May 27, 2010, for the period between January and early May 2010, a combination of the following factors contributed to the recent increase: custody orders related to abscondances, new commitments, and rearrests.

⁹² Ex. 12, Chart prepared by the Office of the Special Arbiter, Awaiting Placement Youth Housed at New Beginnings, by Day and Housing Unit Assignment, November 1, 2009 – May 17, 2010.

⁹³ *Id.* DYRS housing assignment records show that youth on awaiting placement status have been housed in virtually all of NB's housing units. NB's unit managers and other DYRS staff report that this adversely affects the efficacy of the model unit program.

⁹⁴ *See, e.g., October 2009 Report at 35.*

of an assessment process and a final placement decision.⁹⁵ Only a small percentage of youth on awaiting placement status ultimately are enrolled in one of NB's model unit programs.⁹⁶

Approximately 75 percent of the youth are transferred to a different placement within 15 days of their admission to NB.⁹⁷ According to a program summary submitted to the Special Arbiter by the Academy principal in November 2009, the development of an individualized approach to teaching and learning for each student is initiated during an intake and assessment process that occurs within one week of a student's enrollment in the model unit program.⁹⁸ At this point, students begin working with the advocates, Academy staff members assigned to each of NB's

⁹⁵ Data provided to the Special Arbiter by the defendants on May 27, 2010 indicate that between January 1 and early May 2010, 45 percent of the 291 youth admitted to NB had a Youth Family Team Meeting [hereinafter YFTM] prior to their admission to the facility. Another 50 percent arrived without a YFTM and were released from NB before one was conducted. For newly committed youth, DYRS case management protocols contemplate the assessment process will be finalized prior to admission to NB, but if not, within 15 days of admission to the facility. §7 DYRS Case Management Manual, Version III, April 2009. According to the protocols, the assessment process, which culminates in the development of an individual development plan ("IDP"), includes a risk assessment based on a structured decision-making assessment tool to determine level of restrictiveness; the convening of a YFTM to determine the needs, strengths, services, supports, and opportunities that should be afforded to each youth; a review of the Superior Court Social Services Social Study; and a review of any psychological and/or psychiatric evaluation. IDPs are intended to reflect the DYRS placement decision as well as the services, supports and opportunities that should be afforded to each youth during commitment.

⁹⁶ According to data provided to the Special Arbiter by the defendants on May 27, 2010, between January 1 and early May 2010, of the 291 youth who were awaiting placement at NB during this period, only 12, or 2.5 percent, were enrolled in a model unit. The Special Arbiter's analysis of placement data for three months during a recent five-month period indicates that between eight and 12 percent of awaiting placement youth ultimately enrolled in the model unit program. *See* Ex. 13, Charts prepared by the Office of the Special Arbiter, Length of Stay for All Youth Admitted to NB in December 2009, February 2010 and April 2010.

⁹⁷ *Id.* The placement data analyzed by the Special Arbiter showed that between 75 and 80 percent of the youth admitted to the facility during December 2009, February 2010 and April 2010 were transferred out within 15 days. According to data provided to the Special Arbiter by the defendants on May 27, 2010, between January 1 and early May 2010, 31 percent of these youth were transferred to a group home, 20 percent to a parent/home, 15 percent to Exodus House (a short-term residential program operated by DYRS), 12 percent to a residential treatment center, and the balance to other placements, including "subacute" facilities for evaluation. In April 2009, DYRS started to divert committed youth to newly created "subacute care centers" or "diagnostic placement centers" instead of housing them at Oak Hill and later at NB. As the Special Arbiter has previously reported, between early April and mid-September 2009, DYRS transferred 90 youth to these centers, which are predominantly located far outside of the Washington, D.C. metropolitan area. *See October 2009 Report* at 30. The data submitted by the defendants on May 27, 2010 indicates that defendants' reliance on these "subacute" placements has declined. DYRS managers report that since early 2010, fewer subacute placements have been approved for Medicaid funding, a factor that appears to have exacerbated the challenges associated with the awaiting placement population.

⁹⁸ Ex. 14, excerpt from November 13, 2009 submission, Individualization and ILPs at Maya Angelou Academy, prepared for the Special Arbiter at the initiative of the Academy's principal, for further detail about this process. The description reflected in this submission is consistent with data obtained through interviews, record reviews and site observations.

model units, who serve as the Academy's liaison to each housing unit. Advocates work with model unit students to facilitate their adjustment to school as well as their transition back to the community prior to and for a 90-day period following discharge.⁹⁹

During the first week of a student's enrollment in the model unit program, advocates work with each youth to develop an ILP. ILPs are prepared for both general and special education students. The forms include data related to each student's educational background as well as assessment data and academic and behavior goals.¹⁰⁰ As noted above, Ms. Cramer Brooks assessed the ILP process and reviewed individual ILPs to determine whether the ILPs prepared by the Academy are the equivalent of the individual plans for each student's educational services, goals, and objectives required by this performance standard.¹⁰¹ As part of her assessment, Ms. Cramer Brooks interviewed Academy staff and reviewed 36 ILPs. Ms. Cramer Brooks concluded that as designed and written, the ILP cannot drive instruction because the academic goals are vague and correspond to the generic expectations of the level system used in the model unit programs.¹⁰² Given this significant limitation, it is not surprising that Ms.

⁹⁹ Advocates are assigned to play a role in locating educational and job placements for NB students prior to their transfers to a community setting. *See id.* at 1 for an additional description of the work advocates perform relating to with the youth enrolled in the model unit program. As part of the planned improvements to the educational program for youth on awaiting placement status, it is anticipated that the advocates will begin to work with students on awaiting placement status in the near term. *See* App. B, Ex. 6, *infra* note 117 for additional information regarding this matter.

¹⁰⁰ A sample ILP form is included in the appendix as Ex. 15. Although career institute goals remain on the ILP form that is currently in use, as Ms. Cramer Brooks notes, the Academy no longer addresses these goals on the ILP. *See* Ex. 6B at 9.

¹⁰¹ *See id.* at 9-11 for Ms. Cramer Brooks's assessment of the ILPs. Ms. Cramer Brooks also found that ILPs are completed within 45 days of a student's admission to NB. *Id.* at 7. Given the fact that ILPs do not constitute the individual plans required by the Work Plan, this finding is not addressed herein.

¹⁰² DYRS reports that it assigns high risk youth to NB's model unit program. Youth enrolled in the program are required to meet certain behavioral and therapeutic goals in order to pass through six levels and ultimately "graduate" from the program. Ms. Cramer Brooks found that the ILPs have a "'cookie cutter' appearance much more individualized to the particular [model program] level as opposed to the specific scholar." *Id.* at 9. The Special Arbitrator's independent review of the ILP's confirms this finding. *See, e.g.*, Ex. 16A - Ex. 16C, excerpts from three redacted ILPs, each dated November 11, 2009, of level five and level six students with several identical goals: 1) pass all classes each term/unit; 2) earn As and Bs in all classes each term; 3) achieve 100 percent of money options or \$810 in career institute goal.

Cramer Brooks found that “[t]eachers do not refer to the ILP for any decisions concerning curriculum or instruction.”¹⁰³ Instead of serving as a tool to direct individualized instruction as contemplated by the Work Plan, the ILP is referred to by the advocates at three points during the course of a student’s residency at NB: during the first week of a student’s enrollment in the model unit program; when a student is between levels three and four of the model unit program;¹⁰⁴ and upon a student’s release from NB.¹⁰⁵

In addition to the ILP, according to the Academy’s November 2009 submission, during the first week of enrollment in the model unit program, planning for IEP reviews and updates was initiated for special education-eligible students. During the time period covered by Ms. Cramer Brooks’s site visit and the Special Arbiter’s related assessment, it was at this point that efforts were made to locate past school records, including IEPs and assessment data.¹⁰⁶ In their comments on the draft versions of this report, defendants contend that the school obtains student records for all students, including students on awaiting placement status, within 24 hours of their entry into the program. Moreover, defendants state that if a transcript indicates a student has an IEP, the staff obtain it and do not wait until a placement decision has been made. This represents a significant departure from the policy documents that were provided to the Special Arbiter by the Academy’s principal prior to Ms. Cramer Brooks’s site visit¹⁰⁷ and the representations made to Ms. Cramer Brooks and the Special Arbiter during the course of this assessment. The Special Arbiter has not had an opportunity to determine when this change in policy and practice

¹⁰³ Ex. 6B at 10.

¹⁰⁴ See *supra* note 102 for a description of the level system.

¹⁰⁵ This information was reported to Ms. Cramer Brooks during the interviews she conducted with the advocates. Ex. 6B at 9-10.

¹⁰⁶ The Academy principal’s November 2009 submission indicates that efforts to locate school records for special education students were initiated once a student was identified as likely to transfer to the model unit program. Ex. 14 at 3. However, Ms. Cramer Brooks notes that based on interviews and other data obtained during her site visit, educational records were not requested until after a student was transferred to a model unit. Ex. 6B at 8.

¹⁰⁷ Ex. 14, *supra* note 98.

occurred. Preliminarily, however, it appears that there was a change in practice at some point after Ms. Brooks's site visit.

At the Special Arbiter's request, Ms. Cramer Brooks assessed the timeliness and content of the IEPs developed for the special education-eligible students enrolled in the model unit program.¹⁰⁸ Ms. Cramer Brooks reviewed the records of the 21 students enrolled in the program who were eligible for special education services and at the time of her site visit had been housed at NB for 45 days or longer, finding that 19 students had an existing IEP that was either reviewed, modified, adapted or developed by Academy staff, as appropriate, within the 45-day time period.¹⁰⁹ Ms. Cramer Brooks also determined that two of the 21 special education-eligible students who had been at the facility for 200 and 203 days, respectively, did not have an existing IEP or an IEP developed by Academy staff. Because of the excessive delays in developing IEPs for the two students Ms. Cramer Brooks identified, one of whom was on awaiting placement status, Ms. Cramer Brooks recommended continued monitoring of the special education process for compliance with timeline requirements.¹¹⁰ As described more fully below, timelines related to IEP implementation for youth on awaiting placement status will be subject to further monitoring and evaluation.

Ms. Cramer Brooks also assessed the content of IEPs that are used for the students enrolled in the model unit program, finding that virtually all of the IEPs reviewed satisfied this subsection's performance standard.¹¹¹ In this regard, she noted that the IEPs were well-written and included measureable goals that correlated to each student's specific deficit areas and

¹⁰⁸ Ex. 6B at 6-8 and 11-13.

¹⁰⁹ *Id.* at 7.

¹¹⁰ *Id.* Ms. Cramer Brooks noted that the 45-day requirement is far more generous than applicable federal statutory requirements. *Id.* at 8. *See, e.g.*, 34 C.F.R. § 300.323 (2006), which provides that a meeting to develop an IEP must be conducted within 30 days of the determination that a student needs special education services.

¹¹¹ Ex. 6B at 13.

disability. This finding is particularly significant in light of the high percentage of youth enrolled in the model unit program who are eligible for special education services.

Unlike the situation for youth enrolled in the model unit program, neither ILPs nor IEPs were developed for students at NB who are on awaiting placement status during the period covered by Ms. Cramer Brooks' assessment.¹¹² In this regard, Ms. Cramer Brooks found that when youth on awaiting placement status attend school, "they are frequently plugged into the same thematic curriculum that was designed for nineteen to twenty-two days of instructional program."¹¹³ Moreover, youth who were eligible for special education services at the time of Ms. Cramer Brooks' assessment did not receive these services when they were on awaiting placement status. In fact, Ms. Cramer Brooks determined that existing IEPs were not implemented, and new IEPs were not developed.¹¹⁴ For these reasons, Ms. Cramer Brooks concluded that youth on awaiting placement status at NB have not received an individualized education.¹¹⁵ This outcome was neither contemplated nor intended during the Work Plan development process. And while it is entirely appropriate for the individualized plans developed for awaiting placement youth to be structured and conceptualized differently from the plans developed for youth in the model unit program, the individualized educational needs of this cohort of students must be addressed in a deliberate and meaningful way.

As noted above, in their comments on the initial draft version of this report, defendants indicated that while they believed Goal IV.A.3. requirements for youth on awaiting placement status had been satisfied, they were prepared to address key concerns raised by Ms. Cramer Brooks's assessment. Thus, the Special Arbitrator and the parties conferred with the Academy's

¹¹² *Id.* at 16; *see also* Ex. 14, *supra* note 98.

¹¹³ Ex. 6B at 16. This reference is to the unit of study which has a four-week duration.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

principal and Ms. Cramer Brooks and reached agreement on a series of modifications to the educational program for students on awaiting placement status at NB. The agreement will be used to determine whether an adequate substitute for the required individual educational plans for awaiting placement youth who do not have IEPs is used to determine instructional strategies,¹¹⁶ as well as whether effective methods have been established and implemented to ensure individualized instruction for this cohort of students.

The agreement includes specific timelines, applicable to all awaiting placement youth housed at the facility, within which educational records will be obtained; IEPs retrieved, reviewed and implemented; transcripts updated; educational assessments conducted and the results communicated to the teachers who will use the information in curriculum content and instructional strategy decisions. The agreement also includes modifications to the curriculum that is used for youth on awaiting placement status who are housed in Unity – the NB awaiting placement unit. The terms of the agreement are included in the Appendix to this report.¹¹⁷ The Special Arbiter will monitor progress and reevaluate the educational program offered to youth on awaiting placement status to determine whether Goal IV.A.3. has been satisfied and report to the Court and the parties on her findings.

4. **Each general education and special education student shall receive the educational services and supports prescribed in his/her individualized plan** (Mandatory for special education students; conditional for general education students)
 - a. **Review to determine whether students receive the educational services and supports prescribed in their individualized plans.**
 - i. **Performance Standard: By September 1, 2009, the Special Arbiter shall engage an expert, selected by the Special Arbiter pursuant to the selection process established by the December 26, 2006 order, to assess whether individualized student education plans are being implemented at [NB]. The assessment shall include a review of the plans to determine whether the plans document the link between the assessed**

¹¹⁶ If the students are special education eligible, the IEP will be relied upon for this determination.

¹¹⁷ App. B, Ex. 6, Agreement Regarding Youth on Awaiting Placement Status.

levels of student performance and the goals and objectives for each student, and whether the objectives and services are tailored to each student's needs. In addition, the assessment shall determine whether there is a demonstrable link between classroom academic activities, student goals and objectives as reflected in the plans, and the services described in the IEP.

In the event the expert finds material deficiencies in IEP implementation at [NB] that do not constitute isolated or *de minimis* deviations and that are indicative of a pattern and practice, the parties shall resolve by agreement whether such deficiencies should be addressed through a supplement to the Work Plan in consultation with the Special Arbiter. Any supplementary Work Plan provision shall be established by the agreement of the parties, in consultation with the Special Arbiter and the expert, within 30 days following the issuance of the expert's assessment, and shall be submitted to the Court for approval.

Status of IV.A.4.a.(i): At the Special Arbiter's request, Ms. Cramer Brooks evaluated whether students at NB receive the educational services and supports prescribed in their individual plans. Based on her assessment, Ms. Cramer Brooks found that this performance standard was satisfied for special education students enrolled in the model unit program.¹¹⁸ In addition, Ms. Cramer Brooks concluded that the intent of this performance standard was satisfied for general education students enrolled in the model unit program. Although Ms. Cramer Brooks found that the Academy does not develop the individual plans required by Goal IV.A.4.a.(i), she concluded that general education students in the model unit program receive an individualized and quality education for two reasons: 1) an adequate substitute is used to determine instructional strategies;¹¹⁹ and 2) effective methods have been established and implemented to ensure individualized instruction.¹²⁰ As detailed in the preceding narrative related to Goal IV.A.3.a.,¹²¹ individual plans are not developed for students at NB on awaiting placement status. Thus, Ms. Cramer Brooks found that this performance standard had not been achieved with respect to youth

¹¹⁸ Ex. 6B at 15.

¹¹⁹ Ms. Cramer Brooks noted that the services and supports a general education student may require to be successful are not addressed by the substitutes for the individual plan that are used by the Academy, and as a result, she recommends a redesign of the ILPs that are developed for the Academy's general education students. *Id.* at 14.

¹²⁰ *Id.*

¹²¹ *See supra* p. 29.

on awaiting placement status. The Special Arbiter fully adopts Ms. Cramer Brooks's findings, which are explained below.¹²² The agreement related to modifications to the educational program for youth on awaiting placement status that is described in the preceding section of this report is also applicable to the Goal IV.A.4. performance standard.¹²³

Ms. Cramer Brooks limited her assessment for this performance standard to the connection between IEPs and the instruction and services delivered to special education students.¹²⁴ She reviewed 19 IEPs and randomly chose ten students to observe in the classroom. For eight of the 10 students selected for classroom observation, Ms. Cramer Brooks found that there was an observable connection between assessment data, instructional strategies and accommodations used in the classroom.¹²⁵ In addition, Ms. Cramer Brooks found that IEP goals for special education eligible students enrolled in the model program who receive educational services in the general education classroom corresponded to student academic levels and were relevant to the curriculum.¹²⁶ On this basis, Ms. Cramer Brooks found the performance standard has been satisfied for special education students enrolled in the model unit program.

VI. Goal Six: Youth at both the YSC and [NB] shall participate in structured activities during 80 percent of their waking hours, which shall include the type and amount of exercise and recreation required by the Consent Decree. In addition, youth at the YSC and [NB] shall have access to a non-mandatory and confidential grievance process.

¹²² Ex. 6B at 14.

¹²³ The parties, in consultation with the Special Arbiter and consistent with her recommendations, have agreed that the deficiencies Ms. Brooks found in IEP implementation for youth on awaiting placement status do not, at this time, warrant a modification to the Work Plan. Instead, the parties have reached agreement on improvements in the educational program for youth on awaiting placement status that will guide the reevaluation that will be conducted by the Special Arbiter and her expert consultant pursuant to the agreement described *supra* p. 36. As noted above, the Special Arbiter fully endorses the parties' agreement.

¹²⁴ Ex. 6B at 14.

¹²⁵ *Id.* at 15.

¹²⁶ Ms. Cramer Brooks did, however, note significant discrepancies which should be addressed for students enrolled in the GED and pre-GED program. *Id.*

Goal VI addresses structured recreational activities and implementation of a non-mandatory and confidential grievance process. This section of the report presents the Special Arbiter's findings related to Goal VI.A.1.a. and b., one of two Goal VI performance standards designed to measure whether youth at the YSC and NB regularly participate in exercise and other structured recreational activities.¹²⁷ These performance standards are derived from the Consent Decree, which recognized that recreation is an essential component of youth development.¹²⁸ As a practical matter, in institutional settings such as the YSC and NB, a structured daily recreation program serves an additional purpose: it is an antidote to idleness – a factor that has contributed to a number of critical issues throughout the course of this lawsuit.

The evidence shows defendants have made recent and significant progress implementing a recreation program with the capacity to engage youth in two hours of planned and structured recreation on a daily basis. Substantial resources have been allocated to recreational activities at both the YSC and NB as evidenced by the fact that each facility is staffed with four recreation specialists. Additional recreational opportunities are now afforded at both facilities, including very innovative recreational programs that have been offered for some cohorts of youth housed at NB.¹²⁹ Currently, youth routinely participate in

¹²⁷ Pursuant to the notice and review process, the Special Arbiter previously evaluated Goal VI.A.3.a.(i), the Goal VI performance standard related to the grievance process. The Special Arbiter's informal findings were provided to both parties, and defendants report that they have been working to address certain issues that were identified by the Special Arbiter. For these reasons, the Special Arbiter's formal findings related to the grievance process requirements in Goal VI.A.3.a.(i) will be addressed in a future report. *See October 2009 Report* at 6-8 and *supra* note 4.

¹²⁸ Consent Decree at §IV.D.

¹²⁹ The program has included team building using a high ropes course at Oak Hill. At NB, youth have participated in innovative recreational activities such as white-water rafting and they have participated in the design and construction of a raptor barn through the Academy's career institute program. At times, some of these activities have been curtailed due to Youth Development Representative [hereinafter YDR] staffing shortages. Participation in off-site recreational activities have been limited to a small number of youth. Instead of offering off-site recreational activities for all students at the facility, which was initially the case, DYRS staff report these activities are now only (continued...)

at least one hour of large muscle activity on a daily basis, and to the extent feasible, weather permitting, outdoor recreational opportunities are also provided at both facilities. Additional structured recreational activities are available to some, but not all youth at each facility, on a regular basis. These findings are described more fully below.

In their comments on the initial draft version of this report, defendants do not dispute the Special Arbiter's findings related to structured recreational activity during the prescribed performance period. Defendants contend, however, that subsequent to the required performance period, the performance standard was met at both the YSC and at NB. Defendants support this claim with internal monitoring reports that are based on a definition of structured recreational activity that appears to the Special Arbiter to be at odds with the intent of the performance standard. The Special Arbiter has discussed this concern with the parties and they agree to work with her on more precisely defining the standards for structured recreation in order to ensure the consistent and uniform delivery of structured recreational activity to the youth housed at NB and the YSC on a regular basis.

A. Indicators for Goal Six¹³⁰ (Conditional)

1. Exercise and Recreational Activity

- a. Youth housed at [NB] shall participate in a minimum of two hours of structured recreational activities each day. Youth shall participate in at least one hour of "large muscle activity" and at least one hour of outdoor recreation, weather permitting.¹³¹ (Conditional)**
 - i. Performance Standard: For 85 percent of the days sampled between October 1, 2009 and December 31, 2009, 85 percent of the youth housed at [NB] shall participate in two hours of structured recreational activity each day, including one hour of "large muscle" activity and one hour of**

offered episodically to youth who do not have significant institutional disciplinary records and who have achieved at least a level four in the model unit program.

¹³⁰ The Work Plan states: "Youth on medical hold status, overnights, and youth who have been admitted to [NB] or the YSC within the previous 24 hours shall be excluded from the sampling referred to in VI.A.1. and 2." See January 2010 Work Plan at 41 n. 39.

¹³¹ According to the Work Plan, "'Large muscle' activity includes team sports, jogging and regular gymnasium activities." *Id.* at 42 n. 40.

outdoor recreation, weather permitting. The Special Arbiter shall determine whether this standard has been met based on a sample of up to 30 days selected by the Special Arbiter from the period beginning October 1, 2009 and December 31, 2009. The Special Arbiter shall find that the performance standard has been met if 85 percent of the youth housed at [NB] engaged in two hours of structured recreational activities on 85 percent of the days sampled.

- b. Youth housed at the YSC shall participate in a minimum of two hours of structured recreational activities each day. Youth shall participate in at least one hour of large muscle activity, and at least one hour of outdoor recreation to the extent possible, weather permitting. (Conditional)
 - i. Performance Standard: For 85 percent of the days sampled between October 1, 2009 and December 31, 2009, 85 percent of the youth housed at the YSC shall participate in two hours of structured recreational activity each day, including one hour of “large muscle” activity and one hour of outdoor recreation to the extent possible, weather permitting. The Special Arbiter shall determine whether this standard has been met based on a sample of up to 30 days selected by the Special Arbiter from the period beginning October 1, 2009 and ending December 31, 2009. The Special Arbiter shall find that the performance standard has been met if 85 percent of the youth housed at the YSC engaged in two hours of structured recreational activities on 85 percent of the days sampled.

Status of VI.A.1.a.(i) and b.(i): The evidence establishes that defendants have satisfied the performance standard for Goals VI.A.1.a. and b. insofar as they require that youth at the YSC and NB participate in at least one hour of large muscle activity on a daily basis. However, because additional structured recreational activities are available to some, but not all youth at each facility on a regular basis, further assessment will be conducted after the parties, in consultation with the Special Arbiter, establish the standards used to define the second required hour of structured recreation at each facility.

Goal VI requires that youth receive the type and amount of exercise and recreation mandated by the Consent Decree. The Consent Decree requires a range of individual and group outdoor and indoor activities for two hours each day, with one hour outdoors, weather permitting, and one hour of large muscle activity, which is defined by the Consent Decree as

“team sports and jogging and regular gymnasium activities.”¹³² Pursuant to the Consent Decree, defendants are required to provide “[a] planned structured recreation program” on the weekends and evenings.¹³³ Accordingly, the performance standards for Goals VI.A.1.a. and b. require two hours of structured recreational activity on a daily basis, with at least one hour outdoors to the extent weather permits and with one hour of large muscle activity.

As a threshold matter, because of how records related to youth participation in recreational activities are maintained at both the YSC and NB, it was not possible to conduct the type of quantitative analysis contemplated by these performance standards. Various logbooks and an electronic database capture some aspects of the recreational activities that are afforded to youth at each facility.¹³⁴ However, because the data in these records are not recorded in a way that tracks the requirements of these performance standards, the type of quantitative analysis contemplated by these subsections could not be conducted.¹³⁵ Nonetheless, as explained below, based on interviews with youth and staff, observations during site visits, and a review of the

¹³² Consent Decree at §IV.D.1. The Decree distinguishes between weekday and weekend recreation, requiring a planned and structured recreation program during weekday evenings and weekends. *Id.* at §§IV.D.1. and 2.

¹³³ *Id.* at §IV.D.2., requiring, at a minimum, a range of indoor and outdoor activities, including one hour of large muscle activity and one hour outdoors weather permitting, for at least two hours each weekend day.

¹³⁴ Defendants also capture data related to youth participation in recreational activity in YES!, the DYRS information management system. DYRS recreation staff report that because of limitations in the electronic data system, they have been required to maintain paper records documenting youth participation in recreational activities. Because of these limitations, the DYRS data system was not relied upon for this assessment.

¹³⁵ This limitation is illustrated by records related to participation in large muscle activity that are maintained at NB. A comparison of NB’s housing unit logbook entries with records maintained by gym staff reveals discrepancies in the recorded number of youth participating in large muscle activity. For example, during the week of December 6-12, 2009, on five of seven days reviewed, there were discrepancies between the housing unit logbook maintained by staff in Imani, one of NB’s model units, and the Gym Journal, a logbook in the Gym that is maintained by the Gym staff. *See* Ex. 17, Chart prepared by the Office of the Special Arbiter, New Beginnings: Comparison of December 6-12, 2009 Imani Unit Logbook Entries and Gym Journal Entries. The gym records do not consistently reflect the time youth enter the gym or the length of time youth remain in the gym. Based on staff interviews and examination of the records, it appears that the gym staff record the count in the gym’s logbook when the youth from a specific housing unit first arrive in the gym, and they do not change the count to reflect youth from the housing unit who arrive any time thereafter. If the gym records were used as a basis for calculating the percentage of youth who participated in large muscle activity, the percentage would be under-reported. However, while it may be a more accurate record of the number of youth who went to the gym, reliance on the housing unit logbook would result in over-reporting the percentage of youth who received a full hour of large muscle activity.

relevant records maintained at each facility,¹³⁶ the Special Arbiter is able to make a determination about whether the recreational practices at each facility comport with the intent of these performance standards. Recreational practices at the YSC and NB are described separately, below.

According to the YSC class schedule in effect during most of the performance period prescribed by the Work Plan, youth participated in a 35-minute physical education class every other school day.¹³⁷ The classes were conducted in the gymnasium and taught by a DCPS teacher. Physical education classes at the YSC include various types of large muscle activities such as flag football, kickball, badminton, soccer, volleyball, and four square.¹³⁸ Interviews with DYRS and DCPS staff and a review of attendance records that are maintained by DCPS confirm that the classes generally were conducted as scheduled during the performance period.¹³⁹

In addition to the physical education class, according to the housing unit schedules,¹⁴⁰ each housing unit at the YSC was scheduled for one hour of gym time on a daily basis during the performance period.¹⁴¹ During gym, youth engage in a variety of large muscle activities such as

¹³⁶ The following records related to the time periods within the performance period, or other time periods that are specified herein, were reviewed at the YSC: daily schedules for each housing unit; DCPS school schedule; attendance records for physical education classes; recreation journal; sign-in logbook for large muscle activity; a print-out from the electronic database maintained by the gym supervisor; and recreation logbooks maintained on the housing units. At NB, the records that were reviewed included the daily schedules available in the housing units for five housing units (as described *infra* note 158, the sixth housing unit was closed for renovation during part of the performance period); the Academy class schedule; the gym journal; the gym time rosters; and housing unit logbooks.

¹³⁷ Ex. 18A, Schedule First Semester, November 2009 – January 2010, Advisory II.

¹³⁸ During class, youth also receive physical assessments which require them to run and perform certain exercises such as push-ups and sit-ups.

¹³⁹ Attendance records for each housing unit covering eight school days between November 20, 2009 and December 3, 2009 were reviewed. The records indicate that except for three first period classes involving one housing unit, youth on all housing units attended physical education classes as scheduled during the eight-day period.

¹⁴⁰ Observations during site visits and interview data indicate that there are often variances between activities listed on the housing unit schedules and the actual activities that occur on the housing units during any specific time period. Thus, the Special Arbiter has not relied exclusively on the schedules in determining whether certain specified activities have taken place.

¹⁴¹ Each housing unit at the YSC has a daily schedule. A review of the schedules that were available in the housing units at the YSC during the performance period indicates that most, but not all units, had gym time scheduled every day. *See, e.g.*, Ex. 18B, October 5-19, 2009, bi-weekly schedule for A-100, listing time periods for “large muscle” (continued...)

weightlifting, basketball, dodgeball, football, kickball, running and jump rope. A review of the sign-in logbook maintained by the gym staff, as well as interviews with youth and DYRS staff assigned to the gym and to the housing units, establishes that youth housed at the YSC generally participated in large muscle activities in the gym during the performance period.¹⁴²

To their credit, YSC staff generally provided the youth housed at the facility with daily access to the gym for one hour during the performance period notwithstanding the fact that the performance period overlapped with the most significant population crisis in the YSC's history.¹⁴³ Indeed, as described in several of the Special Arbiter's prior reports,¹⁴⁴ during the performance period, the YSC's population remained at or near unprecedented levels for a sustained period of time, climbing to a high of 156 youth during the latter part of November 2009.¹⁴⁵

(i.e., gym time) each day of the week; Ex. 18C, October 19 – November 1, 2009, bi-weekly schedule for B-100, listing time periods for "large muscle" on Saturdays and Sundays and "In/Outdoor Recreation" on weekdays; Ex. 18D, October 5-18, 2009, bi-weekly schedule for C-100, listing one hour for "large muscle" seven days per week; Ex. 18E, August 17-23, 2009, schedule for D-100 (this schedule was provided by the housing unit staff in D-100 as the schedule in use during the performance period), listing one hour of gym seven days per week; Ex. 18F, December 14-20, 2009, schedule for A-200, listing one hour of gym six days per week; Ex. 18G, November 16-22, 2009, schedule for B-200, listing one hour of gym seven days per week; Ex. 18H, November 26 – December 14, 2009, schedule for C-200, listing one hour of gym seven days per week; and, Ex. 18I, November 1-30, 2009, schedule for D-200, listing one hour of gym seven days per week.

¹⁴² See, e.g., Ex. 19, Table prepared by the Office of the Special Arbiter, based on a review of the YSC Gym Sign-In Log for October 1 – December 10, 2009, reflecting the number of youth from each housing unit listed in the log as present in the gym each day or, in the absence of a numerical entry, reflecting whether there was any evidence that youth from each housing unit were present in the gym each day.

¹⁴³ The overcrowding created ongoing operational challenges for the YSC's staff and management which were compounded by the safety risks associated with moving large numbers of youth in a substantially overcrowded facility to and from the gym throughout the day, including youth housed in make-shift dormitories. Although scheduled gym periods were disrupted during this time due to incidents that occurred before gym, in the gym, or en route to and from the gym, there is evidence from multiple site visit observations and interviews that staff and managers generally tried to maximize the amount of time that many of the units and areas of overflow housing were allotted for gym.

¹⁴⁴ See, e.g., *October 2009 Report* at 27 and 30-32; *Status Report Regarding the Population at the Youth Services Center*, filed December 22, 2009, at 2-3.

¹⁴⁵ Ex. 20, Chart prepared by the Office of the Special Arbiter, Total YSC Population (Including Overnights), December 17, 2004 – May 18, 2010, showing that for most of the performance period the YSC population substantially exceeded its single-room capacity with sustained periods at the highest levels recorded since the date the facility opened during the latter part of 2004.

Along with the 35-minute physical education classes that youth participated in every other school day, and the daily hour of gym time, youth at the YSC were provided with other recreational opportunities during the performance period. As part of the educational program offered by the school, a 35-minute art class was scheduled for each housing unit every other school day.¹⁴⁶ Also, during the performance period, expressive art therapy classes were provided for youth housed at the facility. The classes were conducted by a contractor on a bi-weekly basis for one hour on each housing unit.¹⁴⁷ The housing unit schedules that were available during the performance period include time periods earmarked for recreation after school and on weekends.¹⁴⁸ Interviews with housing unit staff and youth, as well as site observations during the performance period, indicate that for the most part, youth spent this time engaged in largely unstructured activities such as watching television, playing cards, talking in small groups or playing basketball on the small outdoor recreation space adjacent to each housing unit.

As part of the defendants' efforts to increase recreational opportunities for youth at the YSC, four recreation specialists work at the facility to provide coverage seven days per week.¹⁴⁹ Three of the recreation specialists are responsible for supervising recreational activities on the housing units and providing support in the gym. The fourth recreation specialist supervises the others and serves as the gym's manager. During the performance period, the recreation specialists were unable to produce a written schedule showing the time periods that they were required to supervise recreational activities on the housing units; however, the recreation

¹⁴⁶ Ex. 18A, *supra* note 137 for a copy of the school schedule.

¹⁴⁷ Many of the housing unit schedules indicate that these classes were conducted on each housing unit twice each week; however, staff in the units report that the classes are held in each unit every other week.

¹⁴⁸ See, e.g., Exs. 18B-18I, *supra* note 141. As explained *supra* note 140, the housing unit schedules are not always a reliable indicator of the activities that actually occur on the housing unit during specific time periods.

¹⁴⁹ The recreation specialists work a five-day week. Their schedules are designed to maximize the amount of time they are engaged in recreational activities with youth. The specialists work from 1:30 p.m. to 10:00 p.m. on weekdays and 9:00 a.m. to 5:30 p.m. on weekends. They cover the gym when their supervisor, who is responsible for the gym and works a five-day week, is on leave.

specialists reported that they regularly conducted recreational activities on the housing units and contemporaneously recorded each session in a recreation logbook that was maintained for each housing unit. Although the recreation logbook entries appear inconsistent with other data sources that report on the same activities,¹⁵⁰ the logbook entries, observations during site visits, and interviews with youth and DYRS staff assigned to the housing units, indicate that although the recreation specialists do not consistently conduct recreational activities on the housing units on a daily basis, they are regularly present on the housing units for varying periods of time.¹⁵¹

According to both the recreation specialists and the DYRS staff assigned to supervise youth in the housing units, when the recreation specialists are on the housing units, they typically play board games or cards with, at most, a handful of youth while the other youth on the unit watch television or engage in other unstructured activities on the unit.¹⁵² In warm weather, the recreation specialists sometimes accompany youth to a small outdoor courtyard area on the first

¹⁵⁰ A comparison of data entered in an electronic database maintained by the gym supervisor with the daily recreation logbook entries that are filled out by the recreation specialists reveals some key inconsistencies. *See, e.g.*, Ex. 21A, Chart Prepared by the Office of the Special Arbitrator, Comparison of Entries in Electronic Log Maintained by YSC Gym Supervisor with Entries in Recreation Logbook for A-200, October 16-21, 2009.

¹⁵¹ During the 71-day period between September 30, 2009 and December 9, 2009, the recreation logbook for A-200 shows that a recreation specialist was on the unit 49 days watching movies and playing cards and board games with youth. *See, e.g.*, Ex. 21B, excerpted recreation logbook entries for October 6-9, 2009. During the 72-day period between September 29, 2009 and December 9, 2009, the recreation logbook for B-200 shows that a recreation specialist was on the unit 44 days watching movies and playing cards and board games with youth. *See, e.g.*, Ex. 21C, excerpted recreation logbook entries for November 24-28, 2009. During the 71-day period between September 30, 2009 and December 9, 2009, the recreation logbook for C-200 shows that recreation specialists were on the unit 45 days playing cards, watching movies and engaging in unspecified outdoor recreation with youth on the space adjacent to the housing unit. *See, e.g.*, Ex. 21D, excerpted recreation logbook entries for October 10, 13, 14, 15, 2009. During the 72-day period between September 29, 2009 and December 9, 2009, the recreation logbook for D-200 shows that recreation specialists were on the unit 47 days watching movies and playing cards, PlayStation and basketball with youth in the outdoor recreation space adjacent to the housing unit. *See, e.g.*, Ex. 21E, excerpted recreation logbook entries for November 17, 18, 19, 24 25, 2009. These logbook entries were not compared with the electronic database maintained by the gym supervisor to determine whether the electronic database includes any evidence that the recreation specialists were on each of the housing units more frequently; however, it appears that the recreation logbooks under-represent the days that recreation specialists are present on the housing units.

¹⁵² The logbooks maintained by the recreation specialists and the electronic database indicate that the recreation specialists are engaged with all of the youth in the housing units when they visit the units. Verbal reports from staff in the housing units and from some of the recreation specialists themselves confirm that this is not the case. During multiple site visits throughout the performance period, recreation specialists were not observed to be engaged in recreational activities with all of the youth in the housing unit at one time.

floor of the YSC to play board games. This is consistent with entries in the recreation logbooks as well as observations during the site visits conducted throughout the performance period.¹⁵³

During the performance period, neither the recreation specialists nor their supervisor could produce any documentation related to the design, structure or content of the recreation program. The recreation specialists report that they are informed about the board games and equipment available for them to use on the housing units. Although they have been instructed to visit each assigned unit for one hour daily, the recreation specialists confirm that they cannot consistently do so because they must also substitute for each other and for their supervisor on their respective days off. Both the recreation specialists and the housing unit staff report that when the recreation specialists are on the housing units, they play cards, board games and basketball or watch television with some of the youth housed on the unit while the other youth engage in similar activities. These sessions are unstructured and unplanned. This is generally consistent with the recreation logbook entries¹⁵⁴ and observations during site visits that were conducted during the performance period. The evidence does not establish that the activities the recreation specialists engaged in during the performance period were part of a recreational program designed to involve all youth in the housing unit in one hour of structured recreational activity on a daily basis.

The YSC physical plant affords very limited opportunities for outdoor recreation. There are only two areas that can be used by youth for outdoor recreational activities: an enclosed yard on the first floor and the small recreation space adjacent to each housing unit. These exterior sites are narrow, contained by concrete walls, and far too small to accommodate team sports. In

¹⁵³ This is consistent with activities described in the logbook entries that were reviewed for the time periods described *supra* note 151.

¹⁵⁴ Exs. 21B-E, *supra* note 151.

recognition of this limitation, defendants planned to add a secure outdoor yard to the facility grounds several years ago, but construction for this project has not yet been initiated. Instead, defendants have installed basketball hoops in the outdoor areas adjacent to each of the housing units. This innovation has increased the amount of time youth spend outdoors. During the performance period, youth were regularly observed alone or in small groups, shooting baskets in these areas. On a much less frequent basis, they were also observed sitting in the YSC's first floor yard outdoor yard area playing cards or other games.

In contrast to the YSC, except for youth on awaiting placement status, youth at NB have access to a broader array of recreational opportunities. This is appropriate in light of the distinctions between the detained and committed populations. At NB during the current school year, one hour of gym time is incorporated into the class schedule every weekday.¹⁵⁵ Unlike the YSC, during the performance period and until very recently, youth at NB attended school for part of the day on Saturday,¹⁵⁶ and Saturday's class schedule included a 55-minute gym period for some of the housing units.¹⁵⁷ The housing unit schedules, which incorporate the school schedule, indicate that each housing unit, except for the awaiting placement unit, is scheduled to go to the gym for one hour each weekend day.¹⁵⁸ Interviews with youth and staff from the

¹⁵⁵ Ex. 22, Draft Daily Schedule, 2009-2010 School Year, Monday-Thursday and ½ Day Schedule - November +.

¹⁵⁶ See *supra* note 36 for information regarding the cessation of Saturday classes. This scheduling change is likely to have a significant impact on the youth at the facility. The Saturday program clearly benefitted the youth by providing a structured half-day program of enrichment courses such as art, peace studies, instruction in playing chess and American history. See Ex. 23, *supra* note 157, for a copy of the Saturday school schedule.

¹⁵⁷ *Id.*

¹⁵⁸ Exs. 24A-D, schedules for Evolution, Genesis, Imani, and New Horizons housing units, respectively reflecting a one-hour gym period seven days per week; Ex. 24E, schedule for Unity housing unit, reflecting a one-hour gym period five days per week. Generally, except for attending Academy classes, the housing unit schedules do not consistently reflect the precise activities youth engage in during the course of the day. Interviews with staff and youth, as well as observations during site visits, confirm that there are regular variances between activities listed in the unit schedules and the actual activities youth engage in at particular time periods during the day. Thus, the housing unit schedules were not relied upon as the exclusive source of information concerning the recreational activities afforded to youth at NB. Unity, the housing unit used exclusively for youth on awaiting placement status, (continued...)

school, gym and housing units, a review of logbook entries recorded by gym staff, and site observations during the performance period¹⁵⁹ indicate that youth at NB consistently participate in structured large muscle activities in the gym on a daily basis, including dodgeball, team sports tournaments, weightlifting, kickball, and basketball.

Additional recreational activities have been available for students through the Academy's program. All housing units participated in art classes on an alternating rotational basis, corresponding to the duration of the units of study,¹⁶⁰ and two housing units participated in a 55-minute chess class on Saturdays during the performance period. Moreover, staff from the Academy coach NB's football and basketball teams and also provide instruction for the band. In addition, as part of the career institute, a handful of students worked on carpentry projects, in the culinary unit, and on several other projects as part of their school day during at least part of the performance period.¹⁶¹ Youth on awaiting placement status are not permitted to participate in any of these activities. Relative to NB's overall population, a minority of youth participated in these activities at any given time during the performance period.¹⁶²

was renovated during the performance period. Between November 28 and December 31, 2009, youth on awaiting placement status were housed in Reflections.

¹⁵⁹ Ex. 25, Table prepared by the Office of the Special Arbiter, Review of NB Gym Logbook Entries and Time Rosters, for December 2009, reflecting the number of youth from each housing unit who went to the gym each day.

¹⁶⁰ As explained *supra* p. 28, the Academy's units of study are designed to be completed within a one-month period. Thus, each month youth in three housing units take art classes as part of the school program on Mondays through Thursdays and two of the three units participate in an additional art class on Saturdays. During the next monthly rotation, youth in the three other units take art class.

¹⁶¹ These activities involve a small number of GED students.

¹⁶² The band is directed by an employee of the Academy. Youth enrolled in the model unit program who have attained a level three or higher are eligible to audition for the band. The instructor reports that the band has nine slots, but eight youth participated during the current school year. Vocalists practice separately from the musicians, but both cohorts practice twice each week for one hour during the school year. Band members perform at the monthly award ceremonies that are conducted by the school. The basketball and football seasons do not overlap with each other, but each season overlapped with part of the performance period. The football team is coached by an employee of the Academy and part of the charter school league. According to the coach, although 25 youth tried out for the team, only 12 were selected to play during the August – October 2009 season. The youth on the football team practiced at least three to four times per week during one hour sessions and played seven games during the season. Similarly, the basketball team is coached by an Academy staff member. The season started in November 2009 and ended in February 2010. The coach reported that although 14 players were initially selected for the team, (continued...)

In addition to recreational opportunities available through the Academy, structured drama and music classes were conducted on each housing unit by private vendors during the performance period on a bi-weekly basis.¹⁶³ The housing unit schedules available during the performance period identify the time periods immediately after school each day for recreation.¹⁶⁴ According to interviews with unit managers and other housing unit staff, during some of these periods, youth who participated on the sports teams and in the band were permitted to leave their housing units for one-hour practice sessions or to participate in games against other teams. Staff in the model units report that during these time periods the remainder of the youth sometimes participated in games or competitions led largely by the unit managers and housing unit staff, or they went to the gym.¹⁶⁵ On other occasions, staff report that youth played cards, watched television or did homework.

In October 2009, during the early part of the performance period, youth often were observed after school playing basketball on the outdoor court. By the middle of the performance period, as it became darker and colder earlier in the day, this was no longer the case. Instead, the model unit youth who did not participate in team sports or in the band were observed on their

by the end of the season only nine youth remained on the team. Five youth were dropped from the roster for academic reasons. The team members practiced for one hour on three separate days each week in addition to participating in two weekly basketball games during the season.

¹⁶³ In some instances, these classes were held more frequently. These programs are referred to on the housing unit schedules as “The Beat Within,” “VAMP,” and “Theatre Lab.” During the performance period, four housing units were scheduled for The Beat Within, three were scheduled for VAMP, and one was scheduled for Theatre Lab on a bi-weekly basis.

¹⁶⁴ These periods are described differently on each unit schedule. *See, e.g.*, Ex. 24A, daily schedule for Evolution reflects one-hour for “outside recreation-large muscle” every day between 4:00 pm and 5:00 pm; Ex. 24B, daily schedule for Genesis includes multiple time periods each day for activities listed as “outdoors/activity/school arts” and “constructive downtime”; Ex. 24C, daily schedule for Imani reflects time periods each day for “indoor recreational activity” and/or “constructive downtime”; Ex. 24D, daily schedule for New Horizon includes time periods each day for “outside activity (recreation)” and/or “constructive downtime”; Ex. 24E, daily schedule for Unity reflects multiple time periods each day for “outdoor activity” (also referred to on schedule as “outside activity”) and/or “programming on the unit.” *See supra* note 140 for a discussion of the limitations related to the housing unit schedules.

¹⁶⁵ The Special Arbiter was unable to confirm the gym was used for this purpose during these time periods. During site visits, youth from the housing units were not observed in the gym immediately after school. Moreover, the gym is used for basketball practice after school during basketball season.

housing units, generally involved in activities such as playing cards and watching television. Several unit managers have explained that because the model unit program incorporates a very demanding schedule of academic and group activities, the youth need downtime. For this reason, the unit managers intentionally ensure that there is sufficient unstructured time built into the daily schedule. For the most part, except for gym periods and art classes, youth on the awaiting placement unit did not participate in any regular structured recreational activities during the performance period. Observations, interviews and a review of housing unit logbooks, indicate that except for gym time, the amount and type of structured recreation afforded to youth at the facility varies considerably based on housing unit assignment.¹⁶⁶

In their comments on the initial draft version of this report, defendants asserted that “[s]tructured recreational activity is defined as supervised group activities such as arts or crafts, TV/film with discussion, activities in the gamespace, cards, board games, outdoor recreation, and other games that the youth may play as a group that are facilitated by staff.”¹⁶⁷ Even if this definition is consistent with the structured recreational activities contemplated by this Work Plan requirement, and the Special Arbiter does not believe that is the case, there is no common understanding of what constitutes structured recreation among both facility managers and staff responsible for implementing the structured recreation program. The parties have agreed to work with the Special Arbiter to establish a clear standard that defines the second required hour of structured recreation. Thereafter, the Special Arbiter will monitor and report on defendants’ progress. In light of the significant improvements defendants have made in the recreation

¹⁶⁶ See, e.g. Ex. 26, Chart prepared by the Office of the Special Arbiter, Comparison of Housing Unit Logbook Entries for Genesis and Unity, comparing recreational activities afforded to youth in Genesis, a model unit, with recreational activities afforded to youth in Unity, the awaiting placement unit.

¹⁶⁷ Defendants’ Comments to the Special Arbiter’s Draft Report to the Court Regarding Defendants’ Progress Toward Meeting Certain Requirements of the Revised Comprehensive Work Plan at 5, submitted June 21, 2010.

program at both facilities, and the resources defendants have dedicated to the recreation program, the Special Arbiter anticipates that defendants will be able to satisfy this aspect of the performance standard in the near term.

IV. CONCLUSION

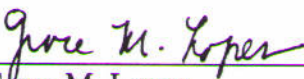
As this report demonstrates, defendants have made substantial progress in several key areas that have contributed to findings of noncompliance for over two decades. Defendants now operate two secure facilities which, by and large, enable them to separate securely-confined youth according to legal status. This has enormous implications for improvements in programs and service delivery – a fact that is underscored by the remarkable transformation of the educational program for committed youth that has occurred over the past three years. Indeed, the Special Arbiter’s expert consultant has described the educational program for youth enrolled in the model unit program at NB as one of the best she has seen.

Although further progress must be made to address limitations in the educational program for youth on awaiting placement status at NB, there have been recent and demonstrable advances in school attendance rates for this cohort of students. Moreover, preliminary evidence suggests at least some shortcomings identified by the Special Arbiter’s expert are being resolved. The parties have worked collaboratively with the school’s management staff, as well as with the Special Arbiter and her expert consultant, on the formulation of a solution that, if implemented, is likely to ensure the Work Plan’s educational requirements for youth on awaiting placement status are satisfied in the short term.

Finally, defendants have made significant progress in developing a credible structured recreation program for youth at the YSC and NB, an initiative that is essential to reducing the youth idleness that has been endemic at both facilities. Defendants have demonstrated the ability

to provide large-muscle recreational activities to youth at both facilities on a consistent basis, as required. Although there are remaining issues related to the second required hour of structured recreational activity, defendants have devoted considerable resources to addressing this matter. The progress that has occurred suggests this aspect of the performance standard will be satisfied soon. And while substantial challenges related to other critical Work Plan requirements must be overcome, there is evidence of continued progress toward meeting certain, but not all, core requirements.

Collectively, the improvements described in this report represent the type of progress that has a tangible impact on the youth housed at DYRS's two secure facilities. The Special Arbiter looks forward to working with the parties to ensure that the remaining deficiencies identified in this report are remedied, and that there is continued progress related to other critical Work Plan requirements. The Special Arbiter will report to the Court and the parties regarding these issues, as appropriate.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing The Special Arbiter's Report to the Court Regarding Defendants' Progress Toward Meeting Certain Requirements of the Revised Final Approved Amended Comprehensive Work Plan was served on the following counsel of record in this matter by electronic mail on this 8th day of July, 2010:

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**The Special Arbiter's Report to the Court Regarding Defendants'
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