

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JIMMY DOE, et al.,	)	
	)	
Plaintiffs,	)	No. 99 C 3945
	)	
v.	)	Chief Judge Holderman
	)	
COOK COUNTY, et al.,	)	
	)	Magistrate Judge Ashman
Defendants.	)	

**THIRD REPORT OF THE TRANSITIONAL ADMINISTRATOR**

Earl Dunlap, Transitional Administrator (TA) of the Cook County Juvenile Temporary Detention Center (JTDC), hereby submits this report pursuant to this Court’s May 8, 2008 Order and Paragraph 9 of the August 14, 2007 Agreed Order Appointing a Transitional Administrator.

**Introduction**

On August 14, 2007, the Court entered an Agreed Order Appointing a Transitional Administrator. The purpose of this Order is to appoint a Transitional Administrator (TA) with the authority and responsibility to bring the Cook County Juvenile Temporary Detention Center (JTDC) into substantial compliance with the Memorandum of Agreement (MOA), the Agreed Supplemental Order (ASO), and the Modified Implementation Plan (MIP), and to prepare the JTDC for the transition of administrative authority over its operations to the Office of the Chief Judge of the Circuit Court of Cook County.

On May 8, 2008, this Court entered an Order that allowed the TA to enter into contracts for temporary staffing services and take other steps necessary to address a staffing crisis that

jeopardized the health and safety of JTDC residents. The Order also directed the TA to report to the Court, the parties, and Local 700 (the collective bargaining unit for most JTDC staff) on the conditions and the status of the JTDC staffing crisis. *See* Doc. 415 (May 8, 2008 Order) at ¶ 6.

The TA submitted his first report pursuant to this order in November 2008 and his second report in October 2009. The first report addressed the staffing and organizational progress that Office of the Transitional Administrator (OTA) has made since May 2008 as well as issues that would need to be resolved in the future. The second report expanded upon the issues discussed in the first report and discussed other progress the OTA has made toward compliance with all of the Court's orders. The second report also included a proposal to reclassify JTDC direct-care workers. This proposal led to extensive litigation with the Union, including two requests by the Union to stay implementation of the TA's staffing plan (both of which were denied) and an appeal that is currently pending in the Seventh Circuit.

At this point, the TA's work at the JTDC is in the final transition state. This third report provides the Court with an update on the status of various matters at the JTDC, such as conversion of the old living units into Centers, capital projects, and medical and mental health care; details the remaining most serious safety and security issues at the JTDC; and provides the TA's proposal for how transition to the Office of the Chief Judge of the Circuit Court of Cook County (OCJ) should occur.

Although this report will not deal directly with the same issues raised in the Court's May 8, 2008 order, the TA hopes that this Court will nevertheless find this report appropriate, as the August 14, 2007 Agreed Order Appointing the Transitional Administrator also anticipates the TA submitting periodic reports to the Court. As always, the TA will gladly provide the Court with any additional information on subjects addressed below.

**I. Current Status Report**

**A. Reorganization of Living Units**

As the Court is aware from the TA's prior reports, the TA has been in the process of converting old living units into new "Centers," which provide residents with levels of staffing and programming that satisfy the MOA. When the Court approved the TA's plan to reclassify direct care workers, the TA had already opened five new Centers. Since the Court approved the TA's plan and allowed the TA to move forward with the plan, the TA has selected qualified staff to open two new centers. Staff assigned to the sixth Center has already been trained; the sixth Center will open on March 13, 2011. Training for staff assigned to the seventh Center will begin on March 14, 2011. The eighth and ninth Centers should be open by June 2011. At that point, this critical staffing transition will be complete. All residents will be housed on new Centers, and all direct care workers will have completed the necessary training for their position.

The TA is pleased to report that a substantial majority of the 202 veteran employees who were affected by the staffing plan have successfully completed the testing and interview process and will soon begin working on a new Center. The TA provided veteran employees two chances to take the IMPACT. In the first round of testing, one hundred twenty one (121) passed veteran staff passed and fifty-six (56) failed. In the second round of testing, approximately 50% passed. Thus, only about thirty (30) veteran staff failed the IMPACT test.<sup>1</sup> In other words, the TA's staffing plan has not, as the Union feared, led to the wholesale replacement of veteran staff.

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<sup>1</sup> Of the two hundred and two (202) affected veteran staff, five (5) of retired, ten (10) were terminated for reasons unrelated to the staffing plan, one (1) passed away, one (1) left for the military, and eight (8) refused to participate in the process.

**B. Reorganized Management/Administration**

As the TA explained in his second report, he has also undertaken to reorganize the management and administrative structure of the JTDC. That reorganization is largely complete. There are now four Deputy Executive Directors (three permanent, one acting), all of whom now report to the TA, but will in the future report to the Superintendent who will be appointed by OCJ. *See* Exhibit A (organizational chart). This organizational structure has enabled the JTDC to function as an organization and will help the OCJ make a smooth transition.

One of the newest additions to the JTDC is the Office of Quality Assurance. This Office will ensure that newly-implemented policies and procedures are carried out in day-to-day practice at the JTDC. This Office will be crucial to a successful transition to OCJ.

**C. Medical/Mental Health Care**

Significant progress has been made in the areas of medical and mental health care at the JTDC. Because medical and mental health services are provided by two separate agencies, they will be described separately below.

**1. Medical Care (Cermak Health Services at the JTDC)**

As the TA has previously reported to the Court, one of his biggest challenges in the area of medical care is that he does not have direct control over the JTDC medical program. Medical services are provided by Cermak Health Services (CHS), a Cook County agency which continues to serve as the sole medical authority for the JTDC. As the TA previously reported, there has been much debate over who was administratively responsible for the oversight of medical and mental health services, confidentiality of patient services, chain of command, and the types of services and health care delivery model required. These debates caused considerable delays in the

progress of achieving several of major goals of the reform effort, though notable progress has been made.

In 2010, the TA hired Dr. Michelle Staples-Horne, a nationally-recognized expert in the field of juvenile corrections medical services,<sup>2</sup> to assess whether the JTDC medial program is in substantial compliance with the medical components of the MOA, ASO, and MIP. Dr. Staples-Horne's evaluation is still ongoing, but a report a report of her findings to date shows compliance in many, but not all areas. Several key policies, for example, must still be written and approved before substantial compliance can be achieved. Additionally, CHS still must obtain accreditation from the National Commission on Correctional Health Care (NCCHC) and training must be developed and provided to medical staff. *See generally* Exhibit B (Staples-Horne report).

As indicated in Dr. Staple-Horne's report, progress toward NCCHC accreditation has been impeded by CHS's somewhat slow development of adequate policies and procedures. The TA has been providing technical assistance to CHS though a contract with Dr. Scott Chavez, an expert in NCCHC accreditation. At the JTDC, Dr. Chavez has facilitated a multi-disciplinary policy team which includes mental health and operations. This team has met frequently over the last several months to develop a facility specific policy manual meeting the standards required by NCCHC, the American Correctional Association, and the Illinois Department of Juvenile Justice. These policies will be approved and implemented by CHS and the JTDC within in the

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<sup>2</sup>Dr. Staples-Horne is the medical director of the Georgia Department of Juvenile Justice. Additionally, she is the Immediate Past President of the Society of Correctional Physicians, serves on the Health Care Committee of the American Correctional Association, the Juvenile Health Committee for the National Commission on Correctional Health Care.

next two months. CHS is in the process of seeking NCCHC accreditation and hopes to obtain accreditation by the end of 2011.

In 2010, significant progress was made toward filling staff vacancies at CHS. For example, in 2010, CHS hired five nurses, one nurse manager, one paramedic, one part time dentist, one physician assistant, and one dental assistant. Another nurse is expected to join CHS next month. Presently, thirty-three (33) of the thirty-seven point seven (37.7) full time equivalent (FTE) positions at CHS are filled.

Finally, as the TA noted in his second report, his office has been in the process of negotiating an intergovernmental agreement between the JTDC and CHS, which will finally resolve some of the main issues that have arisen between the two agencies: patient confidentiality and consent for medical treatment. This agreement should be finalized in the coming months.

## **2. Mental Health (Isaac Ray)**

Mental health services at the JTDC comply with the MOA, ASO, and MIP in most respects. The TA was able to make vast improvements in mental health services by cutting Cermak Health Services (CHS) out of the process. Whereas Issac Ray previously provided mental health services through a contract with CHS, it now has a contract directly with the JTDC. This arrangement has allowed the TA to substantially increase mental health staffing levels (presently 34 FTE mental health staff), consistent with expert recommendations previously submitted to this Court. This arrangement has also allowed the TA to integrate mental health services into behavior management programming in the Centers and has allowed mental health staff to develop better working relationship with other JTDC direct care staff, resulting in much better levels of service and outcomes for JTDC residents. The TA strongly recommends OCJ

maintain a direct contract with Issac Ray when it assumes control of the facility.

With this new arrangement, every JTDC resident receives mental health screening within four (4) hours of his or her arrival at the JTDC and meets with a mental health staff person within twenty-four (24) hours. Where necessary, residents are referred to psychiatrists and obtain needed medications promptly. After intake, all residents—even those who are not identified at intake as having mental health issues—have continual contact with mental health staff through behavior management programming in the Centers, for example, through educational and therapeutic group meetings. Since the TA's appointment, the number of contacts between JTDC residents and mental health staff has almost doubled. For more details, *see* Exhibit C (Isaac Ray 2009-2010 Annual Report). As noted above, however, improvements are still needed to ensure substantial compliance with all areas of the MOA, ASO, and MIP. For example, residents who are placed in restraints do not always obtain a mental health consultation within one hour, as required by the MOA.

#### **D. Understaffing & Overcrowding**

When the TA was appointed, the JTDC faced severe understaffing and overcrowding issues. Both of these problems have been addressed. As the TA has explained in previous reports, the TA has brought in hundreds of new, qualified personnel. Presently, 529 of the 634 budgeted FTE positions at the JTDC are filled. Since January 2007, the TA has hired or promoted 392 employees and has dismissed approximately 236 employees. *See* Exhibit D (JTDC employee head count summary). The OTA is working on filing the remaining vacancies.

Fortunately, there are no overcrowding issues at this time. The daily population has been well below the JTDC 498-bed capacity in recent months. The TA has implemented policies and

created a staff infrastructure to respond in the event overcrowding again becomes an issue.

**E. Internal Investigations**

Deputy Transitional Administrator Brenda Welch is in charge of internal investigations concerning allegations of staff misconduct. Ms Welch, with the assistance of two full-time investigators, conducted over one hundred sixty-two (162) internal investigations in 2010. Approximately forty-one (41) of those investigations were referred to other agencies (in most cases, to arresting police departments because allegations were against arresting police officers). Of the one hundred twenty-one (121) investigations that were completed internally, thirty-four (34) were sustained and fifty-seven (57) were not sustained. For more detail about these investigations, *see* Exhibit E (summary charts of internal investigations).

**F. Policy Development**

As the TA explained in his last report, his office is engaged in a major overhaul of JTDC Policy and Procedure Manual. To date, two hundred sixteen (216) policy statements have been written, one hundred sixty-five (165) of which have been approved. It has been a lengthy process, but all policies and procedures are expected to be completed by the end of March 2011, with the possible exception of medical and mental health service policies, which, as described above, must be written in conjunction with CHS.

It is worth mentioning two policy areas that present special challenges. First, there have been delays in developing safety and emergency procedures, in part due to a lack of cooperation in the process by the Cook County Department of Facilities Management. As discussed in more detail below, however, the Cook County State's Attorney's Office (SAO) has been instrumental in helping obtain the necessary cooperation. Second, the JTDC policy for compliance with the



Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601 *et seq.*, is still in draft form only. The reason is that United States Department of Justice has yet to finalize PREA standards for juvenile facilities. If the DOJ has not finalized these standards by March 31, 2011, the current draft policy and procedure can be submitted to the review process for final approval, with changes made at a later date if needed.

### **G. Capital Projects**

Since the TA's appointment, the following major capital projects have been completed: replacement of the heating and cooling system in the corridors in the living rooms, allowing for air temperature regulation and adequate ventilation; purchase of one hundred fifty (150) handheld portable radios, allowing for adequate communication among staff throughout the building; purchase of detention-grade furniture and mattresses so that these materials cannot be used as weapons; construction of two "safe rooms" in the medical unit to prevent resident self-harm; and installation of detention-grade room doors that have no glass.

Several projects must still be completed. The following projects are currently in progress: installation of a facility-wide camera security system needed to provide adequate supervision and for misconduct investigations (more details below); renovation of gym and outdoor recreation floors needed to ensure that residents have access to minimal levels of large muscle exercise; and repair of external windows needed to stop rain leaks.

There are several capital projects that are seriously needed, but are still in the early planning stages only. First and foremost, the ceilings in the resident rooms need to be replaced. Residents can easily remove the metal tiles, creating a significant security and suicide hazards. The Cook County Department of Facilities Management has included this project in their 2011

capital project request, but the Cook County Capital Development Board has yet to review this project. There is no estimated completion date at this time.

Additionally, the entire facility needs to be re-keyed. Over the years, keys have been issued to non-JTDC personnel, and the key control system is inadequate by corrections standards. In fact, the Illinois Department of Juvenile Justice has previously cited the JTDC for its lack of key control. Further complicating matters is that the Cook County Department of Facilities Management has sole control over the issuance of keys and locks at the JTDC. It is unacceptable for the JTDC to not have control over its key and lock system. OTA is working with Facilities Management to have the facility re-keyed and to turn control over keys and locks to the JTDC.

Finally, the resident phone system needs to be replaced. Currently, there is no way to monitor resident phone calls, to ensure that residents are afforded phone calls to their families, or to ensure that residents are not making unauthorized calls. For the past two years, the Cook County Department of Information Technology has been working on developing a system at the JTDC that would remedy these problems, but much more work needs to be done. At this time, there is no estimated completion date.

#### **H. Other Safety and Security Issues.**

There have been a number of improvements in the area of security and due process for JTDC residents. Security has increased with the installation of metal to replace the old glass doors to the resident rooms and special furniture that cannot be easily thrown or used as weapons. Daily inspections are done of resident rooms. If there are any issues (for example, with plumbing or lighting), residents are moved to a different room and repairs are made in relatively short order. The laundry system has also been reworked so that residents always have a clean set

of clothing and no longer store soiled clothing in their rooms.

Random room searches are also conducted to search for contraband. Additionally, two line scanners have been purchased to reduce the likelihood that contraband is brought into the facility by staff and visitors. Notwithstanding these security measures, contraband (*e.g.*, cigarettes, lighters, and marijuana—items not easily detectable by line scans and electronic wands) and other security breaches remain a problem in the facility.

Another major problem in the facility is fire safety. The TA has made repeated efforts to implement fire safety and evacuation plans, but has had serious difficulty because the TA does not have control over the physical plant in which the JTDC is housed. The building, which is also used by the Circuit Court of Cook County Juvenile Division and other County offices, is under the control of Cook County Facilities Management. The TA has raised these concerns with the State's Attorneys' Office, which has been helping the TA reach a resolution. With the SAO's help, the TA expects to implement fire safety and evacuation plans within the coming months.

Another very serious safety issue at the JTDC in recent months is the refusal by the Chicago Police Department (CPD) to respond to public safety emergencies and/or reports of crimes occurring at the JTDC. Without an adequate police response, there is no way to quell major disturbances that might occur (there are no sworn officers on the JTDC staff) and there is no way to hold residents and/or staff who commit crimes at the JTDC accountable for their actions. Likewise, crime victims, including residents assaulted by other residents, cannot file police reports or press charges against their assailants. The TA and his legal counsel have made every effort to force CPD to fulfill its responsibility to JTDC residents, to no avail.

Fortunately, the Cook County Sheriff's Office has stepped up and agreed to field calls from the JTDC and to perform necessary investigations. The JTDC Chief Legal Counsel is working with the Sheriff's Office and the States' Attorney's Office to determine what form these services will take and to draft a memorandum of understanding between the agencies. Ideally, the parties will be able to implement a consistent police presence at the JTDC that is proactive in nature and blends into daily life at the JTDC.

### **I. Resident Due Process & Discipline**

Resident due process and discipline is another area in which significant progress has been made, but improvement is still needed. A recent review of statistics showed that JTDC hearing officers are consistently conducting resident due process hearings within timeframes established by MIP. Additionally, JTDC residents are getting orientation handbooks, though not necessarily within one hour of their admission to the JTDC. *See* Exhibit F (Resident Orientation Handbook).

Additionally, the TA has developed grievance procedures and installed black boxes labeled "Grievances" on each floor of the resident living quarters in compliance with the MOA. The JTDC grievance procedure is outlined in resident handbook. *Id.* at 15.

There is still no Disciplinary Practices Review Committee, as required by MIP, but the TA anticipates that this Committee will be established in 2011. Another area that needs improvement is making sure that residents who are in disciplinary confinement receive one (1) hour of large muscle activity outside their room per day. The new Office of Quality Assurance will help ensure that this requirement is met going forward.

## **II. Plans for Remaining Safety and Security Problems at the JTDC**

As the discussion above shows, there are a number of issues that still must be resolved at the JTDC before substantial compliance with the MOA, ASO, and MIP is achieved. While some of those issues seem minor, others pose a serious ongoing safety threat and/or a threat to residents' constitutional rights. Now that the TA's staffing plan is almost fully implemented, the TA is shifting his focus to resolution of the following most serious matters.

### **A. Physical Plant Safety Issues.**

The state of the building in which the JTDC is housed has been a major barrier to achieving substantial compliance with the MOA, ASO, and MIP. Simply put, the building is not a reasonable environment to house JTDC residents; it will never be completely safe. Thus, capital projects necessary to mitigate physical plant problems are of the utmost importance.

As described above, the ceiling tiles present a major safety and security issue. Even though the TA replaced the old glass doors with steel doors, residents can still attempt to leave rooms and/or harm themselves or others by breaking into the ceiling tiles. The Cook County Department of Facilities Management has put the ceiling renovation project into the 2011 capital development request. However, due to the many layers of County bureaucracy involved, this project is far from completion.

Additionally, the building layout makes it extremely difficult to provide appropriate supervision, particularly when residents are moving outside of the living units. Cameras are necessary to provide this oversight. Short of building a new facility, the only way to provide adequate supervision is through installation of a facility-wide camera system. Cameras are also crucial to deterring misconduct by residents and staff, and for ensuring fairness for residents and

employees who are accused of misconduct. This project is now on track, though the OTA anticipates that it will need to be completed in 12-18 months. Further, as noted above, the facility must be re-keyed, and control over all the keys should be transferred from the Cook County Department of Facilities Management to the JTDC.

Finally, resolution of the fire safety and evacuation issues at the JTDC is a top priority. As mentioned above, the SAO is helping the TA gain necessary cooperation from Facilities Management. The TA anticipates that SAO will help resolve this matter within the next month.

**B. Health Care**

The TA must also ensure that Cermak Health Services moves forward with implementing policies required by the MOA, ASO, and MIP, and that it obtains necessary NCCHC accreditation. At the current rate, substantial compliance with the medical portions of the MOA, ASO, and MIP should be achieved by the end of 2011.

**C. Public Safety/Police Services**

Finally, as noted above, safety at the JTDC is compromised by the Chicago Police Department's refusal to respond to emergencies and/or reports of crime that occur at the JTDC. The OTA is working with the Cook County Sheriff's Office to make sure that there is an adequate police presence at the JTDC. The details of this arrangement are still being worked out between agencies involved. The OTA hopes that this issue will be resolved and that some form of interagency agreement will be in place within the next 60 to 90 days.

### **III. Transition to OCJ**

The TA and OCJ have been giving much thought to how the transition of the JTDC to OCJ should occur once the facility is ready. The TA is most concerned with making sure that the new Superintendent has all the tools and information he or she needs to successfully run the facility that continues to satisfy constitutional standards. To that end, the TA recommends that, before the transition is complete, the incoming Superintendent become familiar with all operations of the facility and write a multi-year plan to ensure the compliance with remaining provisions of the MOA, ASO, and MIP. The TA would be glad to work with the new Superintendent on such a project. Of course, the TA is also open to additional feedback from this Court or OCJ on the manner in which the transition should occur.

### **IV. Conclusion**

The TA hopes that this report is useful to the Court. A copy of this report will be served on all parties of record, as well as OCJ. The TA will gladly provide the Court any additional information it would like and/or appear in open court to answer questions on the record.

RESPECTFULLY SUBMITTED,

/s/Earl L. Dunlap  
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**CERTIFICATE OF SERVICE**

I, Elizabeth Mazur, an attorney, certify that on March 9, 2011, I delivered a copy of this **THIRD REPORT OF THE TRANSITIONAL ADMINISTRATOR**, on all counsel of record via the ECF electronic filing system.

/s/ Elizabeth Mazur