

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA,)
950 Pennsylvania Avenue, N.W.)
Washington, D.C. 20530)

Plaintiff)

vs.)

STATE OF TEXAS)
P.O. Box 12428)
Austin, Texas 78711-2428)
County of Residence:)
Travis;)

TEXAS YOUTH COMMISSION)
4900 N. Lamar Blvd.)
Austin, TX 78765)
County of Residence:)
Travis;)

CHERIE TOWNSEND,)
Executive Director)
Texas Youth Commission)
4900 N. Lamar Blvd.)
Austin, TX 78765)
County of Residence:)
Travis;)

EDUARDO MARTINEZ,)
Superintendent)
Evins Regional Juvenile Center)
3801 East Monte Cristo Road)
Edinburg, TX 78541)
County of Residence:)
Hidalgo,)

Defendants.)

Civil Action
No. 7:08 cv 00038

COMPLIANCE REPORT

UNITED STATES' SIXTH COMPLIANCE REPORT

Pursuant to Paragraph 25 of the Agreed Order in the above-captioned matter, the United States submits to this Honorable Court its sixth report assessing the State's compliance with the Agreed Order. The report includes the factors considered by the DOJ in monitoring the State's compliance and includes: (1) a verbatim recitation of each paragraph of the Agreed Order; (2) the DOJ's assessment of the State's compliance with each paragraph of the Agreed Order, including a narrative of the information the DOJ considered in reaching its assessment; (3) to the extent that the State is not in compliance with any particular paragraph(s) of the Agreed Order, the report includes the specific factual basis for this assessment and technical assistance recommendations to assist the State in achieve compliance with such paragraphs(s); and (4) the report identifies any noncompliance with mere technicalities or temporary failures to comply during a period of otherwise sustained compliance.

In reaching the conclusions detailed below, the DOJ reviewed policies, reports, investigation documents, committee minutes, staffing rosters, background checks, videos, and other administrative materials from the Texas Youth Commission ("TYC") and Evins Regional Juvenile Center ("Evins"). We also toured Evins on February 7-11, 2011. We interviewed numerous TYC officials, members of Evins management, direct care staff, medical care staff, and youth. We requested and reviewed additional documents after the February 2011 tour.

As detailed below, DOJ's assessment is that the State has achieved compliance with the Agreed Order. DOJ therefore has no objection to the termination of this matter, as set out in the Agreed Order, on May 5, 2011.

COMPLIANCE RATINGS

- (1) *Protection from Harm* The State shall, at all times, provide youth at Evins with reasonably safe living conditions, and shall implement policies, procedures, and practices to reasonably ensure that youth are protected from harm by staff (e.g., improper restraint and excessive use of force) and harm from other youth.

This Paragraph provides the overarching compliance standard. DOJ's monitoring of compliance with this Paragraph has considered the State's implementation of the remedial measures contained in Paragraphs 2-24, which are discussed in detail below.

In addition, since filing our second Compliance Report in May 2009, DOJ's monitoring of compliance with this Paragraph has focused on concerns about youth-on-youth extortion and youth possession of contraband. In our fifth Compliance Report, filed in November 2010, we found that that the State had made progress in controlling these problems. Based on data gathered in April 2010 as part of Evins' participation in the Performance-based Standards (PbS) project, a nationally-recognized improvement program for juvenile facilities, we found the State in partial compliance with this Paragraph in our fifth Compliance Report. This finding of partial compliance indicated that the State had made notable progress in achieving compliance, but that significant work remained.

PbS data are collected twice a year, in April and October, but the data are not available for several weeks after collection. The data from Evins can be compared to the "National Field Average," which is gathered from facilities similar to Evins throughout the country.¹ PbS data collected at Evins in April 2010 indicated that Evins exceeded the national field average in assaults on staff, the percentage of youths and staff who reported that they feared for their safety within the preceding six months, and the use of physical and mechanical restraints. After our fifth Compliance Report was filed, PbS data collected at Evins during October 2010 became available. This data showed that Evins was below the national field average in each of the areas in which it had exceeded the average in April 2010.

In our February 2011 tour, we reviewed information about areas in which the PbS data indicated a potential basis for concern. During that tour, we did not find indications that youth or staff concerns about safety were a consistent or systemic problem. We did not find information indicating a concern with respect to the use of restraints. We also found that Evins had maintained its success in addressing extortion and possession of contraband. Overall, the information gathered in our February 2011 tour was more consistent with the improved October 2010 PbS data than with the more

¹The PbS Project uses a mathematical formula which allows comparison of facilities of different capacities. It is noted that data is largely "self-reported" and thus the quality of the data is dependent upon the ability of each facility or jurisdiction to accurately collect information about their respective operations.

concerning April 2010 data. We also reviewed the PbS Facility Improvement Plan completed by Evins after the April 2010 reports, which described strategies used by Evins to address the April 2010 data that was the basis for our partial compliance finding. We found that the Facility Improvement Plan represented a strong effort to address the concerns raised by the April 2010 data through measurable programmatic goals.

In addition, in evaluating compliance with this Paragraph, we considered statements made in an anonymous letter to our expert consultant shortly after the February 2011 tour, and the State's response to those statements. The anonymous letter alleged that weak youth were being moved from Evins, while the aggressive youth preying on the weaker youth suffered no consequences. We sent the letter to the State, with a request for its response. On April 22, 2011, the State provided a detailed response that discussed each youth transferred from Evins since February 2010, and the explanations for those transfers. The response described 16 transfers. Most of the transfers, the response explained, were undertaken for safety reasons, such as gang affiliations or protection from medical or mental health-related issues. We found the explanations for the transfers to be reasonable, and a sufficient response to the statements that were made in the anonymous letter. We also noted that the response described a situation in which Evins responded to assaults on a youth by imposing disciplinary consequences and by referring matters to the Texas Youth Commission Office of the Inspector General for

investigation. We appreciate that the State responded in a cooperative and thorough matter to our inquiry.

Based on the foregoing information, and based on the State's continued compliance with the 15 additional protection from harm standards in the Agreed Order, we now find that the State has achieved compliance with this Paragraph.

Compliance Rating: Compliance.

- (2) Protection from Undue Restraints Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to reasonably ensure that only safe methods of restraint are used at Evins, and only in those circumstances necessary for safety and security, and that restraints are never used to punish youth.

As in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (3) Reporting of Staff Misconduct and Other Serious Incidents Within 60 days of the effective date of this Agreed Order, the State shall develop and implement appropriate policies and procedures which contain definitions approved by DOJ after review and comment by the DOJ for the terms "use of force," "staff-on-youth assault," "youth-on-youth assault," and "inappropriate staff relationships with youth," and will develop and implement such policies, procedures, and practices so that:
- (a) appropriate Evins staff report all incidents of use of force, staff-on-youth and youth-on-youth assault, inappropriate staff relationships with youth, and sexual misconduct between youth, to appropriate individuals at the facility;
 - (b) appropriate Evins staff notify appropriate supervising officials and document in writing all incidents involving mechanical restraints to control youth; incidents resulting in bodily injury to youth and/or staff;

inappropriate staff relationships with youth; sexual misconduct between youth;

- (c) reporting may be done without fear of retaliation; and*
- (d) all such incidents are appropriately documented and reported, including the facts of the incident, any injury that occurred as a result of the incident, and in a way that permits review.*

As in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (4) Review of Incidents by Senior Management Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices so that senior management review all incidents involving mechanical restraints to control youth, incidents resulting in bodily injury to youth and/or staff, inappropriate staff relationships with youth, and sexual misconduct between youth.*

As in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (5) Health Care Inquiries Regarding Injury If, in the course of the youth's infirmary visit, a health care provider suspects staff-on-youth abuse, that health care provider shall:*
 - (a) report the suspected abuse to the appropriate officials, the Office of Inspector General, law enforcement and social service agencies;*
 - (b) adequately document the matter in the youth's medical record; and*
 - (c) complete an incident report.*

Evins maintained its compliance with the requirements of this Paragraph. We have found compliance with this Paragraph in every Compliance Report.

Compliance Rating: Compliance.

- (6) Uses of Force Within 60 days of the effective date of this Agreed Order, the State shall develop and implement comprehensive policies, procedures, and practices governing uses of force, ensuring that the least amount of force necessary for the safety of staff, youth residents, and visitors is used on youth.

As in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (7) Documentation and Tracking of Investigations Within 60 days of the effective date of this Agreed Order, the State shall develop policies, practices, and procedures for documenting all incidents of use of force, staff-on-youth assault, youth-on-youth assault, inappropriate staff relationships with youth, sexual misconduct between youth, and for documenting and tracking the status and outcome of all investigations. Where there is evidence of staff misconduct, the State shall initiate appropriate personnel actions and systemic remedies, where appropriate.

As in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (8) Investigations Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to reasonably ensure an effective system for investigation of uses of force, physical restraint, alleged child abuse, youth-on-youth assault, and alleged sexual contacts.

As in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (9) Reporting Possible Criminal Violations Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, practices, and procedures governing when possible criminal violations must be reported to the appropriate law enforcement authorities.

As in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (10) Behavior Management Program Within 90 days of the effective date of this Agreed Order, the State shall develop and implement an evidence-based behavior management program. The behavior management program shall be implemented throughout the day, including during school time. The State shall develop and implement policies, procedures, and practices to reasonably ensure that mental health staff provide regular consultation regarding behavior management to custody and other staff involved in the behavior management program, and shall develop and implement a mechanism to assess the effectiveness of interventions utilized.

The State has long been engaged in the transformation of its behavior management program. We continue to find, as in our fifth Compliance Report, that the current program is functioning properly. In previous Compliance Reports, we described the ambivalence of some staff toward this program and their concerns that the revised program's focus on positive behavior programming had resulted in youth no longer being held accountable for their actions. We also described concerns about the effectiveness of positive behavior reinforcements in the Evins program. As noted in our fifth Compliance Report, however, more recently staff seems to have

generally embraced the positive reinforcement approach. We also found that youth now generally understand the program.

Compliance Rating: Compliance

- (11) Staffing Within 60 days of the effective date of this Agreed Order, the State shall provide sufficient numbers of adequately trained direct care and supervisory staff to (a) supervise youth safely, (b) protect youth from harm, (c) allow youth reasonable access to medical and mental health services, and (d) provide youth with adequate time spent in out-of-cell activities. The State shall establish mandatory minimum staffing requirements, including a determination of all direct supervision posts that must be filled on each shift. In establishing mandatory post coverage, the State shall include provisions for coverage for all required staff training as well as authorized leave time.

As in our fifth Compliance report, we find that Evins meets the requirements of this Paragraph. Evins exceeds the staffing ratios set out in State law almost 100% of the time. In addition, as we previously noted, staff have learned over time how to effectively provide supervision in individual dorm rooms, which have replaced the open bay dormitories in existence when the Agreed Order was signed.

Compliance Rating: Compliance.

- (12) Employment Practices Within 60 days of the effective date of this Agreed Order, the State shall continue to conduct a criminal record check for all current employees at Evins, taking appropriate actions where new information is obtained. At least as often as every year thereafter, the State shall update such criminal record checks for all employees who come into contact with youth. The Evins administration shall develop and implement policies and procedures to require that applicants and all current staff immediately report to it any arrest other than a minor traffic violation and also report the issuance of a restraining order entered against the staff member due to alleged abusive behavior.

Evins maintained its compliance with the requirements of this Paragraph. We have found compliance with this Paragraph in every Compliance Report.

Compliance Rating: Compliance.

- (13) Due Process Within 60 days of the effective date of this Agreed Order, the State shall implement policies, procedures, and practices to reasonably ensure that youths confined to the Security Unit for disciplinary reasons for more than 24 hours receive an appropriate due process hearing by an impartial supervisory staff member to determine whether cause exists for continued disciplinary confinement.

As in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (14) Youth Grievances Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to reasonably ensure that there is a functional and responsive youth grievance system.

As in our fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (15) Admissions Intake and Orientation Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to establish a consistent, orderly admissions intake system conducive to gathering necessary information about youth, disseminating information to staff providing services and care for youth, and maintaining youth safety. Each youth entering Evins shall receive an effective orientation that shall include simple directions for reporting abuse, and assure youth of their right to be protected from harm and

from retaliation for reporting allegations of abuse. Orientation shall also clearly set forth the rules youth must follow at the facility, explain how to access medical and mental health care and the grievance system, and provide other information pertinent to the youth's participation in facility programs.

As in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (16) Classification *Within 90 days of the effective date of this Agreed Order, the State shall develop and implement a classification system that considers factors including youth age, committing offense, gang affiliation, delinquent history and treatment needs to reasonably ensure that youth are safely placed within Evins, and provides for reclassification in appropriate circumstances.*

As we noted in our fifth Compliance Report, improved policies and the completed physical modifications at Evins allow the facility to do a significantly better job in classification, and to provide youth with housing placements that are appropriate in terms of treatment, programming and safety.

Compliance Rating: Compliance.

- (17) Training *Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices to provide staff, volunteers and contractual employees of Evins with training regarding their responsibilities. These policies, practices, and procedures shall include:*

- (a) *a comprehensive training plan for all Evins employees, reviewed and updated annually;*
- (b) *requirements by job category;*
- (c) *standards for qualification of trainers;*
- (d) *processes for approval of the training curriculum;*

- (e) *schedules for staff training;*
- (f) *criteria for determining whether Evins staff, volunteers, and contractual employees have mastered the instructional materials and methods being taught; and*
- (g) *specific requirements by professional discipline for any continuing education credits established by licensure, certification, or recognized professional academies and organizations.*

As in our fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (18) *Physical Restraint Training* *Within 60 days of the effective date of this Agreed Order, the State shall train direct care staff on its approved method for physical restraint that minimizes the risk of injury to youth. The State shall only use instructors who are appropriately qualified to teach the approved physical restraint method. All training shall include each staff member demonstrating the approved techniques and meeting the minimum standards for competency established by the method. Direct care staff skills in employing the method shall be periodically re-evaluated. Staff who demonstrate deficiencies in technique or method shall be removed from direct contact with youth until they meet minimum standards for competency established by the method. Juvenile Correctional Officer Supervisory staff shall be trained to evaluate their subordinates' use of the approved restraint methods and must provide evaluation of these methods in their reports addressing use of force incidents.*

As in our fifth Compliance Report, we find that Evins meets the requirements of this Paragraph. Our fourth and fifth Compliance Reports noted our concerns regarding staff initially being trained to use their body weight during passive restraints, a potentially dangerous technique. As we described in our fifth Compliance Report, the State responded appropriately to our expression of concern, including by revising its training so that staff are no longer being instructed to use body weight in passive restraints.

In February 2011, we watched training videos and confirmed that the State continues to implement changes in physical restraint training in response to the concern we raised and the technical assistance we provided.

Compliance Rating: Compliance.

(19) *Staff Training in Behavior Management, De-Escalation and Crisis Intervention Within 60 days of the effective date of this Agreed Order, the State shall provide appropriate competency-based training to staff in behavior management, de-escalation techniques, appropriate communication with youth, and crisis intervention before staff may work in direct contact with youth.*

As in our fifth Compliance Report, we find that Evins meets the requirements of this Paragraph. We have observed the State's appropriate response to staff concerns about holding youth accountable in the revised behavior management programming, including by continued modifications to the behavior management program and by providing staff more tools to deal with youths' challenging behaviors.

Compliance Rating: Compliance.

(20) *Staff Training in Incident Reporting Within 60 days of the effective date of this Agreed Order, the State shall develop and implement policies, procedures, and practices so that staff are appropriately trained in incident reporting consistent with the type of incident reporting required under this Agreed Order.*

As in our fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (21) Document Development and Revision Throughout the term of this Agreed Order, the State shall maintain, revise and/or develop as necessary other written documents including assessment instruments, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreed Order.

As in all past Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (22) Policy Review and Training Within 45 days of the effective date of this Agreed Order, the State shall submit all policies and procedures regarding the following topics to DOJ for review and comment: use of restraints and confinement to the Security Unit, use of force, youth grievance system, investigations of alleged staff misconduct, behavior management program, and reporting and review of staff misconduct and other incidents. Within 120 days of the effective date of this Agreed Order, the State shall commence initial and refresher training to all Evins staff with respect to any newly-implemented or revised policies and procedures. Such training shall be completed within 180 days of the effective date of this Agreed Order. The State shall document employee training.

As in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (23) Performance-Based Accountability System Within 90 days of the effective date of this Agreed Order, the State shall develop and implement a system designed to collect data necessary to assess and reasonably ensure the effective implementation and operation of all remedies instituted pursuant to this Agreed Order.

We again find Evins meets the requirements of this Paragraph. We found Evins in compliance with the requirements of this Paragraph in our third, fourth and fifth Compliance Reports.

As we previously reported, TYC is participating in the Performance-Based Standards project ("PbS"). PbS was begun in 1995 through a grant from the US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention ("OJJDP"), to improve the conditions reported by the 1994 Conditions of Confinement study of 1,000 secure facilities. Directed by the Council of Juvenile Correctional Administrators ("CJCA"), PbS asks participants to collect and analyze data to target specific areas for improvement.

As noted in our previous Compliance Reports and in our discussion of Paragraph 1, above, we review PbS data collected at Evins as part of our analysis of whether the State is in compliance with the requirements of the Agreed Order's overarching protection from harm standard. Our discussion of compliance Paragraph 1 notes that PbS data collected at Evins in October 2010 and our review of the PbS Facility Improvement Plan completed by Evins in response to data collected in April 2010 helped us to conclude that Evins is now in compliance with the requirements of Paragraph 1.

Compliance Rating: Compliance.

(24) Corrective Action Plans *With regard to the protection from harm and training remedial measures addressed in this Agreed Order, throughout the term of this Agreed Order, the State shall develop and implement policies and procedures to address problems that are uncovered during the course of performance-based accountability activities. The State shall develop and implement corrective action plans to address these problems in such a manner as to prevent them from occurring again in the future.*

As we found in our third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this Paragraph.

Compliance Rating: Compliance.

- (25) *The DOJ shall monitor the State's compliance with this Agreed Order. The DOJ's monitoring shall include, on-site inspections of Evins, interviews with Evins youth, staff, and administrators, and a review of relevant documents. The DOJ shall retain a juvenile justice consultant with expertise in protection of youth from harm within the context of the operation of a secure juvenile justice facility to assist the DOJ in its monitoring activities. DOJ shall routinely report its assessment of the State's compliance with the paragraphs of this Agreed Order to the Court. The DOJ's reports shall include the factors considered by the DOJ in monitoring the State's compliance, and shall include: (1) a verbatim recitation of each paragraph of the Agreed Order; (2) the DOJ's assessment of the State's compliance with each paragraph of the Agreed Order, including a narrative of the information the DOJ considered in reaching its assessment; (3) to the extent that the DOJ's assessment is that the State is not in compliance with any particular paragraph(s) of the Agreed Order, the DOJ's report shall include the specific factual basis for this assessment and technical assistance recommendations to assist the State in achieving compliance with such paragraph(s); and (4) identify any noncompliance with mere technicalities or temporary failures to comply during a period of otherwise sustained compliance. The DOJ's first report shall be submitted within six months of the effective date of this Agreed Order, and subsequent reports shall be filed every six months thereafter. Until this matter is dismissed, the DOJ shall have unrestricted access to, and shall, upon request, receive copies of any documents, records, and information relating to the implementation of this Agreed Order. The State shall provide any requested documents, records, and information to the DOJ as soon as possible, but no later than 30 days from the date of the request. The DOJ shall have reasonable access to Evins, including any newly constructed, renovated and/or designated buildings and facilities; staff and youth, including private interviews with staff; and youth records, documentation, and information relating to the issues addressed in this Agreed Order. The State shall instruct all employees to cooperate fully with the DOJ. The DOJ agrees to provide the State with reasonable notice of any visit or inspection, although the DOJ and the State agree that no notice is required in an emergency situation where*

the life, health, or immediate safety of youth is at issue.

As we found in our second, third, fourth and fifth Compliance Reports, we find that Evins meets the requirements of this paragraph.

Compliance Rating: Compliance.

(26) Information to Employees *Within 90 days of the effective date of this Agreed Order, the State shall reasonably ensure that all current and future relevant State employees understand the terms of this Agreed Order (to the extent necessary to carry out their job duties and responsibilities) and implement the terms of this Agreed Order.*

As we found in all previous Compliance Reports, we find that Evins meets the requirements of this paragraph.

Compliance Rating: Compliance.

Respectfully Submitted,

FOR THE UNITED STATES:

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2011, a true and correct copy of the foregoing COMPLIANCE REPORT was served on counsel for Defendants as identified below via the ECF system.

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