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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

|                                        |                                            |
|----------------------------------------|--------------------------------------------|
| 13 <b>DERRICK CLARK, et al.,</b>       | C 96-1486 CRB                              |
| 14                                     |                                            |
| 15 Plaintiffs,                         | <b>STIPULATION AND <del>PROPOSED</del></b> |
| 16                                     | <b>ORDER RE: REVISIONS TO</b>              |
| 17 <b>STATE OF CALIFORNIA, et al.,</b> | <b>REMEDIAL PLAN</b>                       |
| 18 Defendants.                         |                                            |
| 19                                     |                                            |

20 The parties propose to enter into the following stipulation to revise the Remedial Plan as  
21 amended on March 1, 2002:

22 **RELEVANT BACKGROUND**

23 Under the Settlement Agreement entered into by the parties in this case, the parties  
24 adopted a Remedial Plan which governs, in general, the identification of inmates with  
25 developmental disabilities, and the services Defendants are to provide to inmates in the  
26 Developmental Disability Program (DDP).

27 Presently, under the Remedial Plan, if an inmate in the DDP is found guilty of a rules  
28 violation, the Chief Disciplinary Officer must review the completed Rules Violation Report in

1 accordance with California Code of Regulations, Title 15, Section 3312. Then the Chief  
2 Disciplinary Officer must consult with the DDP clinician regarding the findings and disposition  
3 of the hearing before taking action. Remedial Plan, *Amended March 1, 2002* at 50. The clinician  
4 must provide input as to the effectiveness of the disposition in correcting the inmate's behavior.  
5 *Id.* Both the Chief Disciplinary Officer and the clinician must sign the completed Rules Violation  
6 Report. *Id.* By signing this form, the DDP clinician does not endorse the rules violation  
7 disposition, but only acknowledges the consultation. *Id.* The need for the Chief Disciplinary  
8 Officer to consult with clinicians concerning the rules violation disposition for inmates in the  
9 DDP must be incorporated into applicable lesson plans, post orders, and operational procedures at  
10 designated institutions. *Id.*

11 **I. ELIMINATION OF POST- RULES VIOLATION CONSULTATION BETWEEN THE CHIEF**  
12 **DISCIPLINARY OFFICER AND DDP CLINICIAN AND ADOPTION OF *COLEMAN* RULES-**  
13 **VIOLATION EVALUATION PROCESS.**

14 Presently, the Chief Disciplinary Officer and DDP clinician consult after the findings and  
15 disposition of a rules-violation hearing have been issued, but before disciplinary action is taken.  
16 The parties have determined that the better course of action is to follow the newly instituted rules-  
17 violation process developed in *Coleman v. Brown* (2:90-cv-00520 KJM DAD PC), attached to  
18 this stipulation.

19 Under the revised process, inmates in the DDP who are alleged to have committed a rules  
20 violation shall receive a mental health assessment, noted on a CDCR Form 115-MH-A, Rules  
21 Violation Report: MH Assessment Request. This mental health assessment incorporates clinical  
22 input into the disciplinary process when cognitive or adaptive functioning deficits may have  
23 contributed to behavior resulting in a rules violation. Mental health assessments shall be  
24 considered by the hearing officer or other official during the disciplinary proceedings when  
25 determining whether and how to discipline an inmate. The new process also provides  
26 mechanisms to mitigate discipline, allows for alternative forms of documenting inmate behavior,  
27 and excludes certain behaviors from Rules Violation Reports.

28 The parties agree to amend the Remedial Plan to eliminate the post rules-violation  
consultation between the Chief Disciplinary Officer and DDP clinician, and to use the attached

1 rules-violation review process, effective on the date of the Order approving the parties'  
2 stipulation.

3 The parties have also agreed to revise the Rules Violation Report policies, procedures, and  
4 staff training to reflect the above revision to the Remedial Plan. CDCR will implement the  
5 following:

- 6 a. Revised Title 15, Sections 3310(d), 3315(h), 3317, 3317.1, 3317.2 (Attachment 1; in  
7 draft form);
- 8 b. Revised Departmental Operating Manual Section 52080.5.8 (Attachment 2; in draft  
9 form); and,
- 10 c. Revised Mental Health Assessment Form (115-MH-A) (Attachment 3).

11 **STIPULATION**

12 Defendants and Plaintiffs stipulate to the above.

13  
14 Date: December 16, 2015

/s/Danielle F. O'Bannon  
DANIELLE F. O'BANNON  
Supervising Deputy Attorney General  
Office of the California Attorney General  
Attorneys for Defendants

15  
16  
17 Date: December 16, 2015

/s/Sara Norman  
SARA NORMAN  
Prison Law Office  
Attorneys for Plaintiffs

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19  
20 It is so ordered.

21 Dated: December 21st, 2015

  
United States District Court

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As required by Local Rule 5-1, I, Sharon A. Garske, attest that I obtained concurrence in the filing of this document from Sara Norman and that I have maintained records to support this concurrence.

DATED: December 16, 2015

KAMALA D. HARRIS  
Attorney General of California  
DANIELLE F. O'BANNON  
Supervising Deputy Attorney General

/s/ Sharon A. Garske  
SHARON A. GARSKE  
Deputy Attorney General  
*Attorneys for Defendants*

## CERTIFICATE OF SERVICE

Case Name: Clark v. State No. C 96-1486 CRB

I hereby certify that on December 16, 2015, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STIPULATION AND [PROPOSED] ORDER RE: REVISIONS TO REMEDIAL PLAN;  
ATTACHMENTS 1-3

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 16, 2015, at San Francisco, California.

D. Criswell  
Declarant

*s/ D. Criswell*  
Signature