



**U.S. Department of Justice**

**Civil Rights Division**

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*Assistant Attorney General  
950 Pennsylvania Avenue, NW - RFK  
Washington, DC 20530*

May 9, 2007

The Honorable Ted Strickland  
Governor  
State of Ohio  
30th Floor  
77 South High Street  
Columbus, OH 43215-6117

Re: Investigation of the Marion Juvenile  
Correctional Facility, Marion, Ohio

Dear Governor Strickland:

I am writing to report the findings of the Civil Rights Division's investigation of conditions at the Marion Juvenile Correctional Facility ("Marion"), located in Marion, Ohio. On April 15, 2005, we notified you of our intent to conduct an investigation of Marion, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA"), and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141").<sup>1</sup> At that time, we informed you that our investigation of Marion would focus on protecting residents from harm, medical care, grievances, and provision of special education.<sup>2</sup> As we noted, both CRIPA and Section 14141 give the Department of Justice authority to seek a remedy for a pattern or practice of conduct that violates the constitutional or federal statutory rights of children in juvenile justice institutions.

We note that the State has worked cooperatively and, under the leadership of Director of Ohio Youth Services Thomas Stickrath, has unequivocally indicated its clear desire to improve both facilities since being placed on notice of possible constitutional deficiencies. Prior to the Department of Justice investigations of Marion and Scioto, the State hired a team of

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<sup>1</sup> Prior to initiating our Marion investigation, on March 16, 2005, we notified you of our intent to conduct an investigation of the Scioto Juvenile Correctional Facility ("Scioto").

<sup>2</sup> Our Scioto investigation focused on the same issues with the addition of mental health care.

expert consultants, led by Mr. Fred Cohen, to evaluate the constitutional conditions at the girls' section of the Scioto facility.<sup>3</sup> Mr. Cohen issued an Interim Report on August 16, 2004 and an Action Plan on September 28, 2004. In each of these documents, Mr. Cohen found constitutional deficiencies in the areas of protection from harm, medical care, mental health care, grievances, and provision of special education. The State has agreed to adopt and stipulate to Mr. Cohen's findings, for the purpose of our investigation, and to apply those findings regarding the girls' facility to Marion and the entire Scioto facility.

Given the State's stipulation that the conditions identified in our April 15, 2005 notice letter are constitutionally deficient, we agreed to conduct limited facility tours.<sup>4</sup> On June 27-29, 2005, we conducted an on-site inspection of Marion, accompanied by expert consultants in mental health care and medical care. We returned to Marion on July 19 and 20 for an on-site inspection with our special education consultant. During our inspections, we interviewed mental health providers, medical providers, other staff, youth residents, teachers, and facility administrators. Before, during, and after our visit, we reviewed an extensive number of documents, including policies and procedures, mental health records, youth detention records, unit logs, education records, and orientation materials. Consistent with our commitment to provide technical assistance and conduct

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<sup>3</sup> Although the main Scioto facility houses female youth, a separate section of the facility acts as state-wide intake for all male youth.

<sup>4</sup> This investigation is anomalous because Mr. Cohen's 2004 factual findings regarding the conditions of confinement at Scioto revealed significant deficiencies in each of the areas that were the subject of our investigation and because the State has stipulated to all of Mr. Cohen's generally well-supported findings. Together, these factors created the unusual circumstance in which it was not necessary for the Department to conduct a facility tour regarding each of the specific subject areas of our investigation. However, we did tour Marion regarding areas in which we required additional factual information to make a thorough and complete finding or to frame appropriate corrective measures. For example, we toured Marion with a special education consultant in response to the State's concern that Mr. Cohen's extensive findings regarding special education in Scioto were not reflective of the conditions in Marion.

a transparent investigation, we conducted an exit conference with facility staff and Ohio Department of Youth Services officials upon the conclusion of the tour, during which our expert consultants conveyed their initial impressions and concerns.

We commend the Marion staff for their helpful, courteous, and professional conduct throughout the course of this investigation. We also wish to express our appreciation for the cooperation of Ohio Department of Youth Services officials and staff.

Consistent with our statutory obligation under CRIPA, we set forth below the findings of our investigation, the facts supporting them, and the minimum remedial steps that are necessary to address the deficiencies we have identified. As described below, we conclude that youth confined at Marion suffer harm or the risk of harm from constitutional deficiencies as to: protecting residents from harm; certain discrete elements of medical care; mental health care; grievances; and special education services. Notwithstanding the foregoing, we are pleased to report that our review indicates that Marion's general medical programs are, for the most part, good. In particular, we find that Marion's medical quality improvement program, environmental conditions, and management of special dietary needs for youth are appropriate. However, certain discrete aspects of medical care, identified below, substantially depart from generally accepted professional standards of care and expose youth to harm.

## I. BACKGROUND

The State of Ohio, through its Department of Youth Services, owns and operates Marion, located approximately 45 miles north of Columbus, Ohio. Marion is Ohio's only maximum-security juvenile justice facility. Its population consists entirely of juvenile males, aged 12 to 21, adjudicated, of felony-level crimes, in juvenile courts. Marion's rated capacity is 336. Its facilities include 12 housing units, a mental health unit, a transitional unit, and a super-max unit.

## II. FINDINGS

As a general matter, States must provide confined juveniles with reasonably safe conditions of confinement. Youngberg v. Romeo, 457 U.S. 307 (1982); Nelson v. Heyne, 491 F.2d 352 (7th Cir. 1974); see also Miletic v. Natalucci-Persichetti, No. C-3-89-299, 1992 WL 1258522, \*2, \*4 (S.D. Ohio Feb. 6, 1992) (holding, in a case against the Ohio Department of Youth

Services, that "a juvenile who is involuntarily committed to a correctional as opposed to mental health facility has a right to treatment under the Fourteenth Amendment similar to that which was recognized in Youngberg . . . .").

#### **A. PROTECTION FROM HARM**

Juveniles in state custody have a constitutional right to reasonable safety. See Youngberg, 457 U.S. at 315-16 ("personal security constitutes a historic liberty interest protected substantively by the Due Process Clause") (internal quotation omitted).

Our review of conditions of confinement at Marion reveals significant constitutional deficiencies regarding use of physical force, grievance investigation and processing, and use of seclusion. For purposes of our investigation, the State has stipulated to Mr. Cohen's August 2004 findings regarding the Scioto girls' facility, agreeing that Mr. Cohen's findings for each of the above-mentioned subject areas apply to Marion. In addition, our experts concur with Mr. Cohen's findings and suggested remedies.

##### **1. Use of Physical Force**

Juveniles at Marion have a right to be free from unnecessary restraint and the use of excessive force. Youngberg, 457 U.S. at 315-16.

The State has stipulated to apply the findings made by its expert regarding protection from harm issues at Scioto to Marion.<sup>5</sup> Because of the State's stipulation, the Department agreed not to perform a separate fact-finding exercise at Marion regarding protection from harm issues.

In his report, Mr. Cohen concludes that "there has been (and remains) a culture of violence among the uniformed staff, that verbal and physical abuse are common, [and] sexual misconduct by staff occurs . . . ." Mr. Cohen indicates that he and his team of experts "have the most serious reservations as to whether [the State's] investigators are presently able to produce the quality of investigative work required to identify those use of force

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<sup>5</sup> In 2004, the State hired Mr. Cohen and a team of experts to review protection from harm issues in Scioto's Girls' Program after 14 Scioto staff had been indicted on charges relating to physical and sexual abuse of youth at Scioto.

incidents that merit corrective actions for staff who violate the [Department of Youth Services'] use of force policy." Finally, Mr. Cohen concludes that "there can be no debate on the constitutional obligation under the Fourteenth Amendment to provide a safe environment. Scioto has not met its obligations to provide such an environment . . . ."

In reviewing use of force incidents at Scioto, Mr. Cohen reported that "verbal and physical abuse are common." In his report, Mr. Cohen stated that he and his team "found countless examples of situations where no force at all should have been used and others where the force used was excessive." Further, according to Mr. Cohen, verbal abuse is rampant and often serves, perhaps intentionally, to precipitate physical confrontations with juveniles. Based on these assessments and the State's stipulation as to their applicability, we conclude that youth at Marion are subject to use of excessive force and physical abuse.

In addition, from document review and youth interviews, our medical consultant found that Marion youth are at significant risk of physical trauma due to youth-on-youth fights. Youth have indicated they believe that staff encourage youth to fight.

Finally, we note that Marion currently allows use of a physical restraint technique directing staff to place an arm across a youth's chest below the neck and push on the cheek with the back of the hand. As our medical expert observed during the tour, use of any technique calling for an arm to be placed across the neck during a physical altercation or other incident exposes the youth to a significant risk of harm. This practice is especially problematic in light of allegations we have received that youth have been choked by staff during altercations.

## **2. Grievances (Investigations and Processing)**

Just as prisoners and juvenile detainees have a constitutional right of access to the courts, they have a right to a grievance system that does not carry risk of punishment as a price for using it. See Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6th Cir. 1999); see also Bounds v. Smith, 430 U.S. 817, 822 n.17 (1977) ("Our main concern here is protecting the ability of an inmate to prepare a petition or complaint.") (internal quotation marks and citations omitted).

An adequately functioning grievance system ensures that youth have an avenue for bringing serious allegations of abuse and other complaints to the attention of the administration. It

also provides an important tool in alerting the administration about dangers and other problems in the facility's operations.

We adopt the following findings by the State's expert, regarding the Scioto girls' section, based on the State's stipulation as to their applicability at Marion. As part of Mr. Cohen's assessment, the State's experts conducted a review of Scioto's incident investigation and grievance process,<sup>6</sup> finding that several factors contribute to its inadequacy. In particular, Mr. Cohen's report finds that investigations are "pedestrian, time consuming, and full of errors or oversights." The State's experts also determined that, with the exception of a few cases, investigators rarely attempt to determine if officers followed existing protocol.

Additionally, investigations contain few facts other than repetition of the complaint and denials by involved individuals. The investigations reveal a trend of repetitive questioning of involved youth, as though questioning was to continue until the youth provided the "correct" answer. Incidents involving physical aggression contained no evaluation of events preceding the incident, nor questions regarding use or attempted use of lesser physical interventions.

In addition, although grievances contain serious allegations such as verbal harassment and abuse, use of physical force, loss of programs and privileges, sexual harassment, and untreated medical issues, such investigations rarely result in corrective action for staff or youth or any attempt to recognize or identify patterns of behavior requiring intervention.

The inadequacies in Marion's grievance system contribute to the State's failure to ensure a reasonably safe environment. An adequately functioning grievance system ensures that youth have an avenue for bringing serious allegations of abuse and other complaints to the attention of the administration. It also provides an important tool in evaluating the culture at the facility, and alerting the administration about dangers and other problems in the facility's operations.

### **3. Seclusion**

Based on the State's stipulation as to their applicability at Marion, we adopt the following findings by the State's expert

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<sup>6</sup> Mr. Cohen's team reviewed the 984 incidents filed from January 1, 2003 through August 18, 2004.

regarding the Scioto girls' section. The State's experts reviewed over 200 seclusion reports regarding Scioto girls from May 2004 to June 2004. In his report, Mr. Cohen concluded that staff use seclusion as a first response and often hold youth in seclusion for hours even though they do not pose an imminent threat. Additionally, the State's expert found that Scioto's routine use of seclusion as immediate punishment is often accompanied by use of force.

## **B. MEDICAL AND MENTAL HEALTH CARE**

Juveniles in state custody have a due process right to adequate mental health care. The Supreme Court in Youngberg broadly labeled health care as "medical care," but recognized that this would include care provided by various disciplines, including persons with appropriate training in psychology. See id., 457 U.S. at 322-323, n.30. The Sixth Circuit also has recognized that medical care encompasses mental health care. See Horn v. Madison County Fiscal Court, 22 F.3d 653, 660 (6th Cir. 1994) ("A detainee's psychological needs may constitute serious medical needs, especially when they result in suicidal tendencies.").

### **1. Medical**

We are pleased to report that our review indicates that Marion's general medical programs are, for the most part, good. In particular, we find that Marion's medical quality improvement program, environmental conditions, and management of special dietary needs for youth are appropriate. However, certain discrete aspects of medical care, identified below, substantially depart from generally accepted professional standards of care and expose youth to harm.

#### **a. Identification of Health Problems and Initial Health Assessments**

Marion's health records are inadequate insofar as they do not contain problem lists. Such lists document all identified active health problems and are necessary tools in monitoring youth health status and providing adequate health care. Marion's initial health assessments are similarly inadequate, due to the absence of problem lists.

Separately, as a matter of technical assistance, we note that Marion's assessments are conducted in a central area of the clinic that is, at best, marginally confidential, as conversations can be easily overheard. Nurses should use

private exam rooms for such assessments and ensure that non-professional staff are unable to overhear the confidential assessment.

**b. Evaluation and Treatment of Sick Residents**

Marion's sick call procedures make youth access to medical case dependent upon line staff. Marion's current system forces youth to submit requests through line staff in a non-confidential manner, breaching youths' rights to privacy and confidentiality. Marion should implement a system in which youth can submit sick call requests confidentially and independent of the line staff.

Marion's medication management is well-organized. However, Marion's policy of discontinuing medication not on the Prison Health Services formulary constitutes a departure from generally accepted professional standards of care, because it requires youth to become unstable before receiving proper medication.

**c. Dental Care**

Marion's dental program fails to meet the dental needs of its youth. We found numerous instances of youth with significant, untreated, dental needs. Separately, Marion fails to provide pain medications adequate to relieve severe dental pain, reflecting inadequate dental care. In addition, Marion's current dentist only works two days per week to meet the needs of its population of approximately 275 youth. This is not adequate.

**d. Special Services for Chronically Ill and Disabled Youth**

We find that Marion's care provided to patients with asthma substantially departs from generally accepted professional standards, as youths' asthma medications are discontinued upon admission to the facility. Marion should continue to provide such necessary medication without delay.

Finally, we note that Marion, through its contractor, Prison Health Services, inappropriately denies youth access to specialist care, such as diagnostic tests and consultations, when such care is clinically indicated. For example, Marion denied a facility physician's request for an echocardiogram, to examine a youth's significant heart murmur, finding the youth to be "asymptomatic" because he was not yet showing disability due to decompensated heart disease. This is a substantial departure from generally accepted professional standards.

**e. Disease Prevention and Health Promotion**



Thirty percent of Marion's youth had incomplete immunizations, and youth are not fully immunized for their age. This is a substantial departure from generally accepted professional standards.

**f. Medical Quality Improvement Program**

While we find that Marion's current medical quality improvement program is adequate, we suggest that Marion place more emphasis on areas relevant to its population, such as completing immunizations, reviewing grievances, and reviewing hospitalizations.

**g. Special Dietary Needs for Youth**

Marion adequately manages food allergies and special medical diets.

**h. Abuse Reported By Medical Professionals**

While nurses at Marion assess youth after a use of physical restraint, they only report suspected abuse to the facility administration, rather than to State child abuse authorities. This reporting scheme is a substantial departure from generally accepted professional standards and, in light of the State's stipulation regarding use of excessive force, is especially problematic.

**2. Mental Health Care**

The Constitution requires that youth in juvenile justice institutions receive adequate mental health care. Youngberg, 457 U.S. at 323, n.30; Nelson, 491 F.2d at 360; see also K.H. v. Morgan, 914 F.2d 846, 851 (7th Cir. 1990); A.M. v. Luzerne County Juvenile Detention Center, 372 F.3d 572, 585 n.3 (3d Cir. 2004). We find that mental health care at Marion is constitutionally inadequate.

In 2004, Mr. Cohen, the State's expert, concluded that the Scioto girls' facility's mental health unit "is little more than a residence for girls with mental disorders" and that "[m]ental health care is so deficient" that it was not feasible to comment on the various elements of such care, indicating that "[a] more refined analysis must await another day - a day when constitutionally required, minimally acceptable care is instituted."

Given the severity of Mr. Cohen's assessment, and the

State's stipulation applying such findings to Marion, we toured Marion with a mental health expert. We found serious deficiencies in the provision of mental health care regarding the facility's identification of youth with significant mental health problems ("case finding"), and in the screening, assessment, treatment planning, and monitoring of youth with such problems. In addition, we found discrete or underlying problems regarding the facility's efforts to involve family in treatment decisions, and regarding staffing, restraints, and environmental conditions.

**a. Case Finding**

We find that Marion's efforts to identify youth with mental disorders are significantly lacking. Our observations and interviews with youth indicate that a significant number of youth manifesting mental health disorders are not identified and thus, not treated. Marion's current 20 percent rate of youth identified as having such disorders is quite probably a significant underestimate. One of Marion's own staff psychologists estimated that the actual rate of mental disorders within Marion's population is between 30 and 40 percent (an estimate consistent with current prevailing research). Marion's failure to adequately detect youth having significant mental disorders is a substantial departure from generally accepted professional standards.

**b. Screening, Assessment, Treatment Planning, and Monitoring**

Initial screening of all Marion youth is conducted at the intake section of the Scioto Juvenile Correctional Facility. These assessments, which provide the basis for ongoing mental health care at Marion, are addressed in a separate letter. Regarding onsite treatment at Marion, we were unable to find evidence that the facility provides any further assessment of a youth's adjustment to the new facility, such as systematic rescreening. Additionally, the psychology records we reviewed indicated that Marion does not take into account individuals' difficulties or strengths when designing and implementing treatment plans. Further, it was evident that clinical team meetings do not review, and modify as warranted, treatment plans in a formal manner or consider whether goals are being met. This is a substantial departure from generally accepted professional standards. Further, Marion does not base determinations on empirical information, making such determinations overly reliant on subjective reporting by line staff.

We find that psychopharmacological treatment at Marion for youth identified as needing such treatment is based on an adequate psychiatric assessment and, a cursory, but explicit,

plan for treatment with medication. We also find that follow-up is adequate, although Marion should ensure that it gathers information from collateral sources when assessing a youth's target symptoms. Lastly, as a matter of technical assistance, we recommend that the facility reconsider its aversion to prescribing stimulants. Given Marion's care in monitoring medications, the facility should be comfortable allowing its youth access to the therapeutic benefits of such medications.

**c. Mental Health Unit**

Marion's intensive mental health unit appears to be serving an appropriate population and providing adequate care. We suggest that Marion consider using any extra beds in the area for short-term treatment for youth with more acute disturbances.

**d. Suicide Prevention Activities**

We find that Marion's plan for assessing acute risk and preventing suicides is thorough and effective.

**e. Family Involvement**

As a matter of technical assistance, we find that Marion's efforts to engage youths' families in their mental health care are lacking. Families are an extremely important source of clinical information, and their support can make an enormous impact on a youth. We understand that some families may live far from Marion or not be responsive to outreach. Nevertheless, we believe that an increased effort by Marion staff will lead to productive outcomes for its youth.

**f. Staffing**

Marion's social work staff is not adequate to provide more than superficial care for youth with significant mental health disorders, and this constitutes a substantial departure from generally accepted professional standards. The Psychology Department is severely understaffed at Marion. Such inadequate staffing reduces the ability of mental health staff to collaborate appropriately with other staff in monitoring progress of youth on the mental health list and those without identified disorders. Additionally, poor staff size reduces psychologists' availability to youth, reduces flexibility in responding to specific treatment needs and designing appropriate responses, and contributes to inconsistent recordkeeping.

Psychiatry staffing is adequate to meet the needs of youth currently identified as having mental health disorders. However, as noted above, the number of youth with significant mental

health disorders is much higher than currently identified by Marion, and the facility will need to maintain adequate psychiatric staff as its mental health caseload changes.

**g. Restraints**

Marion uses four-point restraints, forced medications, and restraint beds to manage severely mentally ill youth. We urge Marion to work to identify such youth early and transfer them to mental hospitals rather than resorting to the extreme behavior-management options listed above.

**h. Environmental Conditions**

Shower heads in some units pose suicide risks (e.g., hanging hazards) as they are not constructed in a manner that would allow a rope or similar implement to slip free. Easy access to such hazards increases the possibility that potentially suicidal youth will seriously harm themselves. Marion should replace such shower heads.

**C. SPECIAL EDUCATION SERVICES**

Students with disabilities have federal statutory rights to special education services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400-1482 (West 2000 & Supp. 2006). Marion serves its special education population through the Hickory Grove High School. The school's faculty numbers slightly more than 30 individuals, including five special education teachers. As of September 2005, the school served 226 students. Of those, approximately 94 students have been identified as having special education needs. We conducted our own on-site review of the provision of special education at Marion. In addition to our review, our expert consultant reviewed Ms. Ava Crow's findings regarding Scioto and determined that similar concerns exist in Marion.<sup>7</sup>

**1. Child Find**

The IDEA requires that states implement systems to identify all students who are eligible for special education services and provide such services to all those identified as having

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<sup>7</sup> Ms. Crow, acting as part of Fred Cohen's team, reviewed education services provided by Scioto's girls' section. The State has agreed to adopt and stipulate to Mr. Cohen's findings, for the purpose of our investigation, and to apply those findings to Marion and the entire Scioto facility.

disabilities. 20 U.S.C. § 1412. We find that Marion violates many of these "Child Find" requirements of the IDEA.

When youth enter the Ohio juvenile correctional system, they are inadequately evaluated for special education needs at the Scioto intake facility; this "evaluation" process consists of a document request for special education records from a youth's prior school. There is no additional direction provided by the Ohio Department of Youth Services to guide intake personnel in conducting a thorough assessment to identify items in a youth's record that should merit further investigation regarding special education placement. Once placed at Marion, youth appear to receive no additional special education screening; none of the teachers who we interviewed could recount ever having referred a student for such an assessment. In light of the above, we find that Marion is not in compliance with its Child Find obligations under the IDEA.

## **2. Eligibility Determinations**

Under the IDEA, Marion is required to conduct a thorough eligibility evaluation of a child suspected of having a disability. See 20 U.S.C. § 1414 at (b)(4), (b)(5), and (c)(5). The IDEA requires that eligibility decisions are to be reviewed every three years. Approximately six percent of Marion's evaluations were more than three years old and thus not in compliance with the IDEA. In this regard, the shortage of psychological staff at Marion contributes to the facility's inability to complete necessary eligibility assessments.

## **3. Implementation of Individual Education Plans**

The IDEA requires that each student with a disability have an Individualized Education Plan ("IEP"), and describes the IEP components required to ensure that each student receives adequate special education services. We find that Marion's IEP process does not ensure that students with disabilities receive such required special education services.

For example, Marion conducts IEP meetings without the full compliment of professionals who should attend and contribute to the development of the IEP. Although the IEP meeting we observed contained a substitute for the principal or vice principal, it contained no regular education teacher, transition services representative, or psychologist (or other individual with skill in interpreting test results).

Furthermore, the IDEA requires that the IEP be a document containing equal contributions from the school and the parent.

However, at one IEP meeting we observed, although the parent was present via telephone, she had minimal involvement. Throughout the meeting, the special education teacher merely read the "draft" IEP to those present. The parent was not given any opportunity to collaborate in developing the document, and the teacher ratified the IEP upon concluding her oral presentation.

Additionally, the IDEA requires IEPs to be reviewed at least annually. Our document review revealed that at least 12 percent of Marion's IEPs had not been revised within the IDEA's time requirements.

Lastly, our document review revealed a clear need for professional development to properly address youth reading problems. The majority of special education records we reviewed revealed substantial deficits in simple reading skills. Moreover, we reviewed a record for one non-special education youth showing lower level reading performance than others currently receiving special education services. This problem reflects the deficiencies described above regarding the special education assessment process.

#### **4. Monitoring of IEPs**

We find that Marion's practices for monitoring progress of students with disabilities is inadequate. Marion should monitor IEPs to ensure that youth receive access to a free and appropriate public education, as required by the IDEA. If monitoring is not conducted frequently and appropriately, educators are unlikely to recognize students' inadequate progress and modify instruction to improve progress.

Our document review and teacher interviews revealed a general lack of knowledge of how to use objective data and quantitative methods to assess students' progress. All educational records we reviewed consisted of subjective evaluations with little basis supporting the stated conclusions. For example, an estimated 80 percent of the required blocks on the IEP forms uniformly read "quarterly progress reports based upon records reviews and teacher interviews." Our review raises doubts as to whether such reviews are actually occurring. Marion also does not appear to have adequate professional development for preparing teachers to monitor progress of IEP goals.

In addition, while the IDEA requires consideration of positive behavioral interventions for students whose behavior interferes with their learning or that of other students, our document review revealed only one such individualized intervention, despite the needs of Marion's youth. Teachers we

interviewed indicated that they believe "only a couple" Marion students have such interventions. This does not comply with the IDEA.

## **5. Classroom Instruction and Management**

Finally, as a matter of technical assistance, we encourage Marion to make maximum use of the instructional time available to provide important educational opportunities for students with disabilities. Furthermore, in order to ensure that students with disabilities are served appropriately, we encourage Marion to increase its school staffing.

### **III. REMEDIAL MEASURES**

In order to rectify the identified deficiencies and protect the constitutional and statutory rights of the youth confined at Marion, the facility should implement, at a minimum, the following measures:

#### **A. Protection from Harm**

1. Ensure that youth are provided with safe living conditions and are protected from abuse, use of excessive force, undue seclusion, and undue restraint.
2. Develop appropriate policies and procedures that govern the use of force, requiring reliable documentation and limiting use of force to situations where a youth is physically violent and poses an immediate danger to himself and/or others or the youth is physically resisting institutional rules and the institution has attempted a hierarchy of non-physical alternatives.
3. Prohibit verbal and physical punishment, and use of force practices that are incompatible with minimum actions necessary to prevent harm or obtain compliance with reasonable orders, including practices such as shoving, pushing, kicking, striking, or using inappropriate holds on youth.
4. Monitor and supervise staff, maintaining appropriate staff ratios and holding staff accountable for the use of excessive force or abuse.
5. Develop policies and procedures to ensure that seclusion and restraint are only used in appropriate, documented, instances by trained staff.
6. Provide youth with an effective and reliable process to raise grievances, without exposing them to retribution from

staff, ensuring that all grievances are reviewed and addressed in a timely matter that provides youth with notification of the final resolution.

7. Employ sufficiently trained and independent investigators to ensure that all incidents of violence, use of force, or serious injury are adequately investigated, and documented, and that appropriate personnel actions are taken in response to substantiated findings.

#### **B. Medical and Mental Health Care**

1. Ensure that youth receive routine, preventative, and emergency medical and dental care consistent with current, generally accepted professional standards, including identification, assessment, diagnosis, and treatment of individuals with health problems.
2. Develop policies and procedures to ensure that youth are provided with: complete and accurate health records, access to confidential health care, a complete initial health assessment, appropriate access to health services, appropriate medications and care to manage chronic illness, access to specialty consults, and proper immunizations managed according to generally accepted medical standards.
3. Maintain appropriate dental staffing and require that generally accepted professional standards are followed to ensure that: youths' restorative needs are met in a timely manner, youth are not denied appropriate pain medication, needed prosthetic dental services are provided, and health records contain adequate documentation of outside dental consults.
4. Provide mental health and rehabilitative treatment consistent with generally accepted professional standards and ensure that there are an adequate number of qualified mental health professionals to provide mental health and rehabilitative services in a timely manner to all youth who require such services.
5. Develop and implement policies, procedures, and practices to ensure that, consistent with generally accepted professional standards of care, youth are: (1) systematically evaluated in response to problem indicators to address potential manifestations of mental or behavioral disorders in youth who have not been previously identified as requiring treatment; and (2) provided appropriate mental health care, substance abuse care, and treatment services.
6. Ensure that any youth determined at screening to be at immediate risk is immediately referred to a qualified mental



health treatment professional for: assessment, treatment, and other appropriate actions, including facility transfer when necessary.

7. Implement policies, procedures, and practices according to generally accepted professional standards to ensure that: youth identified in screening receive timely, comprehensive, and accurate assessments by qualified mental health professionals; and assessments are designed to incorporate data necessary to identify youth with mental disorders and contribute to a plan for managing the youth's risk.
8. Develop and implement policies and procedures consistent with generally accepted professional standards of care to: (1) ensure that treatment determinations are made by an interdisciplinary team through integrated treatment planning; (2) create and implement treatment plans that are current and individualized; (3) maintain readily accessible records containing meaningful, accurate and coherent assessments of the individual's treatment plan progress, goals, and objectives.
9. Develop and implement a system to ensure that mental health issues are adequately considered in making housing decisions and that mentally ill youth receive appropriate housing.
10. Prior to administration of prescribed psychoactive medication, Marion must: (1) ensure that youth and their parents (or guardians, if parents have lost custody due to abuse or neglect) are provided with goals, risks, benefits, and potential side effects of the medication, along with the potential consequences of not treating with the medication; (2) follow state law in order to administer such medication without consent.
11. Develop and implement policies, procedures, and practices to ensure that psychoactive medications are prescribed, distributed, and monitored properly and safely, consistent with generally accepted professional standards of care.
12. Provide training to all staff who interact directly with youth regarding mental health information, developmental disabilities, recognition of signs and symptoms of trauma, teenage development, strength-based treatment strategies, and suicide risks.
13. Create transition plans for youth leaving the facility that are consistent with generally accepted practice standards.
14. Develop and implement policies and procedures to maintain oversight of mental health services and ensure that such

services are provided consistent with generally accepted professional standards of care.

**C. Special Education**

1. Provide prompt and adequate screening, and ongoing rescreening and referral, of youth for special education needs and ensure that all students requiring special education services receive services in compliance with the IDEA within a reasonable time following intake.
2. Ensure that all eligible youth have current, accurate IEPs that are developed and implemented consistent with IDEA requirements.
3. Create and implement a system to routinely develop, implement, and monitor youths' IEPs, with involvement of parents and guardians, as required by the IDEA.
4. Develop and implement a staffing plan that allows for a sufficient number of certified special education teachers and staff to provide all youth with the opportunity to attend school full-time and to obtain adequate educational services while providing teachers with sufficient time to plan lessons, grade assignments, and participate in special education meetings.
5. Develop a quality assurance program to ensure the quality of IEPs, compliance with the IDEA, and monitoring of teaching staff on compliance issues.
6. Ensure that special education staff receive in-service training and maintain current educator licenses appropriate to the courses they teach.

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As stated above, we appreciate the cooperation we have received from Ohio Department of Youth Services officials and facility staff throughout this investigation. We hope to be able to continue working with the State in an amicable and cooperative fashion to resolve the deficiencies found at Marion. Provided that our cooperative relationship continues, we will forward our expert consultant reports under separate cover. Although this report is our consultants' work - and does not necessarily reflect the official conclusions of the Department of Justice - the observations, analyses, and recommendations contained in the reports provide further elaboration of the issues discussed in this letter and offer practical assistance in addressing them.

In the unexpected event that we are unable to reach a resolution regarding our concerns, the Attorney General is

empowered to institute a lawsuit pursuant to CRIPA to correct the deficiencies of the kind identified in this letter 49 days after appropriate officials have been notified of them. 42 U.S.C. § 1997b(a)(1).

We would prefer, however, to resolve this matter by working cooperatively with you. We have every confidence that we will be able to do so in this case. The lawyers assigned to this matter will be contacting your attorneys to discuss this matter in further detail. If you have any questions regarding this letter, please contact Shanetta Y. Cutlar, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-0195.

Sincerely,

/s/ Wan J. Kim  
Wan J. Kim  
Assistant Attorney General

cc: The Honorable Marc Dann  
Ohio Attorney General  
Department of the Attorney General

Thomas J. Stickrath  
Director  
Ohio Department of Youth Services

Dion Norman  
Superintendent  
Marion Juvenile Correctional Facility

The Honorable Gregory A. Lockhart  
United States Attorney  
Northern District of Ohio