

**THE UNITED STATES OF AMERICA**

Plaintiff,

v.

CIVIL ACTION NO. 94-2080 CC

**COMMONWEALTH OF PUERTO RICO**

Defendants,

Monitor's Compliance Ratings  
Second Quarter 2017

Provision	P	S	R	T	D	G	Comment
<b>Compliance Category and Rating Definitions</b>							
<b>Compliance Category P</b>	This category concerns <u>Policy Compliance</u> as required by Settlement Agreement paragraph 45. "Y" means that there are sufficient written policies and procedures in place so that, if they were implemented, compliance would be achieved. A "Y" also means that there are no policies and procedures in place that are inconsistent with the provision.						
<b>Compliance Category S</b>	This category concerns <u>Staffing Compliance</u> as required by Settlement Agreement paragraph 48. "Y" means that there are sufficient authorized and filled positions so that compliance could be achieved. Temporary vacancies are acceptable, provided that functional coverage is provided while the position is vacant, and the process of replacing the employee proceeds promptly.						
<b>Compliance Category R</b>	This category concerns <u>Resource Compliance</u> as required by Consent Order paragraph 44. "Y" means that there are sufficient funds, equipment and supplies and space that compliance can be achieved.						
<b>Compliance Category T</b>	This category concerns <u>Training Compliance</u> as required by Settlement Agreement paragraph 45. "Y" means that the necessary training has been provided, and that the training informs the employees as to how to implement the provision involved.						
<b>Compliance Category D</b>	This category concerns <u>Documentation Compliance</u> as required by Settlement Agreement paragraph 101. "Y" means that there is procedures and forms in place and in use to document whether compliance is being achieved or not. A "Y" can be assigned when the documentation accurately shows non-compliance.						
<b>Compliance Category G</b>	This category concerns <u>General Compliance</u> - the overall achievement of compliance with the provision involved.						
<b>Compliance Rating Definitions</b>	"Y" means that compliance is achieved. "N" means that compliance is not yet achieved. "#" means that the Monitor has not determined whether compliance has been achieved or not. "I" means that the category is inapplicable to the provision involved.						

Provision	P	S	R	T	D	G	Comment
<b>Facility Provisions</b>							
<del><b>C.O. 41:</b> Within ninety (90) days of the filing of this Consent Order, Defendants shall repair all defective plumbing in the facilities in this case. The defective plumbing shall be repaired first at Mayaguez, Ponce Industrial, Ponce Detention and Humacao.</del>	Y	Y	Y	I	Y	Y	This provision was terminated by the Court on March 30, 2017.
<del><b>S.A. 29.</b> Each new facility shall be built in accordance with: (1) the American Correctional Association's (hereinafter "ACA") standards in effect at the time of the construction; (2) the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 and 47 U.S.C. §§ 225 and 611, and the regulations thereunder; and (3) all Commonwealth fire codes and regulations.</del>	Y	I	I	I	Y	Y	This provision was terminated by the Court on March 30, 2017.
<b>S.A.31.</b> Existing facilities expected to be occupied by juveniles beyond Fiscal Year 1996-1997 shall conform to applicable federal, state and/or local building codes.	Y	N	N	N	N	N	<p>There are still life and fire safety code and ADA violations that have not been remedied. DCR has not allocated sufficient resources to support compliance with this provision nor is there documentation at this juncture to support a pathway to compliance. The Monitor's office and the functional team have, however, discussed a potential Roadmap for compliance with this provision, including utilizing the checklists developed for SA 29 as a foundation for further evaluation. We also met in March with a new team of engineers who are consultants to DCR who are to develop a strategy that may pave the way for a roadmap for eventual compliance with this provision. The monitor was informed that DCR has reviewed existing drawings and the documentation developed for SA 29 as well as toured one of the existing facilities. They have also presented the Monitor's Office with a preliminary listing of codes for compliance analysis. This list was preliminarily reviewed by the Monitor's office and was pending a follow-up discussion with the engineers.</p> <p>The monitor's office has since been informed that the contract with the engineers ended on June 30<sup>th</sup> and that a new consulting group will need to be hired. If a different firm is re-hired, it will set the process back for making progress on this provision.</p>

Provision	P	S	R	T	D	G	Comment
<b>S.A. 34.</b> In order to properly equip and swiftly evacuate the facilities in the event of a fire or other emergency, in each facility, Defendants shall provide sufficient staff with appropriate keys to unlock exit doors in all buildings occupied by juveniles. The keys shall be color coded and notched or otherwise readily identifiable. Defendants shall also store a backup set of emergency keys at a place accessible at all times to staff on duty on all shifts.	N	#	#	#	#	N	<p>The DCR Fire Safety Officer has revised the procedures for emergency key control based on the review by the monitor's office.</p> <p>Presently, Humacao is still testing if current staffing is sufficient to manually unlock housing room doors in compliance with current life safety codes. The Monitor's Consultant is continuing to review the weekly documentation and evacuation simulation data, which indicates that housing units can be safely evacuated in less than two minutes per the life safety code. In addition, DCR is developing new documentation that shows sufficient staff with proper communication capabilities are always working in the Mini Housing Control stations on all shifts to remotely unlock all exit doors in each facility.</p> <p>DCR has completed the initial process to properly color code and notch emergency keys and store them in accessible secure locations for staff access on all shifts.</p> <p>The Monitor's Consultants submitted a report in the third quarter of 2016 based on the tours completed earlier in 2016. Since the time of the tours that generated the report, DCR has been very responsive in correcting most of the issues noted in the report. The Monitor's Consultant has spot checked some of the corrections on subsequent site visits and has seen improvements. DCR submitted a document that described all these corrections as well as a few final updates of the emergency key procedures that the Monitor's office has reviewed and found acceptable. Accordingly, in April 2017, the Monitor's Consultant conducted a compliance tour to determine full compliance and the tour revealed that compliance has been achieved with only a few minor corrections required. Documentation for those modifications will be presented to the monitor's office for verification and once all the other documents required for compliance with this provision, such as the specific policies and evidence of staff training are submitted to the Monitor's Consultant, a Compliance Memorandum will be drafted.</p>

Provision	P	S	R	T	D	G	Comment
<b>S.A. 35.</b> Defendants agree that designated exit doors in all facilities will be maintained in operable condition and shall be readily unlocked in case of an emergency.	N	#	#	#	Y	N	<p>DCR has vastly improved its ability to maintain operable exit doors from living units that can be readily unlocked in emergency situations.</p> <p>DCR is now documenting on a weekly basis its monitoring and inspections made by the fire safety officers at each facility documenting that all exit doors are maintained in operable condition and can be readily unlocked. The process for documentation has been agreed to with the Monitor and Functional team and documentation began in August 2014. The Monitor's office has observed this documentation being utilized at all the facilities and in practice and is satisfied with the progress of compliance. The monitor is also waiting for additional training curriculum documentation. A draft Roadmap for this provision was completed in consultation with the Functional Team and was presented to USA for comments. The Monitor's Office received those comments and also shared them with the functional team members. In the most recent quarterly site visits to the four facilities, there were no issues observed in spot checking emergency exit doors in the housing units. In addition, the Monitors' Office reviewed the most recent quarterly inspection reports and found them to be complete and demonstrated compliance with this stipulation.</p> <p>In addition to all the weekly reports, DCR is currently developing summary spreadsheets of all the exit door tests showing the data in summary form for the last twelve months.</p> <p>Once all the other documents required for compliance with this provision, such as specific policies and training of staff, which is presently proceeding, are submitted to the Monitor's Consultant, a Compliance Memorandum will be drafted.</p>

Provision	P	S	R	T	D	G	Comment
<p><b>S.A. 37.</b> AIJ policy shall ensure safety for juveniles and staff by requiring compliance with fire safety code requirements. Specific emergency plans shall be developed and copies made available to staff members. There shall be ongoing training programs and emergency procedures shall be reviewed and updated annually.</p>	Y	N	Y	#	#	N	<p>DCR is planning to submit an update to its new lesson plans for training compliance. The training using the new curriculum has begun. The Monitor and Functional Team have agreed to focus primarily on the training curriculum and number of staff trained in 2016 and 2017 as these time-frames are more pertinent to determine compliance with this provision.</p> <p>DCR has supplied documentation that emergency procedures are reviewed and updated annually. Documentation has also been provided showing that copies of the emergency plans are available to staff at all facilities.</p> <p>A Final Roadmap for this provision has been agreed to by DCR and USA. The Monitor's consultants continue to work with the parties to assemble the necessary compliance documentation expectations for the Roadmap. The Monitor's Office is waiting for the updated training documentation to become part of a compliance memorandum to be submitted later in 2017</p>

Provision	P	S	R	T	D	G	Comment
<b>Policies and Procedures</b>							
<b>S.A. 45.</b> Within one year of the approval of this agreement by the Court, Defendants agree to provide an agency policy and procedure manual governing all operational aspects of the institutions. Within eighteen months of the approval of this agreement by the Court, Defendants shall further insure that the facilities are strictly operated within these policies and procedures and that all staff have been trained accordingly.	Y	I	I	#	#	N	The Monitor agrees that the agency maintains a policy and procedure manual as required by this provision, although whether it governs all aspects of running the facilities as required has not yet been confirmed. Moreover, in the rest of this table, policies and procedures are rated as a compliance problem for many of the provisions in this case. See the compliance rating in Column T, which identifies when a training deficiency is a factor in compliance. While having developed and routinely updated a manual is a factor in compliance, the provision also clearly requires that the facilities be strictly operated within these policies and this implementation requirement's scope and accuracy have not yet been established.

Provision	P	S	R	T	D	G	Comment
<b>Staffing</b>							
<p><b>S.A. 48.</b> Defendants shall ensure that the facilities have sufficient direct care staff to implement all terms of this agreement. Direct care staff supervise and participate in recreational, leisure and treatment activities with the juveniles. Compliance can be demonstrated in either of two ways.</p> <p><u>48.a Method one:</u> Defendants may provide documentation of consistent supervision by not less than one (1) direct care worker to eight (8) juveniles during day and evening shifts and not less than one (1) direct care worker to sixteen(16) juveniles during normal sleeping hours.</p> <p><u>48.b Method Two:</u> Defendants may develop, and submit to the court for approval, an alternate staffing roster for any facility in this case. The roster shall be based on a study that shall specify fixed posts and the assignment necessary to implement the terms of this agreement, taking into consideration the physical configuration and function of spaces, the classification and risk profiles of youths involved, the incident patterns in the settings involved, the routine availability in the settings of other categories of staff, and the overall number of direct care positions necessary to consistently achieve the coverage proposed. Once a plan is approved for a facility, defendants shall document the employment of the necessary overall numbers of direct care staff, and the ongoing deployment of such staff in accordance with the plan.”</p>	N	N	N	N	Y	N	<p>The Commonwealth has the choice to demonstrate compliance according to method 48.a or 48.b. They have informed the Monitor that they do not intend to select method 48.b and that their legal position is that this language should be struck from the Settlement Agreement as superfluous. The Monitor agrees.</p> <p>For the Second Quarter of 2017, all of the facilities submitted the staffing youth ratio reports requested.</p> <p>6:00 am- 2:00 pm shift: 85% of events, a 4% decrease since First Quarter reporting period  2:00 pm- 10:00 pm shift: 72% of events, a 15% decrease since First Quarter reporting period  10:00 pm- 6:00 am shift: 100% of events, a 0% increase since First Quarter reporting period</p> <p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>While compliance with the terms of this provision is not likely for some time, Monitor’s consultants are working with the parties to identify necessary compliance documentation expectations for compliance.</p>
<p><b>January 2009 Stipulation Paragraph 1:</b> All necessary steps shall be taken immediately to ensure the reasonable safety of youth by providing adequate supervision of youth in all facilities operated by, or on behalf of, the Defendants.</p>	Y	N	N	N	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations Sections 115.313, 115.364. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p>



<b>January 2009 Stipulation Paragraph 2:</b> All necessary steps shall be taken to provide sufficient direct care staff to implement the Consent Decree and adequately supervise youth, pursuant to Paragraph 48.	N	N	N	N	N	N	The requirement that 50 YSOs be hired each month was terminated by the Court on September 13, 2011 (Docket 991)  No new YSOs were hired during the Second Quarter of 2017.
<b>January 2009 Stipulation Paragraph 3:</b> Defendants will include as direct care staff all social workers assigned to its institutions, once such staff receive forty (40) hours of pre-service training, <del>pursuant to Paragraph 49 of the Consent Decree</del> . The same shall also receive annual training as direct care staff, pursuant to Paragraph 50 of the Consent Decree.	#	#	#	#	#	#	The Commonwealth has decided not to employ this provision to enhance coverage. However, the provision remains as a future option. Unless and until the Commonwealth determines that they want to apply this provision, the Monitor's Office will not Monitor the provision. The choice to not implement this provision is not non-compliance. The <del>struck</del> part of the provision references a provision that has been terminated.
<b>January 2009 Stipulation Paragraph 4:</b> All persons hired to comply with Paragraph 48 shall be sufficiently trained, <del>pursuant to Paragraph 49 of the Consent Decree</del> , before being deployed. Defendants shall deploy all duly trained direct care staff, <del>pursuant to Paragraph 49</del> , to juvenile facilities in a timely manner.	#	#	#	#	#	#	The phrases in this provision that refer to Paragraph 49 are struck because that provision has been terminated.
<b>January 2009 Stipulation Paragraph 5:</b> On the fifth day of every thirty-day period commensurate with the Order approving this Stipulation, Defendants shall submit a report to the Monitor and the United States providing the following: a. the number of current direct care staff, by position classification, at each facility; b. the number of qualified direct care staff hired during the previous period; c. the number of hired direct care staff in the previous period who were hired <del>and have received pre-service training, pursuant to Paragraph 49</del> ; and d. the juvenile facilities where the direct care staff who were hired in the previous quarter <del>and have received pre-service training, pursuant to Paragraph 49</del> , have been deployed or assigned.	N	N	N	N	N	N	The <del>struck</del> part of the provision references a provision that has been terminated.  The report was not provided during the Second Quarter of 2017, nor has it been provided by the Commonwealth since the initiation of the stipulation

Provision	P	S	R	T	D	G	Comment
<b>Training</b>							
<p><b>S.A. 50.</b> Defendants shall ensure that current and new facility direct care staff are sufficiently well-trained to implement the terms of this agreement. Each direct care staff, whether current or new, shall receive at least forty (40) hours of training per year by qualified personnel to include, but not be limited to, the following areas: CPR (cardiopulmonary resuscitation); recognition of and interaction with suicidal and/or self-mutilating juveniles; recognition of the symptoms of drug withdrawal; administering medicine; recognizing the side-effects of medications commonly administered at the facility; HIV related issues; use-of-force regulations; strategies to manage juveniles' inappropriate conduct; counseling techniques and communication skills; use of positive reinforcement and praise; and fire prevention and emergency procedures, including the fire evacuation plan, the use of keys, and the use of fire extinguishers.</p>	Y	N	N	N	N	N	<p><u>Compliance tables documenting training within the agency as required in this stipulation have not been submitted to the Monitor since 2011, despite repeated requests.</u></p> <p>There is no additional information to add as the second quarter FT meeting was postponed to August 2017. No interim-reports have been submitted to indicate progress toward the goals established in the first quarter of 2017.</p> <p>During the 1<sup>st</sup> quarter 2017 DCR FT meeting the IDECAHR director and FT members agreed to model a compliance plan for this stipulation. The timeline will extend from July 2016 to the end of December 2017 and will achieve a 90% or higher compliance threshold for all components of the training offered to active direct contact security staff. IDECAHR stated that they have already achieved 100% compliance for CPR and are on track to do so with other training categories. During site visits for this quarter, the monitor's consultant observe sessions in suicide prevention (the 3 hour curriculum), use of force regulations and the use of keys and fire evacuation procedures. A site visit report was submitted to all parties in March 2017. This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as "PREA" is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA. A review of the training sessions during the quarter revealed that PREA training is being offered within the institutions.</p>
<b>Classification</b>							

Provision	P	S	R	T	D	G	Comment
<b>S.A. 52.</b> At both the detention phase and following commitment, Defendants shall establish objective methods to ensure that juveniles are classified and placed in the least restrictive placement possible, consistent with public safety. Defendants shall validate objective methods within one year of their initial use and once a year thereafter and revise, if necessary, according to the findings of the validation process.	Y	Y	#	Y	N	N	<p>DCR, with the support of consultants, has conducted a validation study of the classification process for detention and committed and detention youth.</p> <p>DCR has conducted a classification validation study on committed and detention youth. The validation study was assessed for agency impact, piloted and was implemented in June 2016. An Administrative Order describing implementation of the Instruments of Classification in Custody and Instruments of Classification in Detention has been trained and operationalized</p> <p>Documentation has been provided for the classification of youth for detention, as well as for committed youth, for the months of the Second Quarter 2017.</p> <p>For the Second Quarter, there were 140 detention admissions, of which 78% (109) were classified as low; 19% (26) were classified as moderate; 1% (1) was classified as severe, and 3% (4) as Released prior to classification.</p> <p>For the Second Quarter, there were 25 committed youth institutional assignments based on the Instruments of Classification in Custody:  CTS Humacao (Treatment Level 5: 5 youth);  CTS Villalba (Treatment Level 4: 8 youth);  CTS Ponce (Treatment Level 2: 1 youth)  CTS Ponce (Treatment Level 3: 8 youth);  CTS Ponce, PUERTAS; 3 youth).</p> <p>Monitor's consultants are continuing to work with the parties to identify necessary compliance documentation expectations.</p>

Provision	P	S	R	T	D	G	Comment
<b>Mental Health and Substance Abuse Treatment</b>							
<b>S.A. 59.</b> Defendants, specifically the Department of Health (ASSMCA), shall provide an individualized treatment and rehabilitation plan, including services provided by AIJ psychiatrists, psychologists, and social workers, for each juvenile with a substance abuse problem.	#	N	N	#	#	N	As reported last quarter, effective March 31 <sup>st</sup> 2017 all contracted mental health providers (Psychiatrists, Psychologists and Substance Abuse Counselors) were terminated and mental health services were contracted out to a for profit company, PCPS. Significant gaps in mental health services exists.  NIJ was not meeting generally accepted standards, as required by Consent Order paragraph 59, because of insufficient mental health (psychiatry and psychologist) hours. Mental health treatment, rehabilitation plan, including services provided by AIJ psychiatrists, psychologists and social workers for each juvenile with a substance abuse problem was not being provided by generally acceptable standards.
<b>C.O. 29:</b> Defendants shall maintain an adequate 48 bed residential mental health treatment program which provides services in accordance with accepted professional standards, for juveniles confined in the facilities in this case in need of such services as determined by a qualified child and adolescent psychiatrist as part of a qualified interdisciplinary mental health team.	#	N	N	N	N	N	As mentioned previously it is the understanding of the Monitor's Mental Health Consultant that the 48 bed residential mental health treatment program provision was originally developed, and then reaffirmed by joint stipulation of the parties in 2007, when the overall DCR youth census was substantially higher. The Monitor's Mental Health Consultant recommends a review of this provision for possible revision (i.e. decrease from the 48 bed requirement) given the significant decrease in census (less than 200).
<del><b>C.O. 34.</b> Within 160 days of the filing of this Consent Decree, Defendants shall train all staff whose responsibilities include supervision of the juveniles regarding the effective recognition of suicidal and/or self mutilating behaviors.</del>	<del>Y</del> -	<del>Y</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>	This provision was terminated by the Court on March 30, 2017.

Provision	P	S	R	T	D	G	Comment
<b>C.O. 36.</b> Within 120 days of the filing of this consent Order, Defendant Juvenile Institutions Administration shall provide continuous psychiatric and psychology service to juveniles in need of such services in the facilities in this case either by employing or contracting with sufficient numbers of adequately trained psychologists or psychiatrists, or by contracting with private entities for provision of such services. The continuous psychiatric and psychological services to juveniles in need of such services to include at a minimum, a thorough psychiatric evaluation. The continuous psychiatric and psychological services to juveniles in need of such services to include at a minimum diagnostic tests before prescription of behavior-modifying medications.	N	N	N	N	#	#	As per previous quarterly report, there are insufficient hours to allow for mental health staff to attend multidisciplinary case conferences, treatment reviews, committees where decisions are made (i.e. regarding entrance to PUERTAS) and important school meetings where special education services are discussed.
<b>S.A. 63.</b> For each juvenile who expresses suicidal or self-mutilating ideation or intent while incarcerated, staff shall immediately inform a member of the health care staff. Health care staff shall immediately complete a mental health screening to include suicide or self-mutilation ideation for the juvenile. For each juvenile for whom the screening indicates active suicidal or self-mutilating intent, a psychiatrist shall immediately examine the juvenile. The juvenile, if ever isolated, shall be under constant watch. Defendants shall develop written policies and procedures to reduce the risk of suicidal behavior by providing screening for all juveniles at all points of entry or re-entry to AIJ's facilities and/or programs and by providing mechanisms for the assessment, monitoring, intervention and referral of juveniles who have been identified as representing a potential risk of severe harm to themselves. Treatment will be provided consistent with accepted professional standards.	#	N	N	#	#	#	As per previous quarterly report, there are insufficient hours to allow for mental health staff to attend multidisciplinary case conferences, treatment reviews, committees where decisions are made (i.e. regarding entrance to PUERTAS) and important school meetings where special education services are discussed. Psychiatrists are not immediately available to examine juveniles who have self-mutilated and/or expressed suicidal ideation.  See above and Monitor's Mental Health Consultant's report.
<b>S.A. 72.</b> All juveniles receiving emergency psychotropic medication shall be seen at least once during each of the next three shifts by a nurse and within twenty-four (24) hours by a physician to reassess their mental status and medication side effects. Nurses and doctors shall document their findings regarding adverse side effects in the juvenile's medical record. If the juvenile's condition is deteriorating, a psychiatrist shall be immediately notified.	#	N	N	#	N	N	See above regarding decrease in psychiatric hours.

Provision	P	S	R	T	D	G	Comment
<b>S.A. 73.</b> Defendants, specifically AIJ, shall design a program that promotes behavior modification by emphasizing positive reinforcement techniques. Defendants, specifically AIJ, shall provide all juveniles with an individualized treatment plan identifying each juvenile's problems, including medical needs, and establishing individual therapeutic goals for the juvenile and providing for group and/or individual counseling addressing the problems identified. Defendants, specifically AIJ, shall implement all individualized treatment plans.	Y	Y	Y	Y	#	N	The overall rating is not being determined to be in full compliance as a determination needs to be made regarding youth in detention vs. custody and the interpretation of this into the existing policies and procedures. Policies, staffing numbers and resources are adequate to comply with this provision.

Provision	P	S	R	T	D	G	Comment
<b>Discipline</b>							
<del>S.A. 74. Defendants shall specify the rules of the facilities with a complete list of possible punishments for violations of such rules in the handbook described in ¶ 47 above. Written notice of any rule violation, a hearing before a facility staff person not involved in the investigation of the violation, and an appeal to the facility director shall be provided to a juvenile prior to any punishment being imposed, except that Defendants may administratively segregate a juvenile in emergency or life threatening situations. In the event of an emergency, when circumstances make it inappropriate to hold a hearing prior to segregation, a hearing shall take place within forty eight (48) hours from the time of segregation.</del>	<del>Y</del>	<del>Y</del>	<del>I</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>	This provision was terminated by the Court on December 10, 2014 after the parties filed a joint motion to terminate this provision on July 11, 2014.

Provision	P	S	R	T	D	G	Comment
<p><b>S.A. 77.</b> In no event is physical force justifiable as punishment on any juvenile. The use of physical force by staff, including the use of restraints, shall be limited to instances of justifiable self-defense, protection of self and others, to maintain or regain control of an area of the facility, including the justifiable protection of significant property from damage; and prevention of escapes; and then only when other less severe alternatives are insufficient. A written report is prepared following all uses of force and is submitted to administrative staff for review. When force, including restraint, is used to protect a youth from self, this must be immediately referred to the medical area for medical and mental health evaluation and any necessary treatment.</p>	N	N	I	#	N	N	<p>The overall volume of use of force incidents dropped significantly compared to the 1st Quarter 2017: 8 use of force incidents involving 11 youth this quarter compared with 19 incidents involving 31 youth in Q-1. Incidents occurred as follows: Bayamon (1); Humacao (1); Villalba (1); Ponce (5). All 5 incidents at Ponce involved youth in the two Puertas modules. OC was used only 4 times system wide.</p> <p>During site visits in June 2017, the Monitor's consultant reviewed the incident report packages (including Cernimiento review forms and all incident reports) and each of four quarter-to-date incident videos at Ponce. Review of reports and videos at Ponce revealed incidents in which staff acted admirably, in one case exhibiting extraordinary patience with a very troubled youth and in another using their own bodies to shield/protect youth from assault by others. Many uses of force arise as officers intervene to break up group fights or assaults, typically occurring due to "leader" disputes. Administrators routinely initiate the Cernimiento review process and make referrals for administrative investigations.</p> <p>There were three referrals for OISC investigations pertaining to uses of force this quarter, according to an analysis of 284 referrals by the Deputy Monitor.</p> <p>The Deputy Monitor attended a use of force training session conducted on June 8 for 9 officers at Villalba. He found the training to be excellent, well delivered by qualified trainer, and the content closely tailored to both this provision as well as DCR policy. Appropriate materials were provided to trainees and pre and post-tests were administered to assess understanding of that which was taught.</p> <p>English translations of revised policies and procedures, current training materials and additional evidence of training completion are the first steps toward DCR demonstrating compliance with this provision.</p>



Provision	P	S	R	T	D	G	Comment
<b>Abuse and Maltreatment Investigation and Management</b>							
<b>S.A. 78.a</b> Defendants shall take prompt administrative action in response to allegations of abuse and mistreatment, including steps to protect and treat the victim, steps to preserve evidence and initiate investigation, steps to isolate, separate, and sanction youth and/or staff involved in misconduct or criminal conduct. Defendants' policies, procedures, and practices shall clearly define all incidents that must be reported, to include, at a minimum, allegations of: abuse, mistreatment, neglect, and excessive use of force, inappropriate use of restraints, sexual misconduct, and assaults. Defendants shall provide for confidential means of reporting suspected abuse and mistreatment, without fear of retaliation for making such report.	Y	N	N	#	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as "PREA" is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA. Policies have been updated to comply with this provision.</p> <p>Evidence was preserved in 91% of applicable cases sampled. (Case Assessment A.4)  Suspected youth were separated from their victim(s) in 90% of the cases assessed. (Case Assessment A.8) Additional information about compliance can be found in the case assessment tables in the main report.</p>

Provision	P	S	R	T	D	G	Comment
<p><b>S.A. 78.c</b> Within 24 hours of knowledge of a potential abuse incident, the report shall be transmitted to the Commonwealth Police for investigation, the Department of Family Services for statistical reporting, the Department of Corrections, and the AIJ administration. For serious incidents involving allegations of: abuse; neglect; excessive use of force; death; mistreatment; staff-on-juvenile assaults; injury requiring treatment by a licensed medical practitioner; sexual misconduct; exploitation of a juvenile's property; and commission of a felony by a staff person or juvenile, the AIJ administration shall also notify SAISC within 24 hours of knowledge of the potential incident, and 1 hour for any juvenile death, and SAISC shall conduct an administrative investigation.</p>	Y	Y	Y	#	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as "PREA" is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>The timeliness of initial reporting to PRPD by AIJ, based on AIJ records assessed in the case assessment process (Case Assessment B.1) , is 100%</p> <p>The Commonwealth Police do not fully respond to the Monitor's information requests for case analysis information. There are reports provided for about half of the cases, and much information is missing.</p> <p>Cases were promptly referred to OISC in 93% of sampled cases based on OISC records. (Case Assessment D.1)</p> <p>The conduct and completion of the investigations is assessed in P78.e below.</p>

Provision	P	S	R	T	D	G	Comment
<b>S.A.78.d</b> Within 24 hours, AIJ shall prepare and forward a copy of each incident report together with the AIJ preliminary investigation to the Police Department, the Department of Family Services, the Department of Corrections, and the AIJ Administration. Every 30 calendar days, AIJ, SAISC and the Commonwealth Police shall report to the Defendant Department of Justice and AIJ the status of each investigation including final determinations and associated administrative and criminal actions. Defendants shall implement appropriate policies, procedures, and practices to ensure that incidents are promptly, thoroughly, and objectively investigated. AIJ, SAISC, and Defendant Department of Justice shall consult throughout an investigation. If Defendant Department of Justice indicates an intent to proceed criminally, any compelled interview of the subject staff shall be delayed until Defendant Department of Justice concludes the criminal investigation, but all other aspects of the investigation shall proceed. Defendant Department of Justice shall review and investigate allegations of serious incidents following a preliminary investigation by the Puerto Rico Police Department.	N	#	#	#	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>Indicators of compliance with the provision include measures within the Abuse Referrals Tracking Report and the Case Assessment Table, both in appendices in the main report. These indicators are showing consistent improvement.</p> <p>The Monitor’s Office has not recently reviewed compliance with the interview compulsion provision.</p>
<b>S.A. 78.e</b> Administrative investigations of serious incidents shall be conducted by SAISC and completed within 30 days of SAISC’s receipt of the referral. Administrative investigation of incidents classified as less serious may be conducted internally by appropriate facility staff and shall be completed within 20 days of witnessing or discovering an incident.	Y	#	#	#	N	N	<p>For the most recent quarter, 91% of OISC case investigations were completed within 30 days. (Abuse Tracking Statistics E.5 and E.6)</p> <p>100% of Level One case investigations were completed within 20 days at the facilities. (Abuse Tracking Statistics D.3)</p>

Provision	P	S	R	T	D	G	Comment
<b>S.A. 78.f</b> Defendants shall implement investigation standards in conformance with applicable law, including, at a minimum: photographing visible injuries; preserving and analyzing evidence; conducting separate, face-to-face, private interviews of the alleged victim, perpetrator, and all possible witnesses, with a record of the questions and answers. Whenever there is reason to believe that a juvenile may have been subjected to physical sexual abuse, the juvenile shall be examined promptly by outside health care personnel with special training and experience in conducting such assessments.	N	N	Y	N	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>There is an internal process to review investigation quality. No formally-adopted standards have been submitted to the Monitor’s Office. Training may be insufficient if the policies are not in place which would be the topic of the training.</p> <p>DCR has recently adopted a very structured investigation report template for use of force cases addressing standards set forth in this provision and in others. It is considering revising and adapting the template for non-use of force investigations. The Monitor supports this concept.</p>
<b>S.A. 78.g</b> Every administrative investigation shall result in a written report explicitly providing: a description of the alleged incident, including all involved persons and witnesses and their role; a description and assessment of all relevant evidence; and proposed findings. Defendants shall ensure that there are sufficient numbers of demonstrably competent staff to timely complete competent and thorough administrative investigations. Responsibilities of investigators shall be clearly designated.	N	N	Y	#	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as “PREA” is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>For the most recent quarter, all OISC case investigations were completed within 30 days. (Abuse Tracking Statistics E.5)</p> <p>There is an internal process to review investigation quality and the Monitor and Deputy Monitor are reviewing the instrument that was developed and is used. No formally-adopted standards have been submitted to the Monitor’s Office. Training may be insufficient if the policies are not in place which would be the topic of the training.</p> <p>OISC cases have been identified that do not contain “proposed findings.”</p>

Provision	P	S	R	T	D	G	Comment
<b>S.A. 78.h</b> AIJ shall conduct case management, for tracking which includes identification of findings and outcomes and dates of stages of case processing, and for oversight of further administrative actions including analysis to identify and implement corrective actions designed to avoid recurrence of incidents. At the conclusion of an administrative investigation, SAISC shall provide copies of the investigation report to AIJ and Defendant Department of Justice. AIJ's quality assurance personnel shall analyze the report and, as appropriate, identify corrective action to address operational, systemic, or other problems identified in the report and ensure that such action is taken.	Y	Y	Y	#	N	N	<p>This provision requires policies, actions and/or conditions that are also required by Part 115 of Title 28 of the Code of Federal Regulations. While compliance with these regulations, also known as "PREA" is not required by the Consent Order and Settlement Agreement, the status of compliance with the PREA regulations is relevant in assessing compliance with this provision. The fact that the provision remedies are similar to those required by federal regulations also supports a conclusion that the remedies are narrowly tailored as required by the PLRA.</p> <p>The rating for Staffing and Policy Compliance is "Y" because staffing and policy is sufficient for the Commonwealth to produce this report. The Monitor believes that the remaining area where additional monitoring and documentation is needed is the quality assurance assessment described in the third sentence.</p>
<del><b>S.A. 78.i</b> Any employee, staff member or contractor who is criminally charged for offenses involving the abuse or mistreatment of juveniles, excessive force on juveniles, sexual misconduct with juveniles, or any other offense relating to the safety and welfare of juveniles, shall be immediately separated from having contact with detained or committed juveniles, including removal of any such person from exercising supervisory authority over any staff in AIJ facilities, while the criminal investigation or process is pending. Defendants may take additional administrative actions as they deem appropriate.</del>	Y	Y	Y	Y	Y	Y	This provision was terminated by the Court on March 30, 2017.
<p><del><b>Separation Order, of December 4, 2006:</b> Any employee, staff member, or contractor who is criminally charged in the future for offenses involving the abuse or mistreatment of juveniles, excessive use of force on juveniles, sexual misconduct with juveniles, or any other offense relating to the safety and welfare of juveniles, shall be immediately separated from having contact with detained or committed juveniles, including the removal of any such person from exercising supervisory authority over any staff in AIJ facilities, while the criminal investigation or process is pending.</del></p> <p><del>For any criminal proceeding that is filed in the future, the same information shall be provided to the Monitor and the United States within fifteen (15) days after its filing.</del></p> <p><del>The order also required two reports to be filed by December 19, 2006. These were filed at the time.</del></p>	Y	Y	Y	Y	Y	Y	This provision was terminated by the Court on March 30, 2017.

Provision	P	S	R	T	D	G	Comment
<b>Protection and Isolation</b>							
<p><b>S.A. 79.</b> Juveniles shall be placed in isolation only when the juvenile poses a serious and immediate physical danger to himself or others and only after less restrictive methods of restraint have failed. Isolation cells shall be suicide resistant. Isolation may be imposed only with the approval of the facility director or acting facility director. Any juvenile placed in isolation shall be afforded living conditions approximating those available to the general juvenile population. Except as provided in ¶ 91 of this agreement, juveniles in isolation shall be visually checked by staff at least every fifteen (15) minutes and the exact time of the check must be recorded each time. Juveniles in isolation shall be seen by a masters level social worker within three (3) hours of being placed in isolation. Juveniles in isolation shall be seen by a psychologist within eight (8) hours of being placed in isolation and every twenty-four (24) hours thereafter to assess the further need of isolation. Juveniles in isolation shall be seen by his/her case manager as soon as possible and at least once every twenty-four (24) hours thereafter. A log shall be kept which contains daily entries on each juvenile in isolation, including the date and time of placement in isolation, who authorized the isolation, the name of the person(s) visiting the juvenile, the frequency of the checks by all staff, the juvenile's behavior at the time of the check, the person authorizing the release from isolation, and the time and date of the release. Juveniles shall be released from isolation as soon as the juvenile no longer poses a serious and immediate danger to himself or others.</p>	N	Y	#	#	Y	N	<p>There are currently very few youth designated as TM and, as a result, there are very few youth potentially subject to room confinement pursuant to this provision. In December 2016, Since January, the number of TM designated youth has decreased from approximately 12 to 1-2 at any given time.</p> <p>At the request of Plaintiffs in their response to the previous Quarterly Report, the Monitor's Consultants have initiated a new process of assessing- against the 21 criteria set forth in this provision- the circumstances and conditions of confinement of any youth on transitional measures and protective custody who are generally confined to their rooms. All second quarter Protective Custody and Transitional Measure events occurring or active at the time of facility site visits were reviewed and the results of this new process are included as a separate report in this Quarterly Report.</p>

Provision	P	S	R	T	D	G	Comment
<b>S.A. 80.</b> The terms of this agreement relating to safety, crowding, health, hygiene, food, education, recreation and access to courts shall not be revoked or limited for any juvenile in protective custody.	N	Y	#	N	#	N	<p>See above discussion for P 79 and report on Transitional Measures and Protective Custody.</p> <p>The only services that were found to be limited (none were revoked) in comparison with general population youth were recreation (on weekends) and education. DCR Policies 17.19 (PC) currently establish 20 minutes of individual instruction per subject as the standard for education for these youth and while this amount of one-on-one education <i>may</i> be the equivalent of that offered to other youth in classroom settings, this equivalence is not authorized in the Settlement Agreement and has not been stipulated to by the parties.</p>

Provision	P	S	R	T	D	G	Comment
<b>Education and Vocational Services</b>							
<b>S.A. 81.</b> Defendants, specifically the Department of Education, shall provide academic and/or vocational education services to all juveniles confined in any facility for two weeks or more, equivalent to the number of hours the juveniles would have received within the public education system. Specifically, this education shall be provided 5 (five) days per week, 6 (six) hours per day, 10 (ten) months per year. AIJ shall provide adequate instructional materials and space for educational services. Defendants shall employ an adequate number of qualified and experienced teachers to provide these services.	#	N	N	I	N	N	<p>Although the opening of the 2016-2017 school year was delayed and the number of teacher vacancies required a modified schedule in each of the institutions, conditions improved significantly during the second semester of the year. There were 2 vacancies in CTS Villalba and 1 in CD Bayamon.</p> <p>Vocational opportunities are available in the CTS institutions for all students but there continues to be a deficiency in the CD institutions. DCR revised the vocational programs during the previous school year, adding a civics/ethics course for the Bayamon and Villalba detention students since the agency believes it is a valid substitution for traditional vocational education. The Monitor's educational consultant maintains that in both locations civics/ethics cannot replace traditional vocational education.</p> <p>Adult education is not considered adequate for the educational needs of the DCA youth.</p>
<b>S.A. 86a.</b> Defendants, specifically the Department of Education, shall abide by all mandatory requirements and time frames set forth under the Individuals with Disabilities Education Act, 20 USC §§ 1401 <u>et seq.</u> Defendants shall screen juveniles for physical and learning disabilities.	#	N	N	N	N	N	<p>The Monitor, consultants, and DCR officials continue to study the most effective way to develop an instrument for periodic case reviews and assess stipulation compliance. During the second quarter site visits, there was no awareness from institution and education staff as to how mental health and other related services would be delivered to special education students. The COMPU revised IEPs continued to list recommended special services without clear indication about how they were to be delivered.</p> <p>Compliance with 86a requires compliance with 86b.</p>
<b>S.A. 86b.</b> The screening shall include questions about whether the juvenile has been previously identified by the public school system as having an educational disability, previous educational history, and a sufficient medical review to determine whether certain educational disabilities are present, such as hearing impairments, including deafness, speech or language impairments, visual impairments, including blindness, mental retardation, or serious emotional disturbances adversely affecting educational performance.	#	N	N	I	N	N	<p>Special education files list various instruments employed to determine the needs of the student. There is little evidence that the areas identified here are addressed and re-evaluated in annual reviews.</p> <p>The Monitor's, consultants and DCR officials continue to study the most effective way to develop an instrument for periodic case reviews and assess stipulation compliance.</p> <p>Compliance with 86b requires compliance with 86a.</p>



Provision	P	S	R	T	D	G	Comment
<b>S.A. 87.</b> If a juvenile has been previously identified as having an educational disability, Defendants shall immediately request that the appropriate school district provide a copy of the juvenile's individualized education plan ("IEP"). Defendants shall assess the adequacy of the juvenile's IEP and either implement it as written if it is an adequate plan or, if the IEP is inadequate, rewrite the plan to make it adequate, and then implement the revised IEP.	#	N	N	I	N	N	<p>Compliance with the first part of the stipulation remains high in that the agency institutions request IEPs and special education files from the community public schools. The request is frequently ignored or results in late delivery preventing compliance with the second part requiring assessment of the documents' adequacy. This is particularly the case in the detention institutions. DCR's response to this issue is that they have no authority over the community schools and that is a concern of the Department of Education for the Commonwealth. . It should be noted that DOE is part of the consent decree and should take steps to facilitate the delivery of IEPs and special education files.</p> <p>The Monitor, consultants, and DCR officials continue to study the most effective way to develop an instrument for periodic case reviews and assess stipulation compliance.</p>
<b>S.A. 90.</b> Defendants shall provide appropriate services for juveniles eligible for special education and related services. Defendants shall provide each such juvenile with educational instruction specially designed to meet the unique needs of the juvenile, supported by such services as are necessary to permit the juvenile to benefit from the instruction. Defendants shall coordinate such individualized educational services with regular education programs and activities.	#	N	N	I	N	N	<p>Since all special education students are mainstreamed with those not certified, they receive the equivalent adult education as the others except for those in protective custody or in transitional measures. The monitor's consultant does not acknowledge adult education as delivered in the institutions adequate to the needs of the DCR youth. See note to S.A. 81 as to the appropriateness of adult education. See note to S.A. 94 about protective custody and transitional compliance. See note to S.A. 87 about the development of a mental health/special education assessment.</p> <p>There are no educational services offered to special education or other students who have completed the 4<sup>th</sup> year, as DCR does not consider them part of the agreement. The DCR education director agreed that this policy should be re-examined and indicated he would prepare some recommendation for 4<sup>th</sup> year completers in the next quarter. He noted that some participate in vocational shops with instructor permission and some others could be eligible for future CREANDO Programs. During the quarter, discussions with staff revealed no indication that CREANDO would continue into the next school year.</p>

Provision	P	S	R	T	D	G	Comment
<b>S.A. 91.</b> Qualified professionals shall develop and implement an IEP reasonably calculated to provide educational benefits for every juvenile identified as having a disability. When appropriate, the IEP shall include a vocational component.	#	N	Y	I	N	N	<p>Certified special education teachers provide education services to youth. Vocational opportunities are available in each institution with the exception noted above where a civics/ethics course was substituted for traditional career and technical education courses. The monitor's educational consultant maintains that in both locations civics/ethics cannot be reasonably be considered vocational education.</p> <p>There continues to be a system wide gap in communication between education and mental health staff. Prescriptions written into the IEP fall into a "one size fits all" admittedly written by educators with scant consultation with mental health staff. During this quarter as in past ones, mental health personnel rarely participate in the COMPU which prepares and recommends implementation of the IEP.</p> <p>A recent announcement revealed that the agency will terminate contracts with current mental health staff and replace them with a private sector entity. Institutional staff and DCR officials could not determine how the plan would affect special education students but assurances were offered that all of their needs will be satisfied once the new entity contract is finalized and implemented.</p> <p>See note in reference to related services such as mental health and substance abuse in SA 87.</p>
<b>S.A. 93.</b> Services provided pursuant to IEPs shall be provided year round. Defendants shall ensure that juveniles with educational disabilities receive a full day of instruction five (5) days a week.	#	N	N	I	N	N	<p>Students eligible for special education services did not receive services from the end of May to the beginning of August. Nevertheless, as part of the June 2016 camping program, credit-bearing courses were offered in science and English. Contingent upon funding, and DCR intends to continue credit-bearing opportunities into the next summer program. Although this does extend the school year for some, DCR does not believe there are students who meet the prerequisites for year round education; the monitor's office disagrees that there are no such students.</p> <p>The Monitor and consultants are working with DCR officials to develop an instrument for periodic case reviews to more fully document the level of compliance with this provision.</p>
<b>S.A. 94.</b> Juveniles shall not be excluded from services to be provided pursuant to IEPs based on a propensity for violence or self-inflicted harm or based on vulnerability. Juveniles in isolation or other disciplinary settings have a right to special education. If required for institutional security, services provided pursuant to IEPs may be provided in settings other than a classroom.	#	N	N	I	N	N	<p>Ongoing reviews of services provided for youth in transition or protective custody, showed that youth are not receiving services comparable to youth who are not in isolation. (See also comments for S.A. 90 and SA 80).</p>

Provision	P	S	R	T	D	G	Comment
<b>S.A. 95.</b> When an IEP is ineffective, Defendants shall timely modify the IEP.	#	Y	Y	I	N	N	<p>All special education positions were filled during the 2016-2017 school year. The modified school program this school year negatively affects all students, including those in special education. See note about the delivery of special services in SA 86.</p> <p>A systematic assessment has not yet been completed by the Commonwealth and provided to the Monitor's Office for review.</p>
<b>Funding and Implementation</b>							
<b>C.O. 43</b> Until this order is fully implemented, Defendants shall submit to the Legislature of the Commonwealth each fiscal year a report wherein the required sums of money will be established so as to implement this Consent order.	I	I	N	I	N	N	<p>The Commonwealth legal position is that the required report is the agency budget request. The budget request is not routinely provided to the Monitor or the United States.</p> <p>It is also not established that the budget identifies the "required sums of money" to "implement the order."</p> <p>The budget has been, in fact, insufficient to implement the requirements of the decree. There are many provisions in non-compliance with category "R" specified as one of the factors. These are provisions where lack of resources is a factor in non-compliance.</p> <p>Monitor's consultants are prepared to work with parties to identify necessary compliance documentation expectations for a Roadmap.</p>