



# **Investigation Report: Kern County Juvenile Correctional Facilities**

**January 2018**

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## **EXECUTIVE SUMMARY**

Disability Rights California (DRC) is the designated protection and advocacy agency charged with protecting the rights of people with disabilities in California. Pursuant to federal and state laws, DRC has the authority to inspect and monitor conditions in any facility that serves people with disabilities.

Pursuant to this authority, DRC conducted monitoring inspections of the three Kern County Juvenile Correctional Facilities on June 7 and 8, and August 30, 2017. During each inspection, DRC was accompanied by staff from Disability Rights Advocates (DRA), which is acting as an authorized agent of DRC for purposes of this investigation. The facilities we inspected are operated by the Kern County Probation Department (hereinafter “Probation”) and the Kern County Superintendent of Schools (KCSOS). Probation and KCSOS are collectively referred to as Kern County Juvenile Corrections or “KCJC” throughout this report; the three facilities inspected are referred to as “KCJC facilities.”

As part of our investigation, we conducted confidential interviews of more than 50 youth who are or recently were incarcerated in KCJC facilities. We interviewed parents and guardians of youth who are or were incarcerated at KCJC facilities. We also reviewed more than 10,000 pages of KCJC documents including policies, incident reports, logs of pepper spray use and room confinement, and medical records. These materials corroborated the information provided by the youth and support the findings described below.

The three KCJC facilities, like all juvenile detention facilities in California, exist “solely for the purpose of rehabilitation and not [for] punishment.”<sup>1</sup> Moreover, state law provides that these facilities “shall not be deemed to be, nor shall be treated as, [] penal institution[s]. [They] shall be [] safe and supportive homelike environment[s].”<sup>2</sup>

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<sup>1</sup> *People v Olivas*, 17 Cal.3d 236, 254 (1976).

<sup>2</sup> Welf. And Inst. Code § 851. Unless otherwise specified, all codes referenced herein are California statutes.

In practice, we found evidence that the KCJC facilities that are the subject of this report have not been safe and supportive homelike environments. Specifically, we found evidence that Probation staff:

- Used pepper spray on youth in response to non-violent acts such as verbal defiance and “peer friction,” for symptoms of mental health needs such as self-injury and threats of self-harm, and in a punitive manner after youth had been restrained;
- Responded to disobedient, but non-threatening, youth with physical force, including taking these youth to the ground and placing them in prone restraints;
- Placed youth on a solitary confinement status for hours and sometimes days, weeks, or months at a time;
- Isolated youth for extended periods for non-disciplinary reasons; and
- Subjected youth to extended incarceration and re-incarceration for minor offenses, including for disability-related behavior.

We also found evidence that KCJC staff:

- Failed to take into account the needs of youth with disabilities while administering discipline;
- Neglected the education and mental health needs of youth with disabilities and youth who were placed in solitary confinement or other isolation;
- Failed to provide youth with disabilities with due process and procedural safeguards prior to removal from school; and
- Failed to provide a minimally adequate education that includes regular access to required minimum minutes of instruction and curriculum aligned to the California content standards for the youth’s respective grade.

Our investigation supports a finding that youth with disabilities at KCJC facilities have been subjected to abuse and neglect while in Kern County's custody and care, and further suggests that Kern County, Probation, and KCSOS have been in violation of disability rights laws, as well as the U.S. and California Constitutions.

Following our initial, in-depth investigation, Probation provided us with drafts of select policies and procedures that had been revised. Pursuant to these revisions, we understand that Probation has implemented or begun to implement a new "behavior modification" program at some facilities. We understand that these changes are, in part, an effort by Probation to comply with a new state law, SB 1143, regarding the room confinement of minors.<sup>3</sup> This new law took effect January 1, 2018.

For example, these new policies include provisions to identify and provide accommodations for youth with disabilities at the three KCJC facilities through weekly meetings. The new behavior modification program also includes a welcome emphasis on incentives and positive behavior interventions that are consistent with those required through special education for students with disabilities.

At this time, the status of implementation of these reforms, including the finalization of revised policies and procedures, and their impact remains to be seen. We are hopeful that these changes are harbingers of an improved safe and homelike experience for youth.

However, the problems we observed during our investigation surpass those that have been addressed by Probation's initial proposed revisions. Given the historical problems we have identified, we recommend that Kern County adopt a more comprehensive approach, including through input from outside experts in juvenile rehabilitation, to address the use of force practices and deficiencies in access to programming, social contact, educational services, and mental health treatment described herein.

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<sup>3</sup> Codified as Welf. & Inst. Code § 208.3.

# ***I. BACKGROUND***

## **A. KERN COUNTY JUVENILE CORRECTIONAL FACILITIES**

### **1. Juvenile Hall**

James G. Bowles Juvenile Hall is located at the Ridge Road complex in Bakersfield. This is the facility to which all youth are sent when they are initially detained. Accordingly, Juvenile Hall houses youth who have been ordered by the courts to be detained for alleged violations of law, youth awaiting trial or placement in a commitment program, and youth returning to detention because they violated the terms of their furlough. Most youth at Juvenile Hall attend Central School, an on-site court school run by KCSOS. The youth who are housed in the Juvenile Hall's high-security unit receive their instruction separately.

In addition to its detention function, Juvenile Hall also houses two commitment programs to which youth can be sentenced: Pathways Academy and the Furlough Treatment and Rehabilitation Program.<sup>4</sup>

Pathways Academy ("Pathways") is a commitment program for female youth.<sup>5</sup> Although the Juvenile Court typically orders that these youth be committed for a period of one year (commonly referred to as a "disposition"), youth are assigned to a 12-, 18-, 24-, or 36-week program once at Pathways. Each youth's actual stay at Pathways depends on when she completes the program.<sup>6</sup> Pathways youth must attend school, and may be given the chance to participate in work assignments and other group activities depending on their behavior in the program.<sup>7</sup> Youth with babies are allowed to visit with their baby for one hour per week.<sup>8</sup> Youth are required to adhere to all program and school rules. Failure to do so can result in room isolation, loss of evening program privileges, or "failed" days.<sup>9</sup> Youth must "pass" days to progress through the program. As the last phase of the Pathways program, a youth returns to the community

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<sup>4</sup> James G. Bowles Juvenile Hall & Furlough Treatment Rehabilitation Youth Handbook ("JH Handbook") at 2.

<sup>5</sup> Pathways Academy Handbook at 2.

<sup>6</sup> 1610 Orientation – Pathways at 1.

<sup>7</sup> Pathways Academy Handbook at 2.

<sup>8</sup> Pathways Academy Handbook at 18.

<sup>9</sup> Pathways Academy Handbook at 3

under “intensive supervision” as a furlough from her detention.<sup>10</sup> Violation of the terms of her furlough plan can result in the youth being returned to Juvenile Hall.

The Furlough Treatment and Rehabilitation Program is a short-term, in-custody program that is geared exclusively towards youth who are on furlough from detention.<sup>11</sup> Youth who violate the terms of their furloughs may be committed to this program for a period of up to 30 days.<sup>12</sup> The goal of the program appears to be to stabilize youth so that they may return to the community to complete the aftercare components of their probation.

## **2. Crossroads**

The Larry J. Rhoades Kern Crossroads Facility (“Crossroads”) is located at 17824 Quality Road in Bakersfield. Unlike Juvenile Hall, Crossroads exclusively serves youth who have been committed by the court to a period of detention. Crossroads provides a one-year juvenile treatment program for male youth, with approximately six months spent in custody and six months spent on furlough.<sup>13</sup>

The treatment program is broken into three phases. The first two phases occur at the facility, while the youth is in custody.<sup>14</sup> While in custody, youth attend the on-site court school, Redwood High School, operated by KCSOS.<sup>15</sup> In order to advance from one phase to the next, youth must complete a certain number of “satisfactory” weeks, including successful school attendance.<sup>16</sup>

During the last phase of the program, youth are furloughed from detention at Crossroads. While on furlough, youth are supervised by staff from Probation’s Aftercare unit.<sup>17</sup> All youth must either attend a school or find employment, as well as participate in the other aspects of the Crossroads Aftercare Program.<sup>18</sup> If a youth violates any provision of the

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<sup>10</sup> Pathways Academy Handbook at 2.

<sup>11</sup> <http://www.kernprobation.com/institutions/juvenile-hall/furlough-treatment-and-rehabilitation-program/>

<sup>12</sup> *Id.*

<sup>13</sup> <http://www.kernprobation.com/institutions/crossroads/>

<sup>14</sup> Crossroads Detainee Information and Instructions at 3.

<sup>15</sup> 1705 Redwood School Program (updated 1/20/17) at 193.

<sup>16</sup> Crossroads Detainee Information and Instructions at 3, 30.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* at 30-31.



Aftercare Program, he can be re-detained and subject to a review panel to determine whether he will be remanded to the Furlough Treatment Program or put back into custody at Crossroads.<sup>19</sup>

### **3. Camp Owen**

Camp Erwin Owen (“Camp Owen”) is located in Kernville, 52 miles east of Bakersfield. Like Crossroads, Camp Owen serves youth who have been committed by the court to a period of detention. Camp Owen provides a nine-month to one-year in-custody program for male youth between the ages of 14 and 18, using a behavioral point system to determine each youth’s actual length of commitment and eligibility for privileges and advancement.<sup>20</sup> At Camp Owen, youth attend an on-site court school of the same name operated by KCSOS.<sup>21</sup> Youth are required to participate in a work program.<sup>22</sup> Youth with physical or mental health disabilities are not eligible for the program at Camp Owen.<sup>23</sup>

Some youth remain continuously in KCJC facilities for two to three years because they have repeatedly failed the program at Crossroads and/or Camp Owen and have been recommitted back to these facilities multiple times.

### **4. Leadership and Programmatic Strengths**

Throughout our investigation, we encountered many individual staff members with Probation and KCSOS who expressed a genuine interest in helping young people find positive change in their lives. Both agencies appear to have strong leadership, with progressive senior staff who are dedicated to helping youth.

We were also pleased to find that Probation provides engaging vocational programs for youth at Camp Erwin Owen. In fact, vocational programming is a core component of the program provided at Camp Owen. We were similarly pleased to find a selection of vocational and work training options available to youth at Crossroads through Probation.

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<sup>19</sup> *Id.* at 31.

<sup>20</sup> Camp Erwin Owen Youth Handbook, Rev. 12/12/2015 (1-year program), at 4; 1700 Camp Erwin Owen Facility Program, Rev. 03/2014 (9-month program), at 1; 1600 Intake Procedures at 1.

<sup>21</sup> 1705 Erwin Owen High School Program (Rev. 03/2014) at 1-2.

<sup>22</sup> *Id.*

<sup>23</sup> 1600 Intake Procedures at 1.

Finally, we were encouraged to find that there are mental health providers contracted for and available at each facility. Although our report focuses on aspects of the KCJC facilities for which we believe changes are needed, these existing strengths should not be overlooked.

## **B. PROBABLE CAUSE OF ABUSE AND/OR NEGLECT**

DRC is the protection and advocacy system for the State of California, with authority under the Developmental Disabilities Assistance and Bill of Rights (“DD”) Act<sup>24</sup> and the Protection and Advocacy for Individuals with Mental Illness (“PAIMI”) Act.<sup>25</sup> The youth we interviewed fall under the federal protections of either the DD Act or the PAIMI Act, and their implementing regulations.

Pursuant to DRC’s authority under the DD Act and the PAIMI Act, we find that there is probable cause to believe that youth with disabilities are subjected to abuse and/or neglect in KCJC facilities.<sup>26</sup>

Under the DD Act, probable cause means a “reasonable ground for belief that an individual with developmental disabilities has been or may be subjected to abuse or neglect. . . . The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training . . . .”<sup>27</sup> For these purposes, abuse means any act or failure to act that was knowing, reckless, or intentional, and that may have caused injury to an individual with a developmental disability.<sup>28</sup> Neglect means a negligent act or omission that may have caused injury to an individual with a developmental disability.<sup>29</sup>

Under the PAIMI Act, probable cause means “reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn

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<sup>24</sup> 42 U.S.C. § 15041, *et seq.*, as amended; 45 C.F.R. § 1386.

<sup>25</sup> 42 U.S.C. § 10801, *et seq.*, as amended; 42 C.F.R. § 51.

<sup>26</sup> 42 U.S.C. § 10805(a)(1); 29 U.S.C. § 794e(f)(3).

<sup>27</sup> 45 C.F.R. § 1326.19.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

from his or her experience or training.”<sup>30</sup> The definitions of abuse and neglect in the PAIMI Act mirror those found in the DD Act.<sup>31</sup>

We find evidence that KCJC practices have caused injury to youth with disabilities in the past. These practices, as outlined below, are or were either knowing or negligent, and include the use of excessive force and chemical restraint, extended isolation, educational neglect, and the denial of mental health services. As noted above, the pending policy changes may ameliorate some of the concerns outlined herein for youth detained in the future.

### **C. VIOLATIONS OF DISABILITY RIGHTS LAWS AND THE U.S. AND CALIFORNIA CONSTITUTIONS**

The factual findings in this report indicate that KCJC has violated federal disability rights laws such as Title II of the Americans with Disabilities Act (ADA),<sup>32</sup> Section 504 of the Rehabilitation Act of 1973 (“Section 504”),<sup>33</sup> and the Individuals with Disabilities Education Act (IDEA).<sup>34</sup>

Youth with disabilities have been disproportionately subjected to pepper spray and use of force, isolation and room confinement, and the denial of their education rights. They received inadequate mental health services. They were disciplined for disability-related behaviors over which they have no control. They were also excluded from beneficial programs, such as “work detail,” that may shorten their incarceration in KCJC facilities.

The factual findings made here also point to probable violations of the Eighth and Fourteenth Amendments to the U.S. Constitution prohibiting cruel and unusual punishment and excessive force. KCJC’s imposition of extended solitary confinement, use of pepper spray on passive and non-violent youth, and use of prone restraint on youth all exceeded the measures necessary to ensure safety and security in the facilities.

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<sup>30</sup> 42 C.F.R. § 42.2.

<sup>31</sup> 42 C.F.R. § 51.2.

<sup>32</sup> 42 U.S.C. §§ 12131-34.

<sup>33</sup> 29 U.S.C. § 794.

<sup>34</sup> 20 U.S.C. § 1400, *et seq.*

Finally, the factual findings made here also support violations of Articles I and IX of the California Constitution, and violations of multiple state statutes such as Section 11135 of the Government Code and various sections of the Education Code.

#### **D. THE PROMISE OF THE MISSOURI APPROACH**

As a result of the practices described herein, youth we interviewed reported being scared, angry, and resentful – feelings that are counter-productive to rehabilitation.

There is a better way, which is detailed in the recommendations that follow this report. The “Missouri Approach” or “Missouri Model” is a relationship-based, wholly therapeutic, group treatment approach toward incarcerated youth that has been devised and implemented over the past 30 years by the Missouri Division of Youth Services. Missouri Youth Services wholly rejects punitive practices that harm children, including solitary confinement, prone restraint, and pepper spray. Even so, and in fact because of this rejection of punitive approaches to rehabilitation, Missouri’s youth institutions have fewer assaults against both staff and youth, while maintaining low recidivism rates and high educational outcomes. Children and staff in Missouri report a sense of safety and well-being, as well as strong and caring relationships among youth and staff.

## ***II. FINDINGS***

### **A. USE OF FORCE, ISOLATION, AND PROBATION’S PUNITIVE, NON-REHABILITATIVE CULTURE**

#### **1. Pepper Spray, Threats of Pepper Spray, and Inadequate Clean-Up**

##### **a. Pervasive Use of Pepper Spray**

Using Oleoresin Capsicum spray (“O.C. spray”), also known as “pepper spray,” on youth is inconsistent with the requirement that juvenile halls not be operated as penal institutions and instead provide “a safe and

supportive homelike environment.”<sup>35</sup> We are concerned that the use of burning, stinging gas does not foster a “homelike environment” for youth.

Nonetheless, Probation staff regularly uses pepper spray on detained youth. Records obtained from Probation during our investigation reflect 340 separate exposures to pepper spray over a 12-month period at the three KCJC facilities. Virtually every youth interviewed reported exposure, either as a target or from over-spray. Staff at Juvenile Hall and Crossroads carry cans of pepper spray on their belts, and employ these in living areas including on youth who are already securely in their cells. Probation staff apply pepper spray in bursts and directly to the face, eyes and ears of youth.<sup>36</sup>

Probation staff also verbally threatens to use pepper spray, which contributes to a punitive atmosphere in KCJC facilities. These frequent threats are intimidating and create a feeling among youth that they are in constant danger of being pepper sprayed for reasons outside of their control.

#### b. Pepper Spray Policies are Confusing, Inadequate

KCJC’s written policies on use of chemical force are confusing and internally inconsistent. Probation Policy 1635.1 provides that O.C. spray “should only be used by designated staff in defense of self or to control a potentially dangerous situation.”<sup>37</sup> O.C. spray is not permitted for “mere verbal threats of violence.”<sup>38</sup> On the other hand, officers are given broad discretion to use physical force such as O.C. spray for any incident where a youth has not responded to verbal commands and a show of authority.<sup>39</sup>

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<sup>35</sup> Welf. & Inst. Code § 851.

<sup>36</sup> Other county juvenile halls that use pepper spray prohibit its direct application to the face or from a close distance. For example, Yolo County Probation policies provide that “OC pepper spray [sic] should be applied from a distance of three feet to ten feet to prevent injury to the eyes of the recipient.”

<sup>37</sup> At KCJC facilities, all Probation staff are required to carry either the 2-ounce (known as an “MK-3”) or 4-ounce (known as an “MK-4”) canisters on them at all times. There must be one larger, 16-ounce canister (known as an “MK-9”) available in every unit. 1635.1 Oleoresin Capsicum at 182.

<sup>38</sup> 1635.1 Oleoresin Capsicum at 181.

<sup>39</sup> 1635 Use of Force at 178. The legal authority cited in support of this deference to staff discretion in the use of pepper spray does not appear to support the policy. The authority cited authorizes Peace Officers to use force when making an arrest, incorporating the “objectively reasonable” standard used for purposes of a qualified immunity defense. See 1635 Use of Force at 175. The legal authority cited does not authorize KCJC to institute policies allowing staff to use O.C. spray on disobedient or already subdued youth.

Per Pathways policies, for example, Probation Officers carry O.C. spray and use it to “maintain order.” Per the Pathways handbook, Probation Officers are allowed to use O.C. spray on a youth when she does not “comply with verbal directives,” attempts self-harm, or exhibits “out of control behavior.”<sup>40</sup> Probation policy does not prohibit, and therefore allows, staff to pepper spray youth directly into their eyes, nose, face, and ears.

Pepper spray is used on youth who are not violent or dangerous. Probation records on the use of pepper spray confirm that it is used in response to non-violent acts, such as to “defiance,” “threats,” “unit disturbance,” and “peer friction.” New measures are needed to ensure that officers do not abuse their discretion by using pepper spray on non-violent youth and in situations requiring a mental health-oriented response. Policies require probation staff to decontaminate youth after they have been sprayed. In practice, youth are often not adequately decontaminated immediately after being pepper sprayed.

c. Disproportionate Impact of Pepper Spray on Youth with Disabilities

Youth with disabilities appear to be disproportionately affected by the use of pepper spray in KCJC facilities. For example, in January 2017, seven of the nine reported pepper spray incidents involved special education students with documented disabilities.<sup>41</sup> Youth with ADHD and bi-polar disorder appear to have been pepper-sprayed for behavior related to their disabilities, over which they have little control.

Pepper spray use also disproportionately impacts youth with mental illness and risk of self-injury. Staff use pepper spray to respond to “self-harm” and suicide attempts, according to Probation records and reports by youth. Probation logs regarding pepper spray confirm that it has been used to address threats of self-harm and suicide attempts on multiple occasions.<sup>42</sup>

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<sup>40</sup> Pathways Academy Handbook at 8.

<sup>41</sup> O.C. Administered Report, Kern Crossroads Facility, January 2017.

<sup>42</sup> See, e.g., Reports on use of O.C. spray from Kern County Juvenile Hall for 11/16/16, 11/22/16, 12/27/16, 5/24/17, 6/16/17, 6/19/17.

d. Any Use of Pepper Spray is Harmful and Should Be Prohibited

Any use of pepper spray is harmful to already vulnerable youth, causing them physical and emotional pain. The practice contributes to the chronic trauma experienced by the vast majority of confined youth. It is also contrary to the call of the Attorney General of the United States. In a report titled *Defending Childhood*, the Attorney General declared that juvenile detention “[f]acilities must eliminate practices that traumatize and damage the youth in their care.”<sup>43</sup> Youth in juvenile facilities must receive treatment that is free from the use of coercion, restraints, seclusion, and isolation, and that is designed specifically to promote recovery from the adverse impacts of exposure to violence and trauma on physical, psychological, and psychosocial development, health, and well-being.<sup>44</sup> The report also recognizes the importance of restraint- and coercion-free institutional practices in assuring a safe workplace for staff.<sup>45</sup>

Similarly, the standards put forth by the Juvenile Detention Alternative Initiative (JDAI) prohibit the use of pepper spray in juvenile facilities.<sup>46</sup>

The vast majority of juvenile detention facilities in the United States operate safely without using pepper spray. California is one of very few states where it is used at all. A national survey by the Council of Juvenile Correctional Administrators (CJCA) found that more than 70 percent of state juvenile correctional agencies ban the use of chemical restraints; even those that do allow pepper spray only do so as a measure of last resort.<sup>47</sup> Only 12 percent of juvenile correctional agencies authorize staff to

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<sup>43</sup> *Defending Childhood, Report of the Attorney General's National Task Force on Children Exposed to Violence* (2012) at 22, available at <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

<sup>44</sup> *Id.* at 21-22, 171-79, 210.

<sup>45</sup> *Id.* at 211.

<sup>46</sup> JDAI Juvenile Detention Facility Assessment (2014) at 174. Since its inception, the Juvenile Detention Alternatives Initiative (JDAI), sponsored by the Annie E. Casey Foundation, has emphasized the importance of maintaining safe and humane conditions of confinement in juvenile detention facilities. Dangerous and inadequate conditions in juvenile facilities expose public officials to liability in civil rights lawsuits and, more importantly, harm the very youth whose care is entrusted to the juvenile justice system. Beginning in 2004, officials in JDAI sites began assessing, improving, and monitoring conditions in their juvenile detention facilities using a set of standards published by the Annie E. Casey Foundation. These standards were updated in 2014. See, <http://www.aecf.org/resources/juvenile-detention-facility-assessment/>.

<sup>47</sup> *Issue Brief: Pepper Spray in Juvenile Facilities, Council of Juvenile Correctional Administrators* (May 2011), available at <http://cjca.net/index.php/resources/cjca-publications/70-issue-briefs/172-issue-brief-pepper-spray-in-juvenile-facilities>. Similarly, only 7 percent of youth in juvenile facilities that responded to

carry chemical sprays on their person. The CJCA survey also found that only 8 percent of juvenile facilities participating in its CJCA Performance-based Standards program (referred to as “PbS”) reported any use of pepper spray. The CJCA survey observed that the systems that use pepper spray tend to be systems that have an overall more punitive and adult-correctional approach to managing youth in facilities.<sup>48</sup> This is consistent with our observations of and interviews with youth at KCJC facilities.

The use of pepper spray also raises serious liability issues due to its impact on health, particularly for youth and staff with asthma, heart conditions, and other physical and mental health conditions that pepper spray can exacerbate. As the national juvenile justice system moves toward more developmentally appropriate care for youth in juvenile facilities, any system using pepper spray will become even more of an outlier.

As discussed below, we recommend eliminating the use of pepper spray within KCJC facilities. If necessary, as an interim step to this elimination, we would support better reporting, including reporting the alternative interventions attempted, the volume of pepper spray employed and the youth’s location, whether the youth was already secured with handcuffs, and the time and form of decontamination provided.<sup>49</sup>

## **2. Prone Restraint, In Particular of Non-Violent Youth**

Probation staff routinely take youth to the ground and impose a prone restraint hold, generally by kneeling on their back or torso to “control” youth. Reports indicate that youth are “taken to the ground” by Probation

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an OJJDP Survey of Youth in Residential Placement said that staff had used pepper spray on them. Andrea J. Sedlak and Karla S. McPherson, *Conditions of Confinement: Findings from the Survey of Youth in Residential Placement*, OJJDP Bulletin (May 2010), available at <https://www.ncjrs.gov/pdffiles1/ojdp/227729.pdf>.

<sup>48</sup> *Id.*

<sup>49</sup> KCJC maintains reports on the use of pepper spray, in addition to reports on use of force generally, known as Special Incident Reports. These “O.C. Administered Reports” for each facility offer a means of tracking the use of chemical restraint with particularity. However, the reports on pepper spray do not record the amount of pepper spray used or the exact location. Both should be monitored to minimize or eliminate pepper spray use. The use of pepper spray is unnecessary and not recommended for any purpose in juvenile facilities; however, its use is particularly unjustifiable when used in large quantities and on youth who are handcuffed, subdued, or secured in their cells.



staff, even when they are verbally defiant but non-violent and pose no risk of physical harm to themselves or others.

The use of prone restraint creates a risk of positional asphyxiation – the insufficient intake of oxygen as a result of body position – and has been found to be a contributing factor to individuals’ deaths, including in school restraint instances.<sup>50</sup> Breathing can also be restricted if loose clothing becomes inadvertently entangled or tightened or if the child's face is covered by a staff member's body part (e.g., hand, arm, or torso) or through pressure to the abdomen or chest. This risk is increased when the use of prone restraint is accompanied by pepper spray.<sup>51</sup>

Probation policies state that “[p]hysical force is used to control and gain compliance from a detainee.”<sup>52</sup> But, according to written policies, it is “never to be used as punishment, discipline, or treatment.”<sup>53</sup> Unfortunately, Probation policies do not address or limit the use of prone restraint, and only vaguely address the use of “control holds” and “physical contact.”<sup>54</sup>

The JDAI guidelines prohibit “restraining youth in a prone position and putting pressure on the youth’s back.”<sup>55</sup> Similarly, the U.S. Department of Education has stated that prone restraints should never be used on children and youth because they can cause serious injury or death.<sup>56</sup> Probation should adopt these guidelines and change its practices to prohibit the use of prone restraint, and in particular the prone restraint of non-violent youth.

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<sup>50</sup> See, G.D. Kutz, *Seclusions and restraints: Selected cases of death and abuse at public and private schools and treatment centers*, U.S. Government Accountability Office, Forensic Audits and Special Investigations (2009), available at <http://www.gao.gov/new.items/d09719t.pdf>; *School is not supposed to hurt: Update on Progress in 2009 to Prevent and Reduce Restraint and Seclusion in Schools*, National Disability Rights Network (2010), available at <http://ndrn.org/images/Documents/Resources/Publications/Reports/School-is-Not-Supposed-to-Hurt-NDRN.pdf>.

<sup>51</sup> See, Paterson, B., Leadbetter D., & McCornish, A., *Restraint and Sudden death from Asphyxia*, *Nursing Times*, 94 (44), Nov. 1998, at 62-64.

<sup>52</sup> 1635 Use of Force (Updated 1/2017) at 163.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> JDAI Assessment Standards (2014) at 174.

<sup>56</sup> <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

### 3. Prolonged Isolation

The youth we interviewed who were or are in each of the three KCJC facilities described extended periods of time spent in isolation, separated from programming and deprived of social interaction with their peers. Isolation of youth at KCJC facilities ranges from disciplinary sanctions, such as solitary confinement in an individual cell or restriction to a youth's sleeping area, to the separation of a youth from others for administrative convenience. Wherever the isolation occurs and whatever the rationale, extended periods of isolation are harmful for young people – in particular youth with disabilities, who bear a disproportionate burden when subjected to these practices.

#### a. Isolation Practices at KCJC Facilities

Probation staff have regularly isolated youth for extended periods of time at all three KCJC facilities, either as a disciplinary sanction or for administrative purposes. In connection with new state law requirements governing the solitary confinement of youth, effective as of January 1, 2018, KCJC has developed revised policies and procedures designed to reduce reliance on isolation. We are encouraged by many of the provisions in these new policies, and are hopeful that they represent a meaningful step away from reliance on harmful isolation practices.

Our investigation of all three KCJC facilities demonstrated staff reliance on isolation to discipline young people, even for offenses as minor as “arguing,” “peer friction,” and “poor effort at P.E.”<sup>57</sup> For example, in a sample of six months of data from Juvenile Hall, we identified at least 23 instances in which young people were placed on administrative restriction for more than 70 consecutive hours. In two cases, room confinement exceeded 78 hours, well over the official 72-hour cap. On several occasions, Probation staff almost immediately returned youth exiting room confinement to their cells. For example, in the spring of 2017, records indicate that a young woman was placed in her room for 55 hours for a period from Friday to Sunday, 72 hours for a period from that Sunday to

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<sup>57</sup> Under KCJC's now superseded policies, such conduct could result in up to eight hours locked alone in a small cell, which might be extended at staff discretion for another eight hours. 1805 Discipline Process at 5; see also, posted signs regarding red and green tags observed in Juvenile Hall.

Wednesday, and 55.7 hours from that Wednesday to Saturday. These back-to-back periods of administrative restriction amounted to 182.7 hours of solitary confinement over the span of nine days.

At Crossroads, both “Administrative Separation” (“AS”) and the “Safety and Security Program” are methods of disciplinary solitary confinement. Youth on AS attend school and P.E., but spend the rest of their time in isolation, eating meals alone in their rooms, and spending programming time<sup>58</sup> in “Alternative Program” or “AP.” Crossroads’ policies describe Alternative Program as “a classroom like setting in the day room,” in which youth complete “[s]ilent and controlled assignments” such as “rule session, creative writing assignment, quiet reading, [and] inside or outside marching exercises.”<sup>59</sup> Youth on AP are forced to sit in silence and forbidden from interacting with their peers or adults. Youth with learning disabilities, in particular, may find it difficult to sit still and read for extended periods of time in this way. If youth refuse to participate in AP, they are returned to their rooms. AS status has generally lasted around three or four days.

Youth on the Safety and Security Program (“SSP”) are excluded from Crossroads programming and have no contact with their peers.<sup>60</sup> They are barred from activities, using the telephone, and participating in work details.<sup>61</sup> Physical education, meals, room clean-up, and showers are all conducted individually, and even visiting and church services may take place only in the doorway to the youth’s cell.<sup>62</sup> Youth on SSP are prevented from attending school and have their educational placements changed to independent study; mental health services are available only “based on [the youth’s] behavior.”<sup>63</sup> During their time on SSP, youth remain in their individual cells for twenty-three hours per day, leaving only for one hour per day of physical education – alone. Independent study has amounted to worksheets completed alone in a student’s cell.

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<sup>58</sup> We note that at KCJC facilities “programming time” denotes time that youth are permitted to spend outside of their cells watching TV, calling their parents or guardians, or interacting socially with other youth, rather than either formal or informal rehabilitative, educational, or vocational programming.

<sup>59</sup> 1605 Classification.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

Although Camp Owen lacks individual cells, Probation staff at the Camp have still employed extended isolation as a disciplinary strategy. Young people under “Administrative Restriction” for rule violations, behavior problems, or security reasons “are confined to bed with socks and shoes removed” and “[t]alking privileges . . . restricted or rescinded.” Young people on Administrative Restriction may also be excluded from P.E., school, and mental health groups.

In response to more “serious or chronic” misbehavior, Probation staff at Camp Owen place youth in the Owen Reentry Program, or “ORP.”<sup>64</sup> These youth have been subject to “intense supervision” and not allowed any regular programming.<sup>65</sup> While confined to their dormitory beds for disciplinary reasons, young men in ORP are unable to interact or communicate with their peers, and are required to sit straight up in bed without lying down or moving for extended periods of time, a position which causes back pain. For youth with ADHD, “sitting up” for prolonged periods of time without movement or talking is quite difficult. Although these young men were not technically confined within a cell, they were still cut off from their peers and from all rehabilitative programming as a strategy for punishment and control.

At the conclusion of our investigation, Probation shared revised policies developed to comply with SB 1143. We are encouraged by many aspects of the new policies. In particular, we applaud Probation’s commitment that room confinement shall not be used as discipline; its creation of a mechanism to develop individualized strategies for youth who present recurring behavior management challenges for staff; and its involvement of KCSOS, mental health staff, parents and guardians, and youth in the formulation of those strategies. It is clear that the intent of these policies is to reduce the time that youth spend in their rooms. However, we note with concern continued reliance on SSP and AP, as well as new practices such as having youth in Juvenile Hall sit alone in the hallways outside of their cells as a disciplinary sanction, in order to technically avoid placing youth in room confinement. While these youth may be locked in individual cells less frequently, Probation’s problematic

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<sup>64</sup> 1605 Classification at 5 (Rev. 05/2017).

<sup>65</sup> *Id.* at 2.

reliance on isolation, including extended deprivation of any social interaction between youth, continues.

b. Adverse Effects of Prolonged Isolation on Youth

Reducing the amount of time that youth spend isolated from their peers is critical to their well-being because, regardless of the rationale, prolonged isolation is dangerous for young people. For youth with disabilities, who are often more vulnerable to serious psychological and developmental harm as a result, the impact is far greater.

Isolating any young person for prolonged periods of time leads to stress and anxiety and poses well-documented risks to his or her mental health.<sup>66</sup> Youth at KCJC facilities are generally teenagers between the ages of 14 and 18. During this critical period of development, young people need social interaction to thrive. Left without it, they are vulnerable to rapid deterioration of their mental health. In addition, many of the young people in KCJC facilities have experienced past trauma, including abuse and neglect, compounding the risk. Even without the danger to a young person's mental health, prolonged isolation of young people compromises efforts to rehabilitate them by blocking their access to educational and rehabilitative programming.

For young people with disabilities, the situation is far worse. Medical experts and policymakers alike have recognized that, in particular, solitary confinement of young people with mental illness poses unacceptable risks to their health and development, including the risk of self-harm and suicide.<sup>67</sup> Furthermore, in many cases, young people with disabilities have more to lose when they are excluded from programming – in addition to losing access to the educational and rehabilitative programming available to all young people in KCJC facilities, they can lose access both to mental health counseling and to the special education services they need to access the curriculum and move forward towards graduation. The isolation

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<sup>66</sup> See, e.g., Policy Statement: Solitary Confinement of Juvenile Offenders, American Academy of Child & Adolescent Psychiatry, available at [http://www.aacap.org/AACAP/Policy\\_Statements/2012/Solitary\\_Confinement\\_of\\_Juvenile\\_Offenders.aspx](http://www.aacap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx).

<sup>67</sup> See, e.g., Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL'Y 325 (2006); Press Release, U.S. Department of Justice, Attorney General Holder Criticizes Excessive Use of Solitary Confinement for Juveniles with Mental Illness (May 14, 2014).

of youth with disabilities compromises not only their safety within the facility, but also their chance to succeed in the community on release.

c. Probation Has Disproportionately Isolated Youth with Disabilities

Even though young people with disabilities are at a particularly high risk when isolated from their peers, they have been uniquely affected by these practices at KCJC facilities. The young people we interviewed reported that youth routinely faced disciplinary sanctions, including prolonged solitary confinement, triggered by behavior related to their disabilities. Staff are required to know whether youth under their care have any mental health or medical conditions.<sup>68</sup> Yet, it appears that staff have failed to take disability into account when disciplining them.

Once placed in isolation, youth with disabilities have also faced greater hurdles in rejoining their peers. For example, to exit SSP at Crossroads under the prior policy, a young person was required to recite the Kern Crossroads Facility rules from memory, complete school work (without access to special education services), and “have positive interactions with staff” after days of isolation.<sup>69</sup> For some young people with disabilities, such hurdles may be insurmountable. We are encouraged by revised guidelines inviting staff to create individualized goals for youth exiting SSP.

The sample of data we received and reviewed indicates that young people with disabilities have been more likely to be placed in, and kept in, solitary confinement at KCJC facilities. For example, out of the youth identified as taking psychotropic medications at KCJC facilities, two-thirds also appeared on lists of young people in room confinement. For Crossroads, there were multiple days over the past few months when every single child who appeared on the solitary confinement lists (i.e. lists of youth on administrative segregation and SSP) also had a documented disability.

Independent of disciplinary solitary confinement, youth reported that young people with disabilities, particularly at Crossroads, were more likely

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<sup>68</sup> 1635 Use of Force at 177.

<sup>69</sup> 1605 Classification at 151-52.

to spend extended periods of time in their cells because they were less likely to be chosen for privileges and work details.

From our review of Probation's proposed revised policies, we are concerned that youth with disabilities remain at serious and disproportionate risk of extended periods of isolation, which may exacerbate their disabilities and put their mental health at risk. For example, having been locked alone in an individual cell all night, a youth with ADHD at Crossroads is then expected to refrain from talking or communicating in his room, when lining up, when moving throughout the facility, in the bathroom, or at meals. At school, he is expected to remain focused, pay attention, and complete his work. Even if his IEP allows for breaks for him to regain focus, he may not be permitted to take them. After school, he may or may not have the opportunity to participate in a work detail, such as working in the kitchens or on the grounds. If he does not, he will spend this time alone in his room. His only opportunity to communicate with his peers, call his family, or write a letter home arrives between 6pm and 9pm.

But if at any point in the day, he engages in misconduct – which includes behaviors such as slow response to staff, peer friction, talking during meals, possessing an extra book, having his shirt untucked, failing to comb his hair, or whistling – this social time, as well as his eligibility for a work detail, can evaporate. The youth is then sent to AP, a silent, classroom-like environment where he is again forbidden from interacting with his peers before being returned to his room at 8pm to restart the cycle the next morning. Without creating any significant disruption or posing any safety or security risk, a youth can easily lose the right to interact or socialize with others for the entire day.

A system where young people, and in particular young people with disabilities, are expected to continually earn the right to interact and socialize with others by remaining silent and conforming to behavioral expectations they may not be able to meet neither promotes their rehabilitation nor comes close to creating the safe and homelike environment that Probation has the responsibility to offer. Moreover, it fails to eliminate the disproportionate effect of practices that result in isolation –

including not only room confinement but also the harmful deprivation of social interaction – on youth with disabilities.

d. Probation's Opportunity for Change

With the new SB 1143 requirements in place, Probation has the obligation and opportunity to reject inhumane and punitive practices such as extended isolation, including the deprivation of social interaction, which harms children and frustrates efforts at meaningful rehabilitation, and to replace its prior model with a relationship-based, therapeutic approach designed both to reduce recidivism rates and promote safety for young people and staff. We hope that Probation's recent revisions to its separation and discipline policies are the first step on this path.

e. Disproportionate Impact of Discipline and Punitive Culture on Youth with Disabilities

As discussed above, youth with ADHD and mental health disabilities are unable to conform to the severe behavioral standards at KCJC facilities and appear to have suffered disproportionate discipline as a result. This appears to be due, at least in part, to the lack of consideration of disability status when administering discipline.

The new draft discipline policies now require consideration of disability and mental health status in several ways. One is in the weekly Special Cases meetings at Crossroads, Camp Owen and Juvenile Hall. These meetings will now include the participation of an ADA coordinator and will provide an opportunity for staff to consider and identify approved accommodations for youth with disabilities.

Disability status is also taken into consideration in Revised Policy 1700, which outlines the Crossroads program. For level 3 misconduct – the most serious /dangerous – staff are now required to take into consideration “aggravating/mitigating circumstances, such as the youth’s disabilities ... as well as the youth’s mental health history.” It is unclear



how consideration of disability will be taken in practice for each level of misconduct.<sup>70</sup>

Similarly, Draft Policy 1810 on due process at Crossroads includes a new provision for consultation with the mental health provider, Phoenix House, if youth are “unstable.” While this is a positive change, due process is applicable to only the most serious misconduct, and fails to require collaboration regarding lower level misconduct. Moreover, it appears that this consultation is at Probation initiative and does not occur on a regular basis. New due process procedures for Juvenile Hall include similar provisions.

The revised procedures are a positive step but, until they are fully implemented, it cannot be determined whether they remedy the existing problem. Our investigation found evidence that youth are disciplined for disability related behavior over which they have no control. In the categorization of misconduct, this behavior is most likely to be level one and level two. Level 1 misconduct includes talking, failure to keep your hands behind your back, room noise, whistling, not combing your hair. Level 2 misconduct includes banging on your door, teasing another person, slow compliance with an order to return to your room. All of these are common behavioral problems associated with ADHD and forms of emotional disturbance. The revised procedure does not require consideration of whether the misconduct is disability related for these most common behaviors. These behaviors can result in lost points, alternative programming which results in social isolation, loss of work detail or administrative separation. While these behaviors could be raised at the weekly special cases meetings, there is no assurance this will occur.

#### **4. Rehabilitation Requires that Traumatized Youth Feel Safe**

Children must feel safe to engage in treatment and rehabilitation. If the environment around them is free of perceived danger, young people are more likely to let down their guard and open themselves to positive relationships with staff and their treatment team. If children feel unsafe,

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<sup>70</sup> The initial explanation of the “Points Grid” includes a disclaimer that “[r]esponsivity issues, such as youth with disability, will be factored into this process,” but does not specify how, by whom, or necessarily that disability must be considered at all levels.

their fear keeps them from building relationships and engaging in treatment.

Most young people in juvenile facilities have extensive histories of exposure to psychological trauma. In one study, at least 90 percent of juvenile detainees reported at least one traumatic event.<sup>71</sup> These children may have been beaten by their parents, abused physically and sexually, witnessed violence in the home or street, or placed in foster care and forced to grieve for lost family connections. For these youth, isolation, pain, and physical touch may trigger memories of prior victimization, betrayal, or abandonment. When traumas are re-experienced in a juvenile facility, youth may become hyper-vigilant, or engage in self-destructive or aggressive behavior to distract, avoid, or otherwise reduce their feelings from the trauma response. Re-traumatizing children makes them more resistant, more aggressive, and less likely to respond to rehabilitation.

The practices employed by Probation staff produce and reflect a culture that is an obstacle to rehabilitation. Specifically, the practices of using pepper spray, especially in response to verbal defiance or disobedience that does not pose a threat to safety, prone restraint of youth, and using extended social isolation to modify behavior directly hinder rehabilitation.

## **B. FAILURE TO MEET THE EDUCATIONAL NEEDS OF YOUTH WITH DISABILITIES**

As discussed above, KCSOS oversees and operates court schools at each of the three KCJC facilities.

The Memorandum of Understanding (MOU) between KCSOS and the Kern County Board of Supervisors lays out certain “Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings” established by the U.S. Department of Education. On page one, this MOU recites Guiding Principles such as:

“A safe, healthy facility-wide climate that prioritizes education, provides the conditions for learning, and encourages the necessary

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<sup>71</sup> Abram, Teplin, *et al.*, *PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth*, OJJDP Bulletin, June 2013, <https://www.ojjdp.gov/pubs/239603.pdf>.

behavioral and social support services that address the individual needs of all youth, including those with disabilities and English learners.”

“Recruitment, employment, and retention of qualified education staff with skills relevant in juvenile justice settings who can positively impact long-term student outcomes through juvenile justice settings [and] who can positively impact long-term student outcomes through demonstrated abilities to create and sustain effective teaching and learning environments.”

“Rigorous and relevant curricula aligned with state academic and career and technical education standards that utilize instructional methods, tools, materials, and practices that promote college- and career-readiness.”

“Formal processes and procedures – through statutes, memoranda of understanding, and practices – that ensures [sic] successful navigation across child-serving systems and smooth reentry into communities.”

It is a basic promise in the United States that all youth will receive a quality education; as envisioned in KCSOS’ own MOU, this includes youth in detention facilities.

Providing a quality education with rigorous and relevant curricula within a safe and healthy environment would reduce the number of youth who remain at-risk when leaving KCJC facilities. And, improved educational outcomes would improve the chances of youth being successful and reintegrating into the community. Various studies have shown that recidivism decreases when educational opportunities increase.<sup>72</sup> Quite simply, a quality education, including high educational expectations and outcome standards, helps to equip youth to perform capably on various pathways once they leave detention such as finishing high school, going on to college, or joining the workforce.

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<sup>72</sup> See, e.g., U.S. Dept. of Educ. Resources for Correctional Education in Juvenile Justice Facilities, available at <https://www2.ed.gov/policy/gen/guid/correctional-education/index.html>.

We have concerns about the form and substance of the education services provided to students, especially those with disabilities, while detained in KCJC facilities.

### **1. Students with Disabilities: the Right to a Free, Appropriate Public Education that Meets Their Unique Needs**

Under both the IDEA and Section 504, eligible students with disabilities, including those in the juvenile justice system, have a right to receive a free and appropriate public education or “FAPE.”<sup>73</sup>

Under the IDEA, a FAPE consists of specially designed instruction and related services, at no cost to the parents or adult student, that are designed to meet the unique needs of the individual student with a disability, are consistent with curriculum standards set by the State of California, and conform to the student’s written Individualized Education Program (IEP).<sup>74</sup>

Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student’s individual educational needs as adequately as the needs of nondisabled students are met.<sup>75</sup> FAPE afforded under Section 504 is memorialized in a “504 Plan.” For the purposes of this investigation and report, we consider FAPE under the IDEA and Section 504 substantially similar.

Youth with disabilities do not forfeit their right to a free and appropriate public education simply because they are detained in a KCJC facility.

#### **a. Child Find: Initial and Ongoing Assessments**

The IDEA places an affirmative, ongoing duty on local school districts such as KCSOS to identify, locate, and evaluate all children with disabilities, including those detained in juvenile facilities.<sup>76, 77</sup> To satisfy its duty, KCSOS must actively and systematically seek out “all individuals with

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<sup>73</sup> 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101; Educ. Code § 56040(a).

<sup>74</sup> 20 U.S.C. § 1401(9), (29); *see also* Educ. Code § 56031.

<sup>75</sup> 34 C.F.R. Part 104.

<sup>76</sup> 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.125.

<sup>77</sup> Section 504 similarly provides for initial assessments. 34 C.F.R. § 104.35(b).

exceptional needs, from birth to 21 years of age” who reside within or are under the jurisdiction of the school district.<sup>78</sup> This statutory obligation is commonly referred to as “child find.”

“The purpose of child find evaluations is to provide access to special education.”<sup>79</sup> KCSOS’ child find obligation toward a specific child is triggered when there is a reason to suspect a disability and reason to suspect that special education services may be needed to address that disability.<sup>80</sup> The threshold for suspecting that a child has a disability is relatively low.<sup>81</sup> The appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services.<sup>82</sup> Once KCSOS has reason to suspect that a student may have special education needs, it has the duty to assess the student in *all* areas of suspected disability so that it can determine a comprehensive understanding of the student’s unique needs and serve him or her appropriately.<sup>83</sup> KCSOS’ failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a denial of FAPE.<sup>84, 85</sup>

During our investigation, we requested “any and all documents indicating the number of youth who received an initial assessment for an IEP or [Section] 504 Plan during their detention in [KCJC] [f]acilities” during the past year.<sup>86</sup> KCSOS agreed that such records were disclosable.<sup>87</sup> However, we can find no such documents or information in any of the

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<sup>78</sup> Educ. Code §§ 56300, 56301 (duty to assess); *Id.* §§ 48645.1, 48645.2, 56150 (county offices of education are the responsible agency for students in juvenile halls and court schools).

<sup>79</sup> *Fitzgerald v. Camdenton R-III Sch. Dist.*, 439 F.3d 773, 776 (8th Cir. 2006).

<sup>80</sup> *Dept. of Educ., State of Hawaii v. Cari Rae S.*, 158 F.Supp.2d 1190, 1194 (D. Hawaii 2001).

<sup>81</sup> *Id.* at 1195.

<sup>82</sup> *Id.*

<sup>83</sup> 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. §§ 300.532, 300.533; Educ. Code § 56320(f).

<sup>84</sup> *Park v. Anaheim Union High Sch. Dist., et al.*, 464 F.3d 1025, 1031-1033 (9th Cir. 2006). Furthermore, once an evaluation indicates the possibility of an additional disability, KCSOS is required to evaluate the student’s needs and conduct any necessary medical examination. 34 C.F.R. §300.505(a); *see also*, *Scruggs v. Meriden Bd. of Educ.*, 2007 Westlaw 2318851, \*9 (D. Conn. Aug. 10, 2007) (IDEA regulations required school district to further evaluate student’s needs and conduct any necessary medical examination once an initial evaluation indicated a possible ADHD condition).

<sup>85</sup> *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201 (1982) (recognizing the importance of adherence to the procedural safeguards of the IDEA as part of the provision of FAPE); *W.G. v. Bd. of Teachers of Target Range Sch. Dist., No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992) (“*Target Range*”).

<sup>86</sup> Public Records Act Request by DRA, dated July 28, 2017.

<sup>87</sup> KCSOS Response to Public Records Act Request, dated Aug. 4, 2017.

documents KCSOS has provided to date. Accordingly, it is unclear whether KCSOS does not keep records of assessments, or whether no youth in KCJC facilities received an initial assessment for special education or a 504 Plan during the 2016-17 school year. Given the high rate of correlation between disability and juvenile detention, it would be concerning if the latter is correct, and would suggest that child find duties are going unmet.

In addition to the duty to *sua sponte* identify youth who are suspected of having a disability, KCSOS must also have a system for utilizing referrals from youth's teachers, parents, and other agencies or providers.<sup>88</sup> When a parent, youth, or other professional with knowledge of the student makes a written request for a special education assessment, the school district shall initiate the assessment process.<sup>89</sup>

Of most concern, we have seen no evidence that KCSOS regularly provides assessments in the areas of behavioral and mental health, even to youth who have diagnosed and documented conditions. Several other youth reported a history of trauma and mental health symptoms such as depression to us, but indicated that they had not been assessed for an IEP or 504 Plan while detained. This is consistent with our comparison of the lists of youth on psychotropic medications to the lists of youth with IEPs and 504 Plans; although there is significant overlap between the two groups, many youth who take psychotropic medications do not have IEPs or 504 Plans.

One youth with Bipolar Disorder, a learning disability, and other diagnosed conditions that affect his behavior, mental health, self-regulation, and adaptive living skills, was only given an academic achievement test and a single behavior survey during his triennial re-evaluation at Juvenile Hall. This is problematic in at least two ways: (1) his assessment plan, signed by his parent, indicated he would be assessed in several other areas that were omitted from testing; and (2) his documented history of

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<sup>88</sup> "Identification procedures shall include systematic methods of utilizing referrals of pupils from teachers, parents, agencies, appropriate professional persons, and from other members of the public." Educ. Code § 56302; see also Educ. Code § 56029(a), (b) (A referral for a special education assessment means any written request for assessment to identify an individual with exceptional needs made by a parent, teacher, or service provider of the student).

<sup>89</sup> Educ. Code § 56320; Cal. Code Regs., tit. 5, § 3021.

difficulties supported much more comprehensive testing to establish his then-current educational needs.<sup>90</sup>

These findings raise significant concerns regarding Kern County's execution of its child find duties. However, we are encouraged by the formalization of policies for including KCSOS staff at KCJC facilities in weekly "special cases" meetings regarding youth's disability-based needs. It remains unclear who from KCSOS will attend these meetings, but we would hope that these person(s) will have sufficient expertise, training, and continuity at a facility in order to identify and plan for disability-based concerns. Given the lack of credentialed and consistent special education staffing at Crossroads and the Juvenile Hall, discussed below, this remains an area of great concern.

#### b. Specialized Academic Instruction

As outlined above, students with IEPs and 504 Plans have the right to receive specially designed instruction, more commonly known as "specialized academic instruction" or "SAI."<sup>91</sup> SAI should be provided by a teacher credentialed in special education.

Special education services must be documented in IEPs and provide a meaningful educational benefit toward the goal of self-sufficiency.<sup>92</sup> Whether or not there has been "meaningful progress towards meeting IEP goals and objectives" determines whether or not the IEP was reasonably calculated to provide educational benefit.<sup>93</sup>

Based on information gathered during our investigation, we are concerned that many students are not receiving sufficient special education instruction while detained to provide a FAPE. Some youth reported that they received most of their instruction in special education outside of detention, but reported that their special education time was reduced while in KCJC facilities. The education records we have reviewed for individual

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<sup>90</sup> Consequently, it appears, KCSOS offered only minimal specialized academic instruction and a mere 15 minutes per month of "counseling and guidance."

<sup>91</sup> 20 U.S.C. § 1401(9), (29).

<sup>92</sup> *N.B. v. Hellgate Elem. Sch. Dist.*, 541 F.3d 1202, 1212-13 (9th Cir. 2008); *Andrew F. v. Douglas Cty. Sch. Dist.*, 580 U.S. \_\_\_, slip op. at 14-15 (Mar. 22, 2017); and *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996).

<sup>93</sup> *County of San Diego v. Calif. Special Educ. Hearing Office*, 93 F.3d 1458 (9th Cir. 1996); see also *Andrew F.*, 580 U.S. \_\_\_, 137 S.Ct 988, slip op. at 14-15 (Mar. 22, 2017).

youth similarly suggest that many of those youth have far greater educational needs than are addressed in their IEPs. One youth with a learning disability who is approximately seven years below grade-level in English and math receives only 270 minutes of special education instruction per week. Another youth with severe mental illness was in the 10<sup>th</sup> grade on a diploma track. Although he tested at a second and third grade level in reading and mathematics respectively, his IEP contained no strategies to address the learning disability that contributed to this discrepancy. Similarly, most KCSOS IEPs we have seen do not have goals designed to bring youth closer to grade-level academics or reach self-sufficiency. We are unaware of whether KCSOS utilizes evidence-based instructional materials and practices to try to remedy some of the significant education deficits present for youth, but would strongly recommend such approaches.

Based on the information provided, we also have concerns about the quantity and quality of special education staffing at the KCJC facilities. For example, KCSOS records indicate that between July 2016 and July 2017, 25 individuals provided special education to the youth in Juvenile Hall. Of these 25 individuals, only four had clear special education credentials.<sup>94</sup> During the same time period, 14 different people provided special education to youth at Crossroads. Of these 14 individuals, only two had clear special education credentials.<sup>95</sup> At both facilities, many of these staff were present for only one or two weeks at a time. As of our recent visits with youth in December 2017, it appears that this lack of appropriate credentialing remains an issue at Juvenile Hall and Crossroads. This constant turnover and lack of credentialing observed in special education staffing raises questions about the continuity of instruction provided to youth and the ability of each new staff member to be sufficiently familiar with each youth's IEP and special education needs.

Part of providing appropriate instruction involves uniformly implementing accommodations and modifications specified in youth's IEPs and 504 Plans. Based on our investigation, we are concerned that youth

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<sup>94</sup> Three others held intern credentials requiring, among other things, ongoing supervision by a credentialed teacher and enrollment in a teaching program.

<sup>95</sup> One other held an intern credential requiring, among other things, ongoing supervision by a credentialed teacher and enrollment in a teaching program.



have not been allowed to use the accommodations listed in their IEPs that are necessary for them to access instruction.

Finally, during our investigation, KCSOS identified several youth in KCJC facilities who lacked parents, guardians, or any other legal holder of the youth's education rights. This is concerning because, absent a contrary court order, KCSOS has a duty to appoint an educational surrogate parent to exercise and protect a youth's rights when his or her parent does or cannot do so.<sup>96</sup> Without an education rights holder, these youth with disabilities have no adult responsible for making decisions regarding their education, such as providing informed consent for special education assessments and services. Absent lawful education rights holders, it is unclear how KCSOS is lawfully discharging its duty to provide FAPE to some youth with disabilities.

### c. Related Services

School districts must provide related services that are necessary in order for the student with a disability to access and benefit from his or her education.<sup>97</sup> Related services that help a child receive educational benefit include, but are not limited to, speech and language therapy, counseling and guidance services, including rehabilitation counseling, psychological services, social worker services, occupational therapy, and specially designed vocational education and career development.<sup>98</sup> We have seen no evidence that KCSOS is assessing students for and providing these critical related services.<sup>99</sup> However, several youth reported great difficulty managing the noise and sensory input in their environment and others demonstrated handwriting that appeared far below age- or grade-level expectations.

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<sup>96</sup> 34 C.F.R. § 300.519; Educ. Code § 56050.

<sup>97</sup> 20 U.S.C. § 1401(9), (26).

<sup>98</sup> Educ. Code § 56363.

<sup>99</sup> KCSOS did provide us with an agreement with Presence Learning for non-public agency speech therapy services. However, the agreement, which expired in July 2017 unless extended in another writing not provided, appears to be for the purposes of augmenting services globally at Kern County Special Education Local Plan Area schools and schools within member school districts and makes no mention of KCSOS's court schools at the KCJC facilities. Further, youth did not report receiving services from Presence Learning. Accordingly, it is unclear whether there are, in fact, speech therapy staff, services, and assessments regularly available to youth detained in KCJC facilities.

In addition, students who will soon be or are over sixteen years of age are entitled to receive transition planning services that ensure “equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”<sup>100</sup> These federally mandated transition services are designed to prepare youth for life after high school, and are distinct from what we may refer to elsewhere with regard to planning for detained youth’s transitions back into their communities. It is unclear what, if any, transition services are provided by KCSOS at the Juvenile Hall and Crossroads.

Mental health services related to a student’s education must also be provided by the student’s school district as part of FAPE.<sup>101</sup> A student who is eligible for special education and is suspected of needing mental health services in order to benefit from his or her education is to be assessed by the student’s school district.<sup>102</sup>

Similarly, when a student’s behavior impedes her learning or that of others, the IEP team must consider “strategies, including positive behavioral interventions, strategies, and supports to address that behavior.”<sup>103</sup> California law describes behavioral interventions as the “systematic implementation of procedures that result in lasting positive changes in the individual’s behavior,” including the “design, implementation, and evaluations of individual or group instructional and environmental modifications . . . designed to provide the individual with greater access to a variety of community settings, social contacts and public events’ and ensure the individual’s right to placement in the least restrictive environment as outlined in the individual’s IEP.”<sup>104</sup> An IEP that does not appropriately address behavior that impedes a child’s learning denies a student a FAPE.<sup>105</sup>

Only one of the more than 50 youth we interviewed reported receiving mental and behavioral health related services from KCSOS. KCSOS

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<sup>100</sup> 20 U.S.C. § 1400(c)(1).

<sup>101</sup> Gov’t Code § 7570, *et seq.*; *Student v. Los Angeles County Office of Educ.*, Cal. Ofc. Admin. Hrngs. Case No. 2011090350 at 34-35 (2012).

<sup>102</sup> Gov’t Code § 7573.

<sup>103</sup> 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324 (2006); Educ. Code § 56341.1, subd. (b)(1).

<sup>104</sup> Cal. Code Regs., tit. 5, 20 § 3001, subd. (d).

<sup>105</sup> *Park v. Anaheim Union High Sch. Dist., et al.*, 464 F.3d 1025, 1033 (9<sup>th</sup> Cir. 2006); *Neosho R.V. Sch. Dist. v. Clark*, 315 F.3d 1002, 1028-1029 (8<sup>th</sup> Cir. 2003).

school staff similarly reported that very few, if any, youth detained at the times of our visits received these services through KCSOS.<sup>106</sup> And, in a letter dated September 19, 2017, KCSOS stated that no youth had received behavioral assessments within the last 12 months. It is our impression that KCSOS has abdicated its duty to provide related services, and in particular educationally related mental and behavioral health services, because some youth receive some services through other means, such as through Probation's contract with Phoenix House at Crossroads (described in more detail below).

Further, O.C. spray reports provided by Probation repeatedly recount incidents of physical force and chemical restraint within the classrooms and school facilities. For example, between June 2016 and June 2017, O.C. spray logs indicate that 26 youth at Juvenile Hall were sprayed between 8:30 a.m. and 3:30 p.m. on a school day. This accounts for 22 percent of the total youth sprayed at Juvenile Hall during this time period. As discussed herein, it is our impression that KCSOS relies on Probation to establish classroom management, rather than systemically adopting a school-wide positive behavior intervention system and providing behavior-related services to individual youth as appropriate through IEPs and 504 Plans.

## **2. Youth's Right to Due Process Prior to Removal from an Education Placement**

Youth have a due process interest in their education.<sup>107</sup> Nonetheless, youth report that, while detained at KCJC facilities, they have been excluded from educational programming without notice, an explanation of the reason for the exclusion, and an opportunity to dispute the explanation of the reason for the exclusion.

This appears to occur, in part, because Probation staff, rather than KCSOS staff, act as if they are responsible for the administration of classroom management during the school day. Although youth reports and Probation records reflect the regular removal of youth from their

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<sup>106</sup> One staff member at Camp Erwin Owen High School stated that she thought one student received mental health services from KCSOS. Other staff across sites reported that only Probation arranges for mental health services within the KCJC facilities.

<sup>107</sup> *Goss v. Lopez*, 419 U.S. 565 (1975).

classrooms and education (including through use of physical force and O.C. spray), KCSOS has remarkably reported zero incidents of suspension and expulsion from court schools to the California Department of Education during the past five years.<sup>108</sup>

Youth with disabilities have a heightened interest in their education and specific protections exist by law to ensure these youth are not removed from school for behaviors considered manifestations of their respective disabilities.<sup>109</sup> Similarly, if a youth is removed for 10 or more days of instruction during a school year, additional procedural safeguards and procedures are triggered to ensure the youth's placement is not changed without appropriate planning and notice to and input from the youth's parent or guardian.<sup>110</sup>

Again, despite youth reports and Probation records of removal of students with disabilities, KCSOS reported to us that it had no records of manifestation determination meetings.<sup>111</sup> Similarly, KCSOS reported that it had no records of "youth who have been sent out or physically removed from any classroom."<sup>112</sup> In other words, KCSOS has not been documenting incidents of short- or long-term removals from school (i.e., suspensions and expulsions), and has not been ensuring youth are afforded their due process rights before they are deprived of their education. In addition to the due process implications surrounding each removal, if KCSOS does not track a student's removals from class, it would be impossible for KCSOS to ascertain when the 10-day mark is passed for the purposes of convening an Individualized Education Program ("IEP") meeting prior to changing the student's placement. Changing a youth's educational placement without parental consent and without following appropriate safeguards again violates youth's due process rights under special education laws.<sup>113</sup>

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<sup>108</sup> See, e.g., Student Misconduct and Intervention Data for KCSOS court schools since 2011, available through DataQuest at <https://www.cde.ca.gov/sp/eo/is/faq.asp>.

<sup>109</sup> See, e.g., 20 U.S.C. § 1415(k); 34 C.F.R. §§ 300.530-36.

<sup>110</sup> *Id.*

<sup>111</sup> See, e.g., KCSOS Letter Responding to Public Records Act Requests, dated September 19, 2017 (KCSOS "does not have" records of "youth who received a manifestation determination.")

<sup>112</sup> *Id.*

<sup>113</sup> See, e.g., 20 U.S.C. § 1415(b)(2)(3), (c), (j), (k); 34 C.F.R. §§ 300.530-36; *Honig v. Doe*, 484 U.S. 305 (1988).

In a letter dated September 19, 2017, KCSOS also reported that it had no information regarding youth assigned to disciplinary status, room confinement, or room restriction. However, this conflicts with information available to us through individual student records. For example, records of youth at Crossroads suggest that KCSOS would initiate an internal, administrative “change of placement” from the classroom to independent study when a youth is placed on SSP.<sup>114</sup> Notably, the KCSOS documents effecting these administrative changes of placement *do* document that the youth has an IEP (thus qualifying him for protections and procedures prior to a change in his school placement), but we have seen no records that provide evidence that KCSOS has been notifying parents, obtaining consent, or convening IEP meetings to review students’ IEPs for any necessary changes and alternatives to the change of placement. It is our position that removing a youth from the on-site school and placing him or her on independent study constitutes a change of placement under federal special education laws, thus triggering all applicative procedural safeguards to ensure due process is afforded.<sup>115</sup>

Finally, KCSOS’ lack of a positive, school-wide behavior intervention program misses yet another opportunity to provide rehabilitative services to youth detained in KCJC facilities.

### **3. Right to Minimally Adequate Education, Including Instructional Minutes and Access to California’s Content Standards**

#### **a. Minimum Minutes of Instruction**

Education Code section 48645.3(a) states that the “minimum schoolday [sic]” at juvenile court schools shall be 240 minutes. “Minimum schooldays [sic] shall be calculated on the basis of the average number of minutes of attendance during not more than 10 consecutive days in which classes are conducted.”

Section 48645.3 provides one exception: the minimum school day is reduced to 180 minutes for those students attending approved vocational

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<sup>114</sup> See, e.g., education records for individual students received pursuant to parental consent during this investigation.

<sup>115</sup> See Educ. Code § 51745(c).

education programs, work programs prescribed by the Probation Department pursuant to section 883 of the Welfare and Institutions Code, and work experience programs.

We recognize that the youth at Camp Owen or Crossroads who participate in vocational and work programs provided by Probation may be subject to the reduced minimum school day, and thus may be getting the minimum required minutes of instruction.

However, we are concerned that some youth within KCJC facilities are not subject to the reduced minimum school day or are otherwise not receiving the minimum required instruction applicable to him or her. These groups of youth include, but may not be limited to:

- Youth at Camp Owen who, for any reason, are not participating in a vocational or work program and would not qualify for the shortened minimum school day;
- Youth at Crossroads who do not participate regularly in a work detail or vocational program, for any reason, and would not qualify for the shortened minimum day;<sup>116</sup>
- Youth at the Juvenile Hall who, for any reason, are not brought to the Central School, including youth who remain in their high-security unit, or are assigned to independent study through the court school; and
- Youth at any and all KCJC facilities who are placed on “independent study” or otherwise receive instruction in their units or cells, rather than at the on-site court school facility.

#### b. Curriculum

As discussed above, KCSOS schools at KCJC facilities are intended to provide “rigorous and relevant curricula aligned with state academic and

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<sup>116</sup> We were pleased to see that Probation has a new written policy that all youth at Crossroads will have access to a work detail or vocational program. However, as recently as December 2017, individual youth reported that they still were not attending or participating in such a program on a consistent basis. Youth reported that participating in a work detail, for example, depended on a daily selection process because there were more youth than opportunities. Similarly, it appears that youth may be kept from assigned work details and vocational programming for periods of time pursuant to the revised KCJC discipline system. Accordingly, it appears that there is both a need to build capacity for work detail and vocational programming at Crossroads and a need to ensure youth are able to attend their assignments in order to reach the goal of having each youth participate in a way that would qualify him for reduced minimum instruction.

career and technical education standards that utilize instructional methods, tools, materials, and practices that promote college- and career-readiness.”<sup>117</sup> This is consistent with Education Code section 48645.3(d), which provides that “[i]t is the intent of the Legislature that pupils in juvenile court schools have a rigorous curriculum that includes a course of study preparing them for high school graduation and career entry and fulfilling the requirements for admission to the University of California and the California State University.” It is our finding that the education provided by KCSOS at the KCJC facilities is not consistent with these standards.<sup>118</sup>

We have observed, and students have reported, that classes run by KCSOS are comprised of youth ranging from eighth or ninth through twelfth grades, depending on the then-current makeup of the detained population. Compounding the difficulty of having four or five grades in one class, many students report functional academic skills that are not aligned with their named grades.

Given these reports and the multitude of grade levels present in any one class, it seems nearly impossible that KCSOS is regularly providing detained youth with a “rigorous course of study” that is aligned with California’s robust content standards.<sup>119</sup>

Curiously, however, students’ transcripts suggest that youth within the same class are taking different courses (and presumably then receiving different instruction) for the exact same instructional period.<sup>120</sup> For example, one student may receive credit for “Integrated Science A” while another receives credit for attending “Integrated Science C.” This is a

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<sup>117</sup> See, e.g., MOU between KCSOS and the Kern County Board of Supervisors.

<sup>118</sup> We draw a distinction here between the courses that have been provided to youth with disabilities during the period of our investigation and the courses that may be listed in a course catalog.

<sup>119</sup> The content standards, which are available at <https://www.cde.ca.gov/be/st/ss/>, define the knowledge, concepts, and skills that California students should acquire at each grade level.

<sup>120</sup> KCSOS’s credit forms also suggest that it awards credits to students for either attendance or school performance. We have concerns about KCSOS’s awarding of credits based on attendance, particularly if done in lieu of providing a high-quality education and measuring students’ actual performance. For example, students placed on independent study frequently reported that it didn’t matter if they did the day’s assignment because KCSOS staff did not return to collect assignments or ever review or return any graded independent study assignments. These students reported that they believed they received credit regardless of work or learning while on independent study.

questionable practice, at best, and possibly a misrepresentation of the differentiation of curriculum provided to students in the same classes.

Further review of a sampling of students' transcripts supports conclusions that youth at KCJC facilities are not receiving even grade-level instruction: KCSOS routinely awards generic academic credits for course attendance, and the named courses do not align with the California content standards. For example, most youth's math classes are recorded as "High School Math A", "B," and "C," rather than pre-algebra, algebra, and geometry. Similarly, science classes are recorded as "High School Integrated Science A", "B," and "C," rather than biology, health, chemistry, and physics. English and history classes are similarly undifferentiated.

Based on students' transcripts, however, it appears that KCSOS then counts these non-specific courses towards specific, differentiated diploma course requirements (for example, 20 units of "High School Social Studies" becomes 10 units of U.S. history and 10 units of world history in the diploma-based tracking of classes completed and needed). Overall, it appears there is little correlation, other than general subject matter, between the academic instruction a student received and the diploma course requirement that KCSOS deems satisfied.

It is also unclear how many units of each non-specific class a youth needs to take. Although the courses listed always seem to proceed in purported order (i.e., a youth gets credit for High School Social Science "A" before "B"), many youth have odd numbers of units of each class. For example, one youth earned eight units of High School Math A, and then earned 16 units in High School Math B over two years. Another youth earned 8.5 units of High School English A, and then stayed in High School English B for 18 consecutive credits. In other words, even with non-specific academic courses, students still appear to be repeating, at least in name, courses they have already taken and passed.

This type of limited, generic access to high school courses is inadequate, especially in an age in which technology and the internet make high-quality, subject-matter courses readily available to distance learners. We understand that KCSOS has access to a platform for online learning, but some youth do not have access to computers in their classrooms and none of the youth with disabilities we interviewed reported accessing this



computer-based option to take classes. Further, this approach to instruction at KCJC facilities certainly is not preparing youth for eligibility to apply to Universities of California or California State Universities, as envisioned by the Legislature. This system of instruction also does not facilitate ease of re-entry to community school districts that make available traditional high school courses aligned with the State content standards; it would be unclear to receiving districts which content a youth has learned and which classes would provide a logical progression in the youth's course of study.

Overall, it appears that KCSOS has denied and continues to deny detained youth a curriculum of grade-level instruction that is aligned to the California content standards.<sup>121</sup>

### c. Independent Study

We have specific concerns regarding the KCJC facilities' use of independent study for students with disabilities. By law, special education students may not participate in independent study unless it is specified as an instructional method in their IEPs.<sup>122</sup> None of the IEPs we reviewed listed independent study as an authorized instructional method to provide FAPE. Similarly, we saw no evidence that KCSOS convenes an IEP meeting with a youth's parent(s) before changing a student's placement from the classroom to independent study.<sup>123</sup>

We also have concerns about youth's access to minutes of instruction and curriculum while on independent study. The California Department of Education states that school districts must offer the same number of minimum instructional minutes to students enrolled in independent study.<sup>124</sup>

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<sup>121</sup> Among other potential avenues for liability, KCJC students may be able to bring equal protection claims against KCSOS. As compared with youth elsewhere in Kern County who do have access to grade-level high school classes aligned to the content standards, it appears that youth at KCJC facilities are not receiving even a minimally adequate education in violation of their right to equal protection of the law protected by the Fourteenth Amendment to the United States Constitution.

<sup>122</sup> Educ. Code § 51745(c).

<sup>123</sup> California Education Code section 51747(c)(8) also requires that each student have an Independent Study Written Agreement that is signed by the student's parent prior to the commencement of independent study. However, we have seen no evidence of parents' prior written consent on the ISWA's provided to us for individual youth.

<sup>124</sup> "Independent study is not an alternative curriculum; students must meet the same required number of instructional minutes as their peers in any school. To claim apportionment, schools must offer at least a 'minimum day.' In independent study, a 'minimum day' is based on the teacher's determination of the time

However, youth on independent study in their unit or cell report that they routinely receive only one book pertaining to one subject each day that they are on independent study. Many reported that they received no direct instruction from a teacher, other than to be given the assignment for the day. They are then to self-direct their own study of that subject; if they have questions, they just guess. However, California law requires that “[i]ndependent study shall not be provided as an alternative curriculum.”<sup>125</sup> “[T]he independent study option is to be substantially equivalent in quality and in quantity to classroom instruction...”<sup>126</sup> Both of these provisions make it clear that students who take courses via independent study are not to receive a different or inferior course of study.<sup>127</sup>

It is also worth noting that, though many students at KCJC facilities have a history of difficulty with academics, some youth, in fact, require honors or other advanced academic courses in order to reach their potential or avoid boredom at school. To our knowledge, the only option available to these students is to guide themselves through their own coursework through independent study.<sup>128</sup> Similarly, we understand that independent study is the only option available for youth who need to take specific courses required for high school graduation such as algebra, physical education, fine arts classes, government, and economics. For example, one senior in high school with an IEP told us he has no choice but to spend his entire school day on independent study so he can finish high school. For this youth, independent study means self-guided learning from textbooks or workbooks. This poses great challenges for this youth

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value of that work. Schools are to offer the following numbers of minutes per grade level:...Grades four through eight: 240 minutes (*EC* Section 46113); High school: 240 minutes (*EC* Section 46141)...” Frequently Asked Questions [about Independent Study], Cal. Dept. of Educ., available at <https://www.cde.ca.gov/sp/eo/is/faq.asp>.

<sup>125</sup> Educ. Code § 51745(3).

<sup>126</sup> Cal. Code Regs., tit. 5, § 11701.5(a).

<sup>127</sup> See, Frequently Asked Questions [about Independent Study], Cal. Dept. of Educ. (available at <https://www.cde.ca.gov/sp/eo/is/faq.asp>); see also Educ. Code § 51747(c)(7) (requiring independent study to be “continuously voluntary” for students); Cal. Code Regs., tit. 5, § 11700(d)(2)(A).

<sup>128</sup> We understand that independent study is also made available to twelfth graders who need to finish specific graduation requirements such as government and economics. This appears to limit such courses to those students who are capable of such self-study. We also understand that, although all youth receive one hour of mandated physical activity per day, nearly all of the Physical Education credits awarded by KCSOS are earned through independent study.

and for other youth with disabilities who require a more advanced or specific curriculum, but are unable to teach themselves.

### **C. FAILURE TO MEET THE MENTAL HEALTH NEEDS OF YOUTH WITH DISABILITIES**

Mental health care for youth is provided by different agencies at each of the three KCJC facilities. At the Juvenile Hall complex, Juvenile Probation Psychiatric Services (JPPS) provides mental health care.<sup>129</sup> JPPS is a part of the Children’s System of Care, Kern County Behavioral Health and Recovery Agency. At Camp Owen, mental health care is provided by College Community Services, which is a contractor with the County Behavioral Health agency.<sup>130</sup> At Crossroads, mental health care is provided by Phoenix House, which contracts directly with Probation.<sup>131</sup>

Procedurally, correctional staff screen new intakes in Juvenile Hall using the MAYSI mental health screening instrument and notify Mental Health personnel “if warranted” based on the intake chart.<sup>132</sup> Custody staff at all three facilities may place youth on suicide watch or on “special watch,” which is one step below suicide watch in intensity.<sup>133</sup> The mental health provider at the facility then receives a referral from custody to visit the youth.

In the past, most care coordination between mental health providers, KCSOS and Probation was informal and depended on telephone consultation, unscheduled in-person meetings, and paper “consult slips” exchanged between the agencies. The only formal care coordination meeting with education occurred when a youth was about to be released.

Revised draft procedures may increase the coordination between mental health providers, KCSOS and Probation via the new behavior management system and the weekly special cases meetings at Crossroads

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<sup>129</sup> 1900 Responsibility for Health Care at 247 (Rev. 01/06/17); 1937 Mental Health Services and Transfer to Treatment Facilities.

<sup>130</sup> 1130 Agency Partners; MOU between Kern County Mental Health Dept. and Kern County Prob. Dept.

<sup>131</sup> 1937 Mental Health Services & Transfer to Treatment Facilities (Rev. 1/20/17); Amendment No. 4 to Agreement for Professional Services Kern Crossroads Facility Mental Health Services.

<sup>132</sup> 1600.3 Intake Unit (JH) at 154.

<sup>133</sup> See, 1522 Mental Health Emergencies (JH); 1522 Mental Health Emergencies (Crossroads); 1522 Mental Health Emergencies (CEO); 1605 Special Watch or Suicide Watch.

and Juvenile Hall, which include mental health staff.<sup>134</sup> For youth with behavior problems, the Individualized Safety and Security Program at Juvenile Hall also requires mental health input. Revised policy 1810 requires consultation with mental health staff if “it appears that the youth is mentally or emotionally unstable.”

### **1. Inadequate Mental Health Care at Juvenile Hall**

In the past, youth could request to be seen by JPPS on an as-needed basis.<sup>135</sup> Youth had reported high satisfaction with the individual counseling they received at Juvenile Hall, as compared to Crossroads where their access was more limited; youth described this as a benefit of placement at juvenile hall. Youth particularly valued that they could see a counselor frequently if they were in crisis and needed support.

Recently, youth have reported new reductions in access to the JPPS team at Juvenile Hall. We are concerned about the reported reduction in mental health provider availability and believe this will adversely affect youth with mental health disabilities.

We have also noticed a discrepancy in availability of mental health services depending on a youth’s unit at Juvenile Hall. Young women in the Pathways program reported that they participated in group sessions on a regular basis. However, young men detained in Juvenile Hall in the 200A, 200B, and 300B units reported no similar access to group programming. Although the youth in these units often stay for only short periods, some youth may remain there for months or even years if they are facing significant charges or a trial. Youth in custody need mental health and out-of-cell programming regardless of whether they are detained or committed.

With regard to medications, JPPS has a psychiatrist on staff who handles prescriptions and medication management for youth at the Juvenile Hall.

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<sup>134</sup> Revised Policy 1605.

<sup>135</sup> See Pathways Handbook at 7, ¶ 13 (Right to “Medical attention as soon as possible on a continuous basis” and “Access to counseling services”); Juvenile Hall Handbook at 11, ¶¶ 14, 22 (same); see also Kern County Mental Health Department Manual of Policies and Procedures at 2-3 (Rev. 1/27/15).

## 2. Inadequate Mental Health Care at Crossroads

Crossroads is described as a “Juvenile Correctional *Treatment Facility*” (emphasis added). Moreover, Probation reports to the Board of State and Community Corrections (BSCC) that 100 percent of the youth at Crossroads are described as having open mental health cases.<sup>136</sup>

Unfortunately, the mental health care provided falls far short of that in a true treatment facility. Mental health care at Crossroads consists of appointments with an assigned counselor from Phoenix House. Although these appointments used to occur weekly, youth now report that they are seen every two weeks, apparently because of staff shortages.

Access to mental health counseling at Crossroads is inadequate, according to youth. Even when appointments occurred weekly, some youth reported this frequency was inadequate and that they had a hard time getting by in between appointments.

Phoenix House also conducts group counseling in areas such as anger management, specifically a program called Aggression Replacement Training or “ART.” Youth who were interviewed reported that the groups were repetitive, and that, especially when repeating the program, they had taken the same ART group multiple times. This was especially true for the youth with disabilities, who tended to stay at Crossroads much longer or who failed the program and had multiple returns to the facility.

We have been informed that Phoenix House does not have a psychiatrist on staff or on call, and relies on the JPPS psychiatrist at Juvenile Hall. Youth at Crossroads are only able to obtain medication prescriptions or medication management through a telemedicine appointment. A case manager from Phoenix House sits with the youth and connects via teleconference with a JPPS psychiatrist. The young men with serious mental illness whom we interviewed reported that the distancing effect of the telemedicine arrangement made engagement with their treatment even more difficult.

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<sup>136</sup> Kern County Probation report to BSCC, Monthly Juvenile Detention Profile Survey, August 2016, Crossroads Facility.

Care coordination between Crossroads and other KCJC facilities is especially problematic. Phoenix House is contracted directly through the Probation Department and is not a County Mental Health provider. Consequently, Phoenix House uses a different electronic record system and cannot access the record system used by JPPS and the provider at Camp Owen. Clinicians and case managers cannot directly access a youth's treatment history when he moves to and from Crossroads. Communication is solely informal, consisting of telephone calls and the same consult slip system employed at Juvenile Hall. The lack of formal coordination is especially problematic for youth with disabilities who "fail" the Crossroads program and are returned to Juvenile Hall for weeks or months, since JPPS cannot directly access their mental health records from Phoenix House. Then, these youth often return to Crossroads where, upon their return, Phoenix House staff do not have direct access to records from their time at Juvenile Hall.

### **3. Inadequate Mental Health Care at Camp Owen**

At Camp Owen, College Counseling Services (CCS) provides individual counseling and mental health groups. As discussed above, youth with behavior problems are placed in the Owen Reentry Program. However, youth in ORP are prevented from attending group counseling. This has serious consequences for some youth.

These practices of taking away mental health programming when youth are struggling and not allowing youth to re-join or repeat programs they have not completed are contrary to the idea of rehabilitation.

## ***III. RECOMMENDATIONS***

### **A. IMPLEMENT THE MISSOURI APPROACH AND CHANGE THE PUNITIVE CULTURE AT KCJC FACILITIES**

In Missouri, the state has reformed its juvenile justice program over the past three decades to create a more home-like environment and incorporate trauma-informed therapeutic approaches with the youth. The Missouri Department of Social Services Division of Youth Services limits housing units to small groups of 10-12, with stable and consistent staff teams.

## **1. Trauma-Informed Treatment Approach**

The Missouri Approach involves a trauma-informed process that focuses on developing self-awareness and communication skills, building relationships, and individualized treatment planning with significant youth and family involvement.

The Missouri Approach eschews behavior modification programs that rely on punishments and rewards. The Missouri Approach warns that these reward/punishment systems are counterproductive because youth and staff focus on counting points and controlling behavior, instead of identifying and addressing core issues and internalizing change.

Under the Missouri Approach, programs rely on relationships between peers and staff in group settings to resolve conflicts and concerns. When a behavioral incident arises, youth assemble in group circles to process the incident. Instead of receiving punishments such as program separation, confinement, or loss of privileges, youth are urged to think about the root causes of their behavior, consider alternatives, and are encouraged to take responsibility for their actions.<sup>137</sup>

The program does not allow for use of chemical agents, isolation, or mechanical restraints other than handcuffs. Even the use of handcuffs is extremely limited.

## **2. A More Home-Like Environment**

In Kern County, every facility has the look and feel of an adult jail or prison. At Juvenile Hall, for example, the rooms themselves are made up of cinderblock walls and concrete floors with a single high, narrow window to the exterior of the building. The rooms contain concrete benches with foam mattresses for beds and an open metal toilet and sink unit. The common day rooms are furnished only with stationary tables and stools.

The institutional jail-like environment that can be found at the KCJC facilities stands in stark contrast to the natural home-like environments that have been created through the “Missouri Approach.” Incarcerated youth in Missouri are housed in dormitory-style rooms furnished with bunk beds,

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<sup>137</sup> <http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>.

desks, and dressers. Youth are permitted to wear their own clothes and decorate their spaces with personal items. Common spaces are set up like family rooms with comfortable couches.

California counties have made efforts to incorporate many of the recommendations supported by the Missouri Approach, even working within the confines of existing institutional structures and spaces. Some counties have refurbished their housing units by painting the units and bringing in sofas, bean-bag chairs, and rugs into common dayroom spaces.

Some counties with unoccupied housing units in their juvenile halls have reconfigured those units to function as spaces for enrichment programming or for behavior management incentives. They have created comfortable recreational and lounge spaces, and have used those spaces to host job training and other extracurricular classes and activities.

KCJC facilities can do more to improve the facilities and make them more supportive and enriching. Young people who are confined for lengthy periods of time require much more extensive programming and recreational opportunities than the KCJC facilities currently provide.

## **B. ADDITIONAL RECOMMENDATIONS FOR REFORM AT KCJC FACILITIES**

### **1. Eliminate Use of Pepper Spray, Prone Restraint, other Excessive Force and Harsh and Arbitrary Discipline**

- a. Adopt JDAI standards regarding use of force.
- b. Adopt JDAI standards regarding prone restraint.
- c. Adopt JDAI standards regarding chemical restraint and pepper spray.
- d. Adopt standards for probation staff regarding respectful language towards youth.



## **2. Eliminate Extended Disciplinary and Administrative Isolation**

- a. Eliminate extended isolation of youth, including through restricting social interactions, for disciplinary purposes.
- b. Eliminate use of extended isolation of youth, including through restricting social interactions, for administrative convenience.
- c. Meaningfully account for disability and disability-related needs in administering discipline and incentive programs.
- d. Meaningfully account for disability and disability-related needs in administering work details and other programs that afford youth the opportunity to exit their rooms and/or dorms.

## **3. Provide Adequate Education, Including Adequate Special Education Services, to Youth**

- a. Adopt practices recommended by the U.S. Department of Education regarding education in juvenile correctional facilities, including trauma-informed instruction and a rigorous curriculum.
- b. Align the curriculum used at KCJC facilities to grade-level California content standards as envisioned by the Legislature and applicable MOUs.
- c. Adopt policies and practices to provide youth with disabilities due process and procedural safeguards with respect to school removals.
- d. Incorporate education professionals into multi-disciplinary teams used on a regular basis to coordinate services among agencies and to develop and provide Individual Learning Plans for each youth.

## **4. Increase and Improve Access to Mental Health Services**

- a. Increase mental health staff as needed to ensure that youth may obtain mental health counseling in crisis and on an as-needed basis.

- b. Include mental health staff in the decision whether to impose discipline to ensure that appropriate accommodations are made for disability-related behavior.
- c. Ensure that mental health staff at Crossroads have access to a youth's treatment records from Juvenile Hall and Camp Owen.
- d. Ensure that youth at Crossroads have ready access to psychiatric services.
- e. Make daily rounds to assess the mental health status of all youth in isolation or room confinement.
- f. Hold multi-disciplinary team meetings with Probation and KCSOS on a regular basis and not merely at time of release.