UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

J.H., et al., Plaintiffs, v. HINDS COUNTY, MISSISSIPPI, Defendant.	Civil Action No. 3:11-cv-327-DPJ-FKB **ORAL ARGUMENT REQUESTED**

AMENDED MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AN EXTENSION OF THE CONSENT DECREE AND A CORRECTIVE ACTION PLAN OR, IN THE ALTERNATIVE, CONTEMPT

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The Plaintiffs, children confined at Henley-Young Juvenile Justice Center ("Henley-Young"),[1] respectfully submit this amended memorandum of law in support of their Amended Motion for an Extension of the Consent Decree and a Corrective Action Plan or, in the Alternative, Contempt ("the Motion").[2] Pursuant to Local Rule 7(b)(6)(A), the Plaintiffs respectfully request oral argument on this motion.

PRELIMINARY STATEMENT

Hinds County (the "County") for nearly seven years has failed to comply with key substantive provisions of the court-ordered consent decrees in this case,[3] including in the areas of suicide prevention, educational and rehabilitative programming, and medical care, resulting in ongoing violations of the federal rights of vulnerable and disabled children.[4] Plaintiffs respectfully move this Court for relief to address the County's continued failure to achieve substantial compliance with fourteen key consent decree provisions in six critical areas ("Key Provisions"). These are in structured educational and rehabilitative programming (Provisions 3.1, 4.1); medical care (Provisions 12.1, 12.2); individualized treatment plans (Provisions 5.1, 5.2,

[1] Agreed Order Granting Approval of Settlement Agreement and Certifying a Settlement Class 2, Mar. 28, 2012, ECF No. 32 (defining the settlement class as comprised of all children who are currently, or who will in the future be, confined at Henley-Young).

[2] This amends Plaintiffs' previously-filed motion and memorand]TJ-21.9891 -TnP.end-4.8(l)-]TJ7.98 0 0 .the Consen and

5.3, 5.4); mental health care (Provisions 13.3, 13.4, 13.5, 13.6); suicide prevention (Provision 14.4); and Plaintiffs' access to records (Provision 18.1). As relief, Plaintiffs request a court order extending the consent decree and requiring that the County develop a corrective action plan ("CAP") with input from Plaintiffs to ensure that the resources required to achieve consent decree compliance are timely identified. Such relief is warranted at this time, and ordering it would be an appropriate exercise of this Court's authority.[5]

The relief requested is necessary. The County has not achieved substantial compliance with any of the Key Provisions, resulting in actual and heightened risk of harm to Plaintiffs. Relief is warranted at this time because the County has not achieved substantial compliance with *any* provision since the Court entered this consent order seven months ago. No evidence in the experts' recently-filed reports support the conclusion that the County is likely, within the next five months, to achieve substantial compliance with the Key Provisions. According to the most recent report of the Federal Court Monitor ("Monitor"), Mr. Leonard Dixon, the County remains out of substantial compliance with 42 of 47 (89%) of all of the substantive provisions in the consent decree. Thirteen and eleven provisions were eliminated from the consent decree for sustained substantial compliance in 2016 and 2018, respectively. Since this Court's 2014 contempt holding, the County has eliminated provisions at an average rate of six provisions per year. Coupled with the subject matter experts' recent reports, no colorable argument can be made that the County is on track to comply with the Key Provisions, or all 42 remaining substantive provisions, before March 2019.

To the extent a lack of resources or facility space are to blame for lack of progress, which

[5] Plaintiffs have advised the County we would seek Court intervention. *See, e.g.*, Ex. 1, Letter from Pls. re: *Request to Discuss Plans for Compliance with Second Am. Consent Decree* (Oct. 10, 2018); Ex. 2, Letter from Pls. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018).

Plaintiffs believe to be the case, a remedy of developing a CAP aimed at addressing limiting factors is critical at this stage. Plaintiffs' position regarding the need for space is based on the findings and recommendations of the Monitor, his experts, and those of the court-appointed monitor in *U.S. v. Hinds County, et al.* No. 3:16-cv-489-WHB-JCG (S.D. Miss., June 23, 2016) ("Hinds County Jail Case") (entering a federal court-ordered consent decr

Constitution. *See generally* Am. Compl., ECF No. 6. The lawsuit resulted from an investigation initiated nearly a decade ago, in 2009, which resulted in a failed Memorandum of Understanding between the County and Plaintiff Disability Rights Mississippi. *See, e.g.*, *id*. at 16–18, 19; Mem. of Understanding Between Hinds Cty., Miss. and Mississippi's Protection and Advocacy System, Disability Rights Miss. (DRMS) 1, 5, June 6, 2011, ECF No. 6-2.

The prospective relief in the consent decree was adjudged to conform with the PLRA as (a) necessary to correct an ongoing violation of a federal right, (b) extending no further than necessary to correct that violation, and (c) narrowly drawn and the least intrusive means to correct the violation. Settlement Agreement 2. The consent decree thus falls "within the range of possible relief" permitted by federal law and pursuant to the PLRA. Agreed Order Granting Approval of Settlement Agreement and Certifying a Settlement Class 2.

The original consent decree consisted of 90 total provisions. The Monitor assigns compliance ratings and recommendations to 71 of these in his quarterly reports ("substantive provisions").[6] *See, e.g.*, Twelfth Monitor's Report 13, 18–68, Mar. 22, 2018, ECF No. 118 (omitting from his report nineteen provisions relating to the Monitor's duties, Plaintiffs' counsel's continued access, court enforcement, and attorneys' fees).

The consent decree contains a three-pronged monitoring and enforcement mechanism to ensure effective assessment of compliance and the availability of Court intervention to address compliance-related issues. **First**, the consent decree contSys641,broaonitortingstadju7dr

their respective obligations" under the consent decree, and (2) effectuate compliance through remedial orders. Specifically, the consent decree provides that, "[i]n the event that any matter related to this [consent decree] is brought to the Court, the Court may require briefing, and any remedy within the Court's jurisdiction *shall* be available." Consent Decree 25 (Provision 19.5) (emphasis added). Further, the consent decree expressly provides that, "[i]t is the intent of the parties that the Court will retain ongoing jurisdiction . . . for the purposes of enforcement." *Id*. at 3. **Second**, the consent decree contains extensive right-of-access provisions, empowering Plaintiffs' counsel to monitor consent decree compliance with broad access to "relevant documents and files maintained by Henley-Young relevant to assessing [the County's] compliance." *Id*. at 22–23 (Provision 18.1). **Third**, the consent decree provides for the duties and obligations of the Monitor. These include requiring that the Monitor (a) file quarterly reports; (b) provide Plaintiffs with "all draft reports from other experts"; and (c) allow Plaintiffs' counsel to "be present" at his experts' briefings. *Id.* at 21–22 (regarding Provisions 17.1–17.7, outlining the independent monitor's duties, which the Monitor has inconsistently discharged since 2015).[7]

The Court extended the consent decree for two years and held the County in contempt for

[7] The Monitor's substantial lack of conformance with the independent monitoring requirements of the consent decree has created inefficiencies and hindered Plaintiffs' ability to assess compliance in this case. Plaintiffs respectfully request that the Court require that the Monitor perform the monitoring duties in the consent order, as unilateral modification of those duties is not permitted under the PLRA or the consent decree. *See, e.g.*, 18 U.S.C. 3626(b) (providing that a party or intervenor may seek modification of court-ordered prospective relief under the PLRA); Consent

lack of compliance in 2014. Since then, the consent decree has been extended two more times—in March of 2016 for two years and in March of 2018 for one year only, until March of 2019.

extended for two years after the date a court approves prospective relief if the relief ordered meets the requirements of the PLRA.

Since that time, subsequent versions of the original consent decree subtracted provisions with which the County had achieved substantial compliance, but no provisions were added. In all, the consent order has been extended three times, in April 2014, March 2016, and March 2018. Joint Mot. to Extend Consent Decree 4, Mar. 28. 2018, ECF No. 119; Joint Mot. to Extend Consent Decree 6, Mar. 9, 2016, ECF No. 62; Order Granting in Part and Denying in Part Mot. for Contempt 6 (ordering an extension of the consent decree to be applied retroactively). In joint motions to extend the consent decree in 2016 and 2018, the parties reaffirmed that "the remaining provisions with which Hinds County is not in continued substantial compliance extend no further than necessary to correct the violations of [] federal rights, and [] the prospective relief is narrowly tailored and is the least intrusive means to correct the violations." Joint Mot. to Extend Consent Decree 4, ECF No. 119; Joint Mot. to Extend Consent Decree 6, ECF No. 62. There is no countervailing evidence that the consent decree Plaintiffs seek to extend does not meet the requirements of the PLRA.

B. A Two-Year Extension of the Consent Decree Is Necessary.

This Court's decision to extend the consent decree by two years in 2014 was based on the Court's conclusion that the County "will not be in substantial com
months." Order Granting in Part and Denying in Part Mot. for Contept 3. At this juncture, the same conclusion is warranted. According to the Monitor's mo

enforcement, and attorneys' fees). According to the Monitor, the County, between 2011 and 2018, achieved substantial compliance with only 41% (29 of 71) of all substantive provisions in the original consent decree. *Id*. (providing a summary chart of the compliance ratings assigned to the 71 substantive provisions in each of the Monitor's previous eight reports); Settlement Agreement 2.

To the extent the Monitor's most recent, seven month-old report is outdated,[11] the County has not come into substantial compliance with any consent order provisions since this Court ordered the consent decree extended in March of

discuss its future plans regarding Henley-Young); Ex. 2, Letter from Pls. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018); Ex. 6, *Why are Youths Charged with Murder & Other Violent Crime Housed at Juv. Ctr. in Jackson?*, (containing County counsel's suggestion that Henley-Young requires additional unallocated resources).

Plaintiffs, during status conferences, have provided the County and this Court with extensive evidence supporting that the remaining affirmative programmatic provisions in the consent decree would require more resources and planning efforts of the County than it has expended since the consent decree was extended in March 2018. *See, e.g.*, Ex. 5, Status Conf. Tr. 5–8, 33–37; Ex. 8, Handout from Pls. re: Requests for Assistance with Compliance (July 25, 2018); Ex. 9, Handout from Pls. re: Attachment 1: Outstanding Facility Policies, Staffing, and Training Issues (July 25, 2018); Ex. 10, Handout from Pls. re: Attachment 2: Cell Confinement and Disciplinary Practices and Procedures (July 25, 2018); Ex. 11, Handout from Pls. re: Attachment 3: Confinement/Mental Health Nexus: A Case Study (July 25, 2018); Ex. 12, Handout from Pls. re: Attachment 4: Confinement/Mental Health Nexus: Additional Examples (July 25, 2018); Ex. 13, Handout from Pls. re: Attachment 5: Need for Records Protocol Letter (July 25, 2018).

The evidence overwhelmingly supports the conclusion that (1) the County will not be in substantial compliance by March 2019; and (2) the remaining consent decree requirements will take substantial time to achieve. *See generally* Order Granting in Part and Denying in Part Mot. for Contempt 3. Therefore, Plaintiffs are entitled to a two-year extension of the consent decree as necessary to address ongoing violations of the federal rights of children confined at Henley-Young who cannot be made to wait indefinitely for the County to plan for and invest in

providing constitutionally adequate conditions.

II. Plaintiffs Are Entitled to a Court Order Requiring that the County Develop a CAP with Input from the Plaintiffs Under This Court's Express and Inherent Powers.

A two-year extension of the consent decree by itself has not been, and will not be, enough to ensure the County's substantial compliance with all provisions of the consent decree, even by March of 2021. The additional affirmative relief requested—of an order requiring development of a CAP with Plaintiffs' input—is well within this Court's discretion to order pursuant to the Court's express enforcement powers contained within the consent decree and its inherent powers to issue remedial relief pursuant to a finding of contempt.

The relief requested is necessary, narrow, and sufficiently tailored to comply with the PLRA.[15] Whether discretionary or remedial in nature, the affirmative relief requested is necessary, narrowly drawn, and sufficiently tailored. Courts in the Fifth Circuit have ordered Defendants to submit CAPs as a form of relief. *Cowan ex rel. Johnson v. Bolivar County Bd. Of Educ.*, 914 F. Supp. 2d 801, 826 (N.D. Miss. 2012) (the Court maintained judicial control over a school district under an order to integrate and ordered the district to submit proposed plans to integrate schools and achieve racial balance among faculty within 45 days); *Corner v. Housing Auth. New Orleans*, No. 06-10751, 2014 WL 3908592, at *5 (E.D. La. Aug. 11, 2014) (ordering parties to meet and confer to submit a development schedule after holding that seven years of non-compliance was too long to "simply think" about complying). The Fifth Circuit also stated

[15] The CAP requested would be a remedial tool to assist in effectively identifying and enlisting resources for an articulable two–year plan of action to achieve substantial compliance with all provisions of the consent decree. The CAP would not be coextensive with or a proxy for consent decree compliance. Satisfaction as to one would not be the legal or factual equivalent of satisfaction with the other. Development of the CAP with Plaintiffs' input would enhance the potential of the County to double its provision compliance rate and close out the consent decree by March of 2021. The County, of course, would be entitled, under the PLRA, to jointly move for termination at any point it believes it has achieved global substantial compliance. 18 U.S.C. § 3626(b)(1)(B).

that "remedies need not match those requested by a party or originally provided by the court's earlier judgment." *U.S. v. Alcoa, Inc.*, 533 F.3d 278, 288 (5th Cir. 2008).

A. Ordering the CAP is Within the Court's Express Enforcement Powers Contained in the Consent Decree.

In order for the Court to order a CAP as within the Court's express enforcement powers, the matter must be "brought to the Court, the Court may require briefing, and any remedy within the court's jurisdiction shall be available." Consent Decree 25 (Provision 19.5). The purpose of the Court's express enforcement power is "to ensure that the parties fulfill their respective obligations" under the consent decree. *Id*.

In this case, Plaintiffs raised the issue of the need for Court intervention to ensure the County's compliance with the consent decree multiple times since the decree was extended in March of 2018. *See, e.g.,* Ex. 5, Status Conf. Tr. 5–8 (requesting the Court "provide concrete ways for the parties to continue progress," particularly in the areas of mental health, medical, and education compliance; also requesting a schedule of status conferences and concrete dates for production of policies); *id*. at 7–8 (requesting to be provided with updated policies); *id*. at 21 (verification from County's counsel that updated policies exist); Ex. 8, Handout from Pls. re: Requests for Assistance with Compliance (July 25, 2018) (requesting the County to update Plaintiffs on requests for policies and procedures, consent decree compliance, and a plan to provide recurring records in a timely manner). All of these "Requests for Assistance" and others have been made directly to the County, and very few have been answered, evidencing the necessity of Court remedial action at this juncture.

The need for development of the County's specific plans to comply have thus been "brought to the Court" many times since March of 2018. Consent Decree 25 (Provision 19.5).

Therefore, pursuant to the Court's express enforcement powers, it "may require briefing, and any remedy within the court's jurisdiction *shall* be available," including Plaintiffs' proposed remedy of a CAP. *Id* (Provision 19.5) (emphasis added). The purpose of the Court's express enforcement power, "to ensure that the parties fulfill the respective obligations" under the consent decree, would be satisfied if this Court ordered the County to develop a CAP with Plaintiffs' input. *Id*.

B. Ordering the CAP is Within the Court's Inherent Enforcement Powers Pursuant to a Finding of Contempt.

The Court's authority to order the CAP is within the Court's inherent power to design remedies aimed at achieving consent decree compliance. To demonstrate contempt, Plaintiffs must establish by "clear and convincing evidence" that: "(1) a court order was in effect, (2) the order required specified conduct by the respondent, and (3) the respondent failed to comply with the court's order." *U.S. v. City of Jackson, Miss.*, 359 F.3d 727, 731 (5th Cir. 2004) (citing *Am. Airlines, Inc. v. Allied Pilots Ass'n.*, 228 F.3d 574, 581 (5th Cir. 2000)) (finding that a district court had the authority under a consent decree to award attorney's fees following the district court's finding of contempt by defendants). Conduct violating provisions of a consent decree is specific conduct establishing the third prong of the contempt analysis. *U.S. v. City of Jackson, Miss.*, 318 F. Supp. 2d 395, 410 (S.D. Miss. 2002).

Plaintiffs are not required to demonstrate that that the County's contempt was willful or in bad faith.

Pennington, 832 F.2d 909, 913 (5th Cir. 1987) ("Intent is not an issue in civil contempt proceedings; rather, the question is whether the alleged contemnors have complied with the court's order.").

The consent decree does not bind this Court to impose a specific form of relief. The Fifth Circuit has established that, "district courts have wide discretion to enforce decrees and to implement remedies for decree violations." *Alcoa*, 533 F.3d at 286 (interpreting the consent decree at issue's provision "to take any action necessary or appropriate for its enforcement," to mean that the district court could impose the remedies it suggested); *see also Chisolm ex rel. CC v. Greenstein*, 876 F. Supp. 2d 709, 713 (E.D. La. 2012) (citing the Court's holding in *Alcoa* to grant the court wide discretion in consent decree enforcement).

The Fifth Circuit grants district courts "the inherent authority to enforce their judicial orders and decrees in cases of civil contempt" emphasizing that "[d]iscretion . . . . must be left to a court in the enforcement of its decrees." *Cook v. Oschsner Foundation Hosp.*, 559 F.2d 270, 272 (5th Cir. 1977). The Fifth Circuit has also held that "[c]onsent decrees are judgments despite their contractual nature, and district courts may fashion remedies [which] need not match those requested by a party or originally provided by the court's earlier judgment." *Alcoa*, 533 F.3d at 288 (citing *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 577–79 (5th Cir. 2005)) (finding a district court's decision to issue an injunction to prevent Defendant from pursuing a trademark to be "within the court's discretionary power" and a necessary part of its enforcement power). In fashioning remedial relief for violation of a consent decree, the Court should enter relief that is coercive or remedial in nature. *Jackson v. Whitman*, 642 F. Supp. 816, 827 (W.D. La. 1986) (holding that the applicable jurisprudence "is clear that the standard to be employed in deciding whether or not to impose a compliance fine is whether such fine is necessary to coerce

the contemnor into compliance with [the] court's order") (internal quotations omitted).

1. The Consent Decree is a Court Order.

In April 2014, this Court held the "[Settlement] Agreement . . . fully satisfies the definition of a consent decree." Order Granting in Part and Denying in Part Mot. for Contempt 5, 7 (citing, among other sources, the consent decree itself, the plain language of 18 U.S.C. § 3626(g), and *Rowe v. Jones*, 483 F.3d 791, 795–96 (11th Cir. 2007)). Plaintiffs have satisfied this element.

2. The County Engaged in Specific Conduct in Violation of the Consent Decree.

To establish this prong, Plaintiffs must demonstrate specific conduct by the County in violation of the consent decree. Provisions of district court orders

necessary to correct the violation"; and (3) "the least intrusive means" by which to remedy the violation. Settlement Agreement 2; *see also* Agreed Order Granting Approval of Settlement Agreement and Certifying a Settlement Class 2 (providing that the relief ordered "falls within the range of possible relief").

The County's failure to comply substantially with the Key Provisions, including Provision 18.1, governing Plaintiffs' access to records, therefore constitutes specific conduct in violation of the consent decree as outlined below and summarized in Exhibit 14. Ex. 14, Summary Chart II: Non-Compliance with Access Provision (compiling outstanding requests for policies, procedures, and records Plaintiffs have sought pursuant to Provision 18.1).

3. The County Has Failed to Comply with the Court's Order.

Individual provisions of consent decrees are "independent obligations, each of which must be satisfied before there can be a finding of substantial compliance" with the entire consent decree. *Rouser v. White*, 825 F.3d 1076, 1081 (9th Cir. 2016) (finding that the district court wrongly terminated a consent decree because the district court did not consider defendants' lack of compliance with individual provisions of the consent decree).

"'[T]he mere fact that a party may have taken steps toward achieving compliance is not a defense to a contempt charge.'" *City of Jackson, Miss.*, 318 F. Supp. 2d at 417 (citing *Sizzler Family Steakhouses v. Western Sizzlin Steak House, Inc.*, 793 F.2d 1529, 1534 n. 5, *reh. denied*, 797 F.2d 982 (11th Cir. 1986)). A finding of substantial compliance requires more than "significant steps." *Rouser*, 825 F.3d at 1082. The "obligations contained in the Consent Decree are binding and enforceable, and Defendants may not choose to disregard them after unilaterally determiniance wit15.2prhsion is unnecessary or undesirable."*Frew v. Hawkins*, 401 F.Supp.2d 619, 654 (E.D. Tex. 2005).

In determining whether a party has failed to comply with a Court order so as to render it in contempt, Courts may consider whether defendants "fail[ed] to accomplish what was ordered in meaningful respects," including the scope of violations, the level of effort made to comply with the order, and the time taken to attempt to follow the order. *Ruiz v. McCotter*, 661 F. Supp. 112, 143, 144, 145, 117 (S.D. Tex. 1986) (finding Defendant in contempt for violating various provisions because attempting to comply with a provision over a span of two years demonstrated lack of diligence; finding Defendant "procrastinated in obeying a court order requiring immediate action"; taking Defendant's "tardy response to the improper housing of prisoners… coupled with its failure to address the female housing problem," as sufficient proof of "a failure to achieve substantial compliance with the relevant orders;" and determining that repetition of violations indicate a lack of diligence" despite Defendant's promulgation of plan, which the Court found "lamentably defective").

Courts additionally rely on state law definitions of substantial compliance as an analogy. *Rouser*, 825 F.3d at 1082. Mississippi state courts determine whether a party is in "substantial compliance" as a "legal, though fact-sensitive, ques

contempt powers by demonstrating the County's lack of substantial compliance with the Key Provisions. The violations outlined below have continued for years despite repeated recommendations from the Monitor and his experts to implement ignored recommendations. If established, such a finding would entitle Plaintiffs to a finding of contempt and the coercive CAP remedy requested.

i. The County Has Failed to Comply with Court Orders Regarding Plaintiffs' Access to Records and Documents (Provision 18.1).

The consent decree contains extensive right-of-access provisions, empowering Plaintiffs' counsel to monitor consent decree compliance with broad access to "relevant documents and files maintained by Henley-Young relevant to assessing [the County's] compliance." Consent Decree 22–23 (Provision 18.1). The Plaintiffs have unsuccessfully requested, at least fourteen times, revised and updated policies they are entitled to receive under this provision, which are critical to monitoring consent decree compliance. Ex. 14, Summary Chart II: Non-Compliance with Access Provision; *see also* Ex. 2, Letter from Pls. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018); Ex. 15, E-Mail from Pls. re: *Request for Records: Current Policies, Forms, and Staffing* (Apr. 20, 2018); Ex. 16, E-Mail from Pls. re: Reforwarding Request for Records: Current Policies, Forms and Staffing (Apr. 23, 2018); Ex. 17, Letter from Pls. re: *Records: Revised Weekly Request & Outstanding Requests* (July 17, 2018); Ex. 18, E-Mail from Def. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018); Ex. 19, E-Mail from Pls. re: *Pls.' Counsel's Attempts to Copy Policies and Resident Files* (Sept. 18, 2018). Plaintiffs also requested these revised and updated policies at the April and July 2018 status conferences. *See, e.g.,* Ex. 5, Status Conf. Tr. 8; Ex. 8, Handout from Pls. re: Requests for Assistance with Compliance (July 25, 2018).

Plaintiffs were provided on October 31, 2017 with a current set of the facility's policies and procedures. Ex. 20, E-Mail from Henley-Young re: Policies and Procedure Manual (Sept.

and Staffing (Apr. 23, 2018); Ex. 8, Handout from Pls. re: Requests for Assistance with

1. The County provide Plaintiffs' counsel with documents, records, and files requested pursuant to Provision 18.1 within five business days.
2. The County provide Plaintiffs' counsel by email on a weekly basis the following documents created in the regular course of business:
   a. Mental health records produced as a follow-up to incident reports.
   b. Confinement records for any type of confinement (including for events at school).
   c. Staff disciplinary records produced as a follow-up to incident reports.
   c. Files created during intake for new admits.
   d. Programming schedule for weekdays, weekends, and any variable schedule for CTAs.

The Monitor's education expert advises that existing facility space is "definitely inadequate," and that she has "continue[d] to stress this point especially as it relates to the social studies classroom and the EES rooms." Educ. Prog. Rev. 18, Sept. 19, 2018, ECF No. 126. The Monitor's mental health expert has advised for the "immediate" need to "[c]reate at least one 'suicide-resistant' room/cell on each unit." Mental Health Serv. Rev. 19–20, Aug 21, 2018, ECF No. 124-1. She has also noted the lack of space for individual and group treatment, going so far as to suggesting use of "outside spaces" for individual and psychoeducational group treatment to guarantee confidentiality. *Id*. at 13. The Monitor's medical expert has also advised on the need for appropriate allocation of space. Henley-Young Juv. Just. Ctr. Detention Division – Med. Serv. Rev. 12, Mar. 19, 2018, ECF No. 117 (directing that "[a] designated area separate from the general population is needed to maintain youth that are recovering from acute illness and/or are actively contagious").

In her December 2017 report, the Hinds County Jail Monitor advised with regards to the transfer of CTAs to Henley-Young that compliance was "dependent" on "creation of additional program space(s)." Ex. 26, Court-Appointed Monitor's Third Monitoring Rep. at 55, *U.S. v. Hinds Cty., et al.*, No. 3:16-cv-489-WHB-JCG (Dec. 11, 2017). Specifically, the Hinds County Jail Monitor provided that "[c]onstructing . . . additional classroom, multi-purpose, and recreational programming space(s) . . . will permit proper programming, classification, and supervision for all youth at Henley[-]Young," and that "proper planning (including needed funding) for/implementation of these changes should be done as soon as possible." *Id*. at 50–51, 55.

In her April 2018 report, the Hinds County Jail Monitor noted that the County had not "address[ed] previous recommendations," including making security-related plant modifications

and “constructing additional classroom, multi-purpose, and recreational programming space(s) that will permit proper programming, classification, and supervision for all youth at Henley-Young.” Ex. 27, Court-Appointed Monitor’s Fourth Monitoring Rep. at 48–49, *U.S. v. Hinds Cty., et al*., No. 3:16-cv-489-WHB-JCG (Apr. 18, 2018). In her August 2018 report, the Hinds County Jail Monitor noted, “most of these recommendations were not implemented” and other projected problems had also arisen. Ex. 28, Court-Appointed Monitor’s Fifth Monitoring Rep. at 54, *U.S. v. Hinds Cty., et al*., No. 3:16-cv-489-WHB-JCG (Aug. 1, 2018). At the most recent status conference for the Hinds County Jail Case, the Hinds County Jail Monitor provided priority recommendations to the County. The County was advised to “as soon as possible” make physical plant modifications to Henley-Young, including to “follow [through] with stated plan to add temporary/portable classroom/program space,” and to “[m]ake modifications to . . . living units.” Ex. 29, Handout from Elizabeth Simpson re: Priority Recommendations from June 2018 at 5.(Aug. 29, 2018). **Pü‘**

procedures, to create adequate schedules, develop positive behavior management systems, and hire additional recreation staff. Twelfth Monitor's Report 25, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 30, Sept. 25, 2017, ECF No. 113; Tenth Monitor's Report 31, Feb. 27, 2017, ECF No. 112.

2. ***Provision 4.1 (Structured Programming):*** The Monitor advised that compliance requires programming that includes the JCA population. Twelfth Monitor's Report 29–30, Mar. 22, 2018, ECF No. 118. In his last three monitoring reports, the Monitor has recommended that the County hire case management staff in order to comply with this Provision. *Id*. at 30; Eleventh Monitor's Report 34, Sept. 25, 2017, ECF No. 113; Tenth Monitor's Report 34–35, Feb. 27, 2017, ECF No. 112.

3. ***Provision 5.1 (Individualized Treatment Plans):*** The County has not implemented the Monitor's recommendation in his last two reports that the County review "light weight residents" and "find alternative placement for them." Twelfth Monitor's Report 31, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 34, Sept. 25, 2017, ECF No. 113. The County should also "communicate with Hinds Behavioral Health and Marion Counseling" to determine whether additional assistance or referrals are required. Mental Health Serv. Rev. 5, Aug. 21, 2018, ECF No. 124-1.

4. ***Provision 5.2 (Individualized Treatment Plans):*** The Monitor's mental health expert advised that the clinical psychologist's hours be increased to full-time and found "[n]o treatment plans have yet been developed for youth to address Mental Health or Substance Use treatment at the Detention Center." Mental Health Serv. Rev. 6, Aug. 21, 2018, ECF No. 124-1.

5. ***Provision 5.3 (Individualized Treatment Plans):*** The Monitor's mental health expert reported no signs of compliance other than the existence of a policy. *Id.* at 7. In his last three reports, the Monitor recommended that the County provide intensive training to all staff members. Twelfth Monitor's Report 33, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 36–37, Sept. 25, 2017, ECF No. 113; Tenth Monitor's Report 38, Feb. 27, 2017, ECF No. 112.

6. ***Provision 5.4 (Individualized Treatment Plans):*** The Monitor's mental health expert reported that no individualized treatment plans currently exist, so there are no plans to review under Provision 5.4, regarding "Multi-Disciplinary Treatment Team[s] (MTT)" meant to "discuss residents' Individualized Treatment Plan[s], including treatment goals and objective[s], and to assess youths' progress." Mental Health Serv. Rev. 6, 8–9, Aug. 21, 2018, ECF No. 124-1.

7. ***Provision 12.1 (Medical Care):*** The Monitor and his medical expert recommend that, medical staff remain on duty at all times and that physical exams be performed on all youth within 72 hours. Henley-Young Juv. Just. Ctr. Detention Division – Health. Serv. Rev. 5, Oct. 26, 2018, ECF No. 127; Twelfth Monitor's Report 53, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 55, Sept. 25, 2017, ECF No. 113. According to the Monitor's medical expert, "only cursory physical exams are performed by the nurses which can result in missed health diagnoses" and the Nurse Practitioner does not perform a physical on all admitted youth. Henley-Young Juv. Just. Ctr. Detention Division – Health Serv. Rev. 4–5, ECF No. 127. The Monitor recommended increased training on medication administration, and that licensed professionals review and supervise the

nurses at the facility. Twelfth Monitor's Report 53, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 55, Sept. 25, 2017, ECF No. 113.

8. ***Provision 12.2 (Medical Care):*** The Monitor and his medical expert in multiple recent reports have repeated the recommendation that the County hire a qualified medical professional for nights, including on the weekend. Twelfth Monitor's Report 54, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 56, Sept. 25, 2017, ECF No. 113; Tenth Monitor's Report 57, Feb. 27, 2017, ECF No. 112; Henley-Young Juv. Just. Ctr. Detention Division – Health Serv. Rev. 3, 5, Oct. 26, 2018, ECF No. 127 (reporting that "60% of youth were admitted between 8 PM and 8 AM when there was no medical staff on site; "only registered nurses work at the facility and their hours have decreased from 8 AM – 12 AM to 8 AM – 8 PM"; and a Nurse Practitioner is at the facility "about 4 hours weekly and only sees patients referred to her by the nurses"). The expert advises that overall nursing coverage hours be expanded rather than limited. Henley-Young Juv. Just. Ctr. Detention Division – Health. Serv. Rev. 4, Oct. 26, 2018, ECF No. 127.

9. ***Provision 13.4 (Mental Health Care):*** The Monitor's mental health expert found that policies and procedures have been developed and implemented regarding referral services and processes, but there is no additional information regarding the extent of implementation and the County must "ensure all youth that need to be referred to the Psychiatrist for issues related to psychotropic medication are being referred in a timely manner." Mental Health Serv. Rev. 15, Aug. 21, 2018, ECF No. 124-1.

10. ***Provision 13.5 (Mental Health Care):*** The psychiatrist is at Henley-Young for less than two hours per week, which is insufficient, and he is unaware that there is a consent decree in place at the facility. Health Serv. Rev. 9, Oct. 26, 2018, ECF No. 127. The psychiatrist

does not have specialized training in children or adolescents. Mental Health Serv. Rev. 16, Aug. 21, 2018, ECF No. 124-1. The psychiatrist does not communicate or collaborate with other staff, including mental health professionals, at the facility, and he is not participating in the weekly Multi-Disciplinary Treatment Team m

ATTORNEYS' FEES AND COSTS

At this time, Plaintiffs seek attorneys' fees and costs necessary to compensate it for non-compliance with the records access provision of the consent decree (Provision 18.1), as diligent attempts to obtain basic monitoring-critical documents, such as policies, programming schedules, and records of clinicians' qualifications has been excessively burdensome. Attorneys have the authority to seek fees under 42 U.S.C. § 1983 and 42 U.S.C. § 1988(b), as well as under local precedent. The plain language of a consent decree also guides a Court in deciding whether or not to award attorneys' fees to a prevailing party. *U.S. v. City of Jackson*, 359 F.3d at 732 (awarding attorneys' fees to plaintiffs due to the consent decree's explicit remedial provision empowering the court to "impose *any remedy authorized by law or equity, including* but not limited to an order … awarding any damages, *costs and/or attorneys' fees*) (emphasis in the original). Fees must be "directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988. . . ." 42 U.S.C. § 1997e(d)(1)(A). The fees must also be "directly and reasonably incurred in enforcing the relief ordered for the violation." *Id*. at (d)(1)(B)(ii). Additionally, this Court has the discretion to award attorneys' fees in order to enforce its own decrees. *Oschsner Foundation Hosp.*, 559 F.2d at 272 (holding that granting attorneys' fees in civil contempt hearings is reasonable to enforce compliance with a court order or to compensate for losses or damages incurred due to non-compliance).

Should the Court determine an award of attorneys' fees and costs are an appropriate remedy, Plaintiffs will submit a motion for fees and affidavits forthwith, including after any hearing on this motion. This Court ordered at the close of the 2014 contempt proceedings that, if "the County fails to make adequate progress, then Plaintiffs may file a properly supported