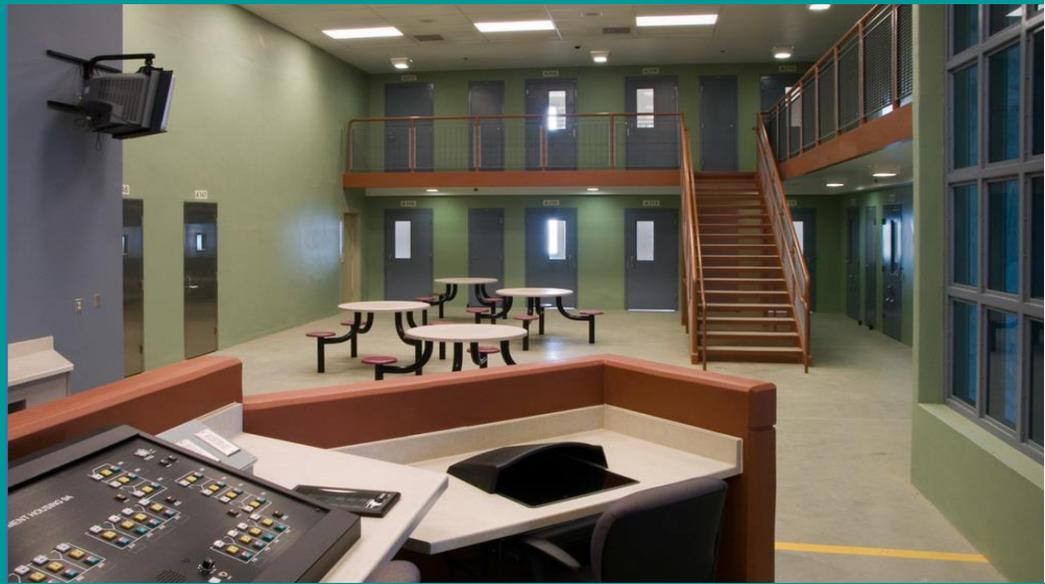


# Inspection Report: Fresno County Juvenile Justice Campus



**July 2018**

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# Executive Summary

Disability Rights California (DRC) is the designated federal Protection and Advocacy System for individuals with disabilities in the state of California. DRC has broad authority under federal and state law to access and monitor conditions of any public or private facility, including jails and juvenile halls. DRC exercises its authority with the intention of eliminating abuse and neglect and improving quality of care provided to Californians with disabilities.

Numerous studies confirm that youth with disabilities and with special education needs are overrepresented in juvenile justice systems. DRC has initiated inspections of a number of juvenile halls to monitor conditions of confinement for youth with disabilities. While accessing facilities, federal and state regulations permit DRC to designate an organization as an agent for an inspection. Youth Law Center (YLC) acted as DRC's authorized agent during its monitoring inspection of Fresno County Juvenile Justice Campus (JJC).

DRC and its authorized agent visited the campus over two days, May 23-24, 2017, reviewing, in particular, isolation and solitary confinement, education and special education services, adequacy of medical and mental health care, and compliance with the Americans with Disabilities Act and related disability laws. During the visit, DRC and YLC conducted in-person interviews with youth, probation staff, education staff, and correctional staff. Over the course of the next year, using the California Public Records Act, DRC also requested and reviewed JJC policies and procedures.

DRC and YLC observed many positive practices. For example, the Fresno County Superintendent of Schools has an effective approach to monitoring students with disabilities and engaging local school districts as students transition back to the community upon release.

However, DRC and YLC also identified a number of concerning policies and practices that Fresno County leadership must address. Some of the concerning practices are the County's unnecessary reliance on pepper spray to deescalate interactions with youth and failure to properly decontaminate youth after each incident. The universal use of a daily system of points for behavioral management results in inequitable program access for youth with disabilities, because it fails to provide reasonable accommodations. And there are many reports of poor food quality and culturally inappropriate personal hygiene products.

# Summary of Findings and Recommendations

## System Strengths

1. The Court School Program, operated by the Fresno County Superintendent of Schools (FCSS), has experienced and credentialed staff, impressive audio-visual supports, engaging course material, and a well-organized special education program.
2. FCSS has developed proactive procedures to address the transition of youth from the court school to the community upon release.

## Recommendations to Adequately Care for Youth with Disabilities

1. The County should end its reliance on the use of pepper spray and use alternative methods to address youth behavior, especially for youth with disabilities who are distinctly vulnerable to the harms of chemical restraint.
2. The County should modify its behavior management programs so that they alert staff to, and provide for mechanisms that accommodate the needs of, students with disabilities.
3. The County should implement an inter-system database—shared between FCSS and Probation—that identifies and monitors the needs of youth with disabilities.
4. The County should evaluate the efficacy of its mental health assessment tools to analyze whether its tools adequately identify youth needs or whether they contribute to race and disability disparities within the youth population at JJC.
5. The County's new health services contract should require that mental health, medical, and substance abuse services be sufficiently coordinated to meet co-occurring needs of youth with complex mental health concerns.
6. As the County further develops its reentry services and scales up its pilot reentry program, it should include targeted and integrated services for foster youth and young girls.

## Other Recommendations to Provide a Safe and Healthy Setting for Youth

1. The County should end the practice of disciplining youth by limiting telephone access and provide all youth with reasonable access to the telephone.
2. The County should modify its policy on hygiene products so that it is sensitive to the ethnic, gender, and cultural diversity of its youth in custody.
3. The County should allow extra portions to be served to hungry youth and provide for snacks in between meals. The County should also conduct, in consultation with an expert who has specialized knowledge on youth nutrition, a comprehensive assessment of the provision of food to youth in custody. The assessment should evaluate whether youth are receiving adequate food and whether the food services vendor is providing adequate portions and nutrition and otherwise meeting the terms of the contract.

# Fresno County's Response to the Findings and Recommendations

At the conclusion of the inspection, DRC and YLC provided a draft of this report to Fresno County's Probation Department and the office of the Superintendent of Schools. On June 7, 2018, the County responded to the findings and recommendations provided here within. DRC revised this report to include acknowledgments of the County's reported new efforts and to ensure factual accuracy.

In response to the recommendations and findings in this report, the Probation Department has announced:

1. "JJC Administration and FCSS are in discussions to establish a process for the dissemination of information regarding the needs of youth with disabilities."
2. "Probation Department is developing a quality evaluation unit, which in part will conduct ongoing fidelity checks of the tools utilized within the Department."
3. "PREP, an extension of our transition piece has since expanded its population to include females as well as foster youth."
4. "JJC Administration is considering options to augment snacks for the youth."
5. "JJC administration will continue to research for the availability of culturally appropriate products."

DRC and YLC commends the Probation Department on these new developments and will look forward to seeing these plans advance the protection of youth with disabilities in the juvenile justice system.

A print copy of Fresno County's response is available at:

<https://www.disabilityrightsca.org/system/files/file-attachments/DRC%20Response.docx>

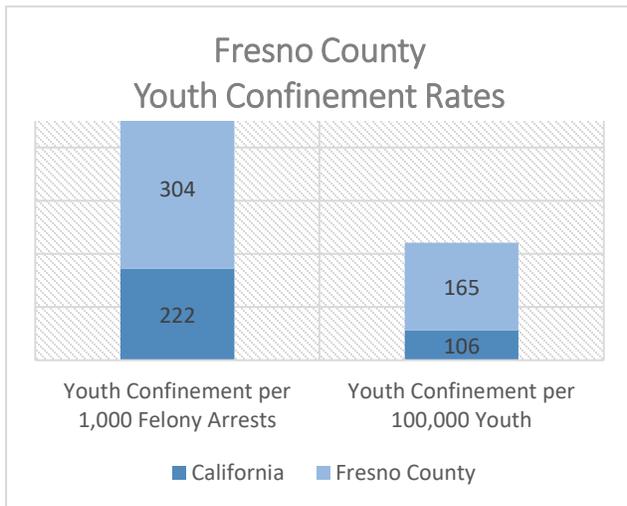
# Snapshot: Fresno County

Located in the Central Valley, Fresno County is estimated to be the residence of 989,255 individuals, making it the tenth most populated county in California.<sup>1</sup> Of these residents, around 282,900 are youth under the age of eighteen.<sup>2</sup>



According to the California Sentencing Institute, the County confines youth at a rate about fifty-five percent higher than the state average.<sup>3</sup> For fiscal year 2016-17, Fresno County Probation Department (Probation) reported 1,907 youth arrests.<sup>4</sup> For every 1,000 felony arrests in Fresno County, 304 youth were confined—2.6 times more than the state average.<sup>5</sup> As of June 30, 2017, 868 Fresno County youth are currently under probation supervision.<sup>6</sup>

At the time of the monitoring inspection, JJC stated that 224 youth were held in custody. The campus is comprised of four facilities: a detention center, a commitment center, support services, and courts. 114 youth were housed in the detention center, awaiting adjudication, disposition, or placement in the community. 110 youth were held in the commitment center in accordance with a court-ordered disposition.



There are thirty-four school districts within Fresno County. Fresno Unified School District is the most populous. It is the fourth most populated school district in the state of California and serves 73,455 students—over a third of Fresno County’s enrolled student population. The second

<sup>1</sup> U. S. Census Bureau, Population Estimates, California: Fresno County (July 1, 2017), [www.census.gov](http://www.census.gov) (last visited May 24, 2018).

<sup>2</sup> Ibid.

<sup>3</sup> In 2016, for every 100,000 youth, ages 10-17, Fresno County confined 165. The California average was 106. Center on Juvenile and Criminal Justice (CJCJ), California Sentencing Institute, *Fresno County* (2016).

<sup>4</sup> Fresno County Probation Department, *Annual Report*, Section II, Pg. 27 (2016-2017), available at <http://www.co.fresno.ca.us/home/showdocument?id=25819>.

<sup>5</sup> In 2016, for every 1,000 felony arrest of youth, ages 10-17, California averages 222 confined youth. CJCJ, *supra* note 3.

<sup>6</sup> Probation Department, *supra* note 4, at 33.

two most populous are Clovis Unified, serving 43,106 enrolled students, and Central Unified, serving 15,893 enrolled students. Alone, these three school districts make up sixty-five percent of Fresno County's total enrolled student population. Data reported from each three indicate that Fresno County's juvenile justice system disproportionately affects youth with disabilities.

Youth with disabilities make up over thirty percent of in-school arrests in Fresno Unified School District, even though youth with disabilities represent less than ten percent of the total enrolled students.<sup>7</sup> Clovis Unified and Central Unified both reported similar numbers. In 2015, Clovis Unified School District reported only 7.4 percent of its students receive special education services under the Individuals with Disabilities Education Act (IDEA).<sup>8</sup> However, IDEA students account for 30 percent of all referrals to law enforcement and arrests. Central Unified reported that special education students account for 8.8 percent of their overall population, but special education students make up 22.4 percent of their referrals and arrests.<sup>9</sup>

Black youth also make up a disproportionate percent of youth arrests. Black youth make up just nine percent of the County's total public school enrollment.<sup>10</sup> According to Kidsdata.org, Black youth (with and without disabilities) represent twenty percent of all youth felony arrests.<sup>11</sup>

At the intersection of race and disability, youth of color with disabilities—and particularly Black youth with disabilities—account for a greater disparity in the Fresno County juvenile justice system. Fresno Unified School District reported that Black students with disabilities account for less than twelve percent of its disability population.<sup>12</sup> However, Black youth with disabilities represent thirty-four percent of all in-school arrests of youth with disabilities in the district.<sup>13</sup> Again, Clovis Unified and Central Unified both reported similar numbers.<sup>14</sup>

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<sup>7</sup> United States Department of Education (DoED), Civil Rights Data Collection, *Discipline Report* (Survey Year: 2015) available at <https://ocrdata.ed.gov/SpecialReports>. See also California Department of Education (CDE), Special Education Division, Enrollment by Ethnicity and Disability—Fresno Unified (Reporting Cycle: December 1, 2017) available at <https://www.cde.ca.gov/sdprofile/> [Hereinafter: *Special Education Report*].

<sup>8</sup> DoED, *supra* note 7; *Special Education Report, supra* note 7 (Clovis Unified).

<sup>9</sup> DoED, *supra* note 7; *Special Education Report, supra* note 7 (Central Unified).

<sup>10</sup> DoED, *supra* note 7.

<sup>11</sup> Kidsdata.org, *Juvenile Felony Arrests, by Race/Ethnicity, Fresno County* (Oct. 2016).

<sup>12</sup> *E.g., Special Education Report, supra* note 7 (Clovis Unified); The Investigative Unit, NBC Bay Area, *Arrested at School* (April 25, 2017) available at <https://www.nbcbayarea.com/investigations/Arrested-At-School-419472753.html>.

<sup>13</sup> DoED, *supra* note 7.

<sup>14</sup> *Ibid.*

# System Strengths

## A. Well-Developed Court School Program

The Fresno County Superintendent of Schools (FCSS) operates the Alice Worsley School, which is the court school and provides programs and services to youth in JJC facilities year-round.<sup>15</sup> DRC and YLC observed that the Court School offers a positive curriculum and classroom experience.

The Court School has twenty-eight teachers, one full-time school psychologist, four vocational teachers, and a librarian. During the monitoring inspection, the teachers interviewed by DRC and YLC reported that they have taught at JJC for many years. This level of teacher retention has a positive impact on student achievement and community cohesion.<sup>16</sup> We observed a wide range of subject offerings, the ability to access online credit recovery tools, impressive audio-visual support, and extracurricular programming (e.g. a welding program that is available to some youth in the commitment center).

The special education program at the Court School is well organized. Each morning, the FCSS staff prepare a roster of all students requiring special education. The roster includes pertinent information about the basis for the student's eligibility, necessary secondary services and supplementary aids; whether the student is an English Language Learner; and whether the student has a Behavior Intervention Plan. The roster also reflects the student's last assessment date, the due date for the next assessment, overdue assessments, and identifies students who are potentially eligible for special education services. This daily roster allows general education teachers to keep critical information about youth with disabilities easily at hand.

While the County's special education program is a good example of monitoring students with special needs, for 2016-2017 school year, the rate of students identified as having disabilities was only nineteen percent for the school year.<sup>17</sup> According to studies of youth in correctional and detention facilities, this rate is significantly below the estimated prevalence rate of thirty to sixty percent.<sup>18</sup>

DRC and YLC observed both special education and general education classrooms. The general education classroom included special education students who were supported

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<sup>15</sup> Fresno County Office of Education, *School Accountability Report Card: Alice M. Worsley School 1 (2015-2016)* available at [http://www.fcoe.org/sites/fcoe.org/files/documents/sarc/2016/2016\\_School\\_Accountability\\_Report\\_Card\\_Alice\\_M.\\_Worsley\\_School\\_20170115.pdf](http://www.fcoe.org/sites/fcoe.org/files/documents/sarc/2016/2016_School_Accountability_Report_Card_Alice_M._Worsley_School_20170115.pdf)

<sup>16</sup> *E.g.*, Ronfeldt et al., National Bureau of Economic Research, *How Teacher Turnover Harms Student Achievement* 17 (2011) available at <http://www.nber.org/papers/w17176.pdf>.

<sup>17</sup> Documents produced by FCSS, on file with DRC.

<sup>18</sup> Quinn, M.M. et al., *Youth with Disabilities in Juvenile Corrections: A National Survey*, 71 *Exceptional Children* 339 (2005).

using appropriate teaching supports, including “pull-out/push-in” services and Universal Design for Learning to accommodate different learning needs.<sup>19</sup>

## **B. Proactive Approach to Transition from Juvenile Court School to Local School Districts**

A report by the California Department of Education (CDE) found that of the more than 60,000 pupils served in juvenile detention in 2010-11, local schools only enrolled twenty-one percent of the students within thirty days after release.<sup>20</sup> In response, the Legislature enacted AB 2276, which amended state law to require county juvenile justice systems to facilitate enrollment of students to public school upon release and to create “a county office of education and county probation department... joint transition planning policy.”<sup>21</sup>

FCSS has developed proactive procedures to facilitate young people’s transition from the court school to the community upon release. First, Probation and the FCSS have collaborated to develop a transition team with an education subcommittee. The two department heads jointly invite all superintendents from local school districts to semi-annual meetings. These meetings generally have sixteen to twenty-four attendees. Topics discussed at the meetings include transition of youth from JJC, calculation of educational credits, discussion of new/pending legislation, and discussion of CDE findings.<sup>22</sup>

Second, Probation and FCSS hold reentry transition meetings every Thursday afternoon. Participants include students who are about to be released, FCSS, Probation, and a representative from local school district to which the student will return. The regularly scheduled time facilitates representation from the Fresno Unified School District, which is responsible for the majority of Court School students.

Third, Probation and FCSS have recently executed a joint student transition-planning memorandum of understanding as required by AB 2276.

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<sup>19</sup> Universal Design for Learning is “grounded in three principles”: 1) multiple means of representation; 2) multiple means of action and expression; and 3) multiple means of engagement. UDL Guidelines 2.2, National Center on Universal Design for Learning (2018), *available at* <http://www.udlcenter.org/aboutudl/udlguidelines/downloads>.

<sup>20</sup> Sophia Kwong Kim, Assembly Bill 2276 Analysis (April 21, 2014) (“...of the 60,097 pupils served in juvenile detention in 2010- 11, the majority were Latinx and Black males between the ages of 16-18. Of the 60,097 pupils, only 12,442 pupils (21%) were enrolled in their local school within 30 days after being released.”) *available at*

[http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201320140AB2276](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB2276)

<sup>21</sup> AB 2276, Stats 2014, Ch. 901, *codified as* Education Code § 48645.5, 48647, 48648, 49069.5. *See also* Coordinated Student Support Division, Juvenile Court Student Transition Statewide Word Group, *Reports and Recommendations to the Legislature* (July 2016) *available at* <https://www.cde.ca.gov/sp/eo/jc/juvcourtworkgroup.asp>.

<sup>22</sup> Documents produced by FCSS, on file with DRC.

# Findings and Recommendations

## A. Dangerous Use of Pepper Spray

California state law prohibits counties from treating their juvenile halls as penal institutions. All juvenile halls must be “safe and supportive homelike environment[s].”<sup>23</sup> In accordance with the call of the United States’ Attorney General, confinement of youth should be designed to promote recovery from the adverse impacts of exposure to violence and trauma on physical, psychological, and psychosocial development, health, and well-being.<sup>24</sup>

The vast majority of juvenile detention facilities in the United States operate safely without using pepper spray.<sup>25</sup> 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 only twenty-nine percent of state juvenile correctional agencies authorize the use of chemical restraints. Of the twenty-nine percent, most only permit its usage as a last-resort measure and prohibit the chemical from being carried on person to prevent serious injuries (only twelve percent authorize staff to carry chemical sprays on their person).<sup>26</sup> The CJCA survey also found that only eight percent of juvenile facilities participating in its CJCA Performance-based Standards program 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>27</sup>

The use of pepper spray also raises issues of liability 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. These risks are magnified when the staff uses water to decontaminate. Water spreads oil-based chemicals. As the national juvenile justice system moves toward more developmentally appropriate care for youth in juvenile facilities, systems using pepper spray will become even more marginalized and subject to increased scrutiny and potential litigation.

JJC relies on pepper spray to control the behavior of youth. This practice is dangerous and traumatizing, particularly for young people who often have previously been victims of physical and other abuse. DRC and YLC reviewed JJC’s use of force and use of chemical restraint policies, and interviewed young people in the facilities. Based on this review, DRC and YLC are concerned by the frequency of pepper spray use, the amount used in

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<sup>23</sup> California Code, Welfare and Institutions Code - WIC § 851.

<sup>24</sup> Defending Childhood, *Report of the Attorney General’s National Task Force on Children Exposed to Violence*, iii. xvii, 113 (Recommendation 6.2.) (2012)

<sup>25</sup> Council of Juvenile Correctional Administrators (CJCA), Issue Brief: Pepper Spray in Juvenile Facilities (May 2011), available at <http://cjca.net/index.php/resources/cjca-publications/70-issue-briefs/172-issue-brief-pepper-spray-in-juvenile-facilities>.

<sup>26</sup> *Id.* Similarly, only seven percent of youth in juvenile facilities that responded to an OJJDP Survey of Youth in Residential Placement said that staff had used pepper spray on them. Andrea J. Sedlak & Karla S. McPherson, *Conditions of Confinement: Findings from the Survey of Youth in Residential Placement* (May 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf>.

<sup>27</sup> CJCA, *supra* footnote 25.

single incidents, the effectiveness of decontamination, and the failure to implement use of force protocols that accommodate youth with disabilities. Because the use of pepper spray, both in JJC and in general, raises significant concern for the health and safety of youth, and because the vast majority of juvenile detention centers across the country do not rely on pepper spray, DRC and YLC recommend that JJC bar the use of pepper spray.

According to public records provided by Probation, the County's frequency of use of pepper spray in the commitment facility appears to be regularly lower than other California juvenile commitment centers that participate in Performance Based Standards (PbS).<sup>28</sup> However, this is not the case for the detention facility, where the use of pepper spray is consistently higher than other California detention facilities. Furthermore, the frequency of use for both detention and commitment facilities far exceeds the field average of national institutions that participate in PbS data collection.<sup>29</sup> This data suggests that the use of pepper spray, at a minimum, could be significantly reduced.

Furthermore, youth reported troubling use of force practices. The girls in B pod who were interviewed by the DRC/YLC team all reported that, typically, JCOs will empty the contents of a pepper spray can during a single incident. In other pods, boys reported that JCOs will use just a few sprays in an effort to break up an altercation between two youth. JCOs will empty the can if the boys do not immediately cease. Youth reported that if an altercation continues, "anything goes" and that JCOs will drag girls away by pulling on their hair. These reports were not confirmed. Both the young boys and the JCOs acknowledged that physical force is common practice between staff and young people if boys do not "respect" the staff.

After staff use pepper spray, staff hose off students with water in the yard and place the individuals back in their cell. This inadequate decontamination process often results in young people continuing to feel the effects of pepper spray after decontamination. The inability to effectively decontaminate youth after they have been pepper sprayed should militate against its use.

Equally troubling, when evaluating the appropriateness for use of force, JCOs do not have a formal process to accommodate or even consider the disability of any particular youth. According to Corizon Health, the County's medical and mental health services provider, there is also no system to notify mental health staff following incidents to evaluate the appropriateness of the staff's response to the youth's behavior.

During the inspection, supervisors stated that pepper spray is used only as a last resort, and that other means of de-escalation are attempted first. However, Probation staff did not document the use of alternatives in the records provided to us. The records confirm that staff continue to use pepper spray on a regular basis.

In response to this report, the Probation department explained: "The Department is within...Title 15 regulations in its use of pepper spray." The County's compliance with

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<sup>28</sup> Fresno County's Performance Based Standards (PbS) data analysis on file with DRC.

<sup>29</sup> For example, the national field average for October 2017 was 0.07 incidents of use per 100 person-days of youth confinement. JJC's chemical restraint use was 0.536 incidents of use per 100 person-days of youth confinement.

state regulations is important, but it does not determine compliance with the United States Constitution or other legal requirements.<sup>30</sup> DRC and YLC recommend that Fresno County eliminate the use of pepper spray in all of its facilities.

**Recommendations to Adequately Care for Youth with Disabilities:**

1. The County should end its reliance on the use of pepper spray and use alternative methods to address youth behavior, especially for youth with disabilities who are distinctly vulnerable to the harms of chemical restraint.

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<sup>30</sup> See, e.g., *Hernandez v. Cty. of Monterey*, 110 F. Supp. 3d 929, 945–46 (N.D. Cal. 2015) (“There is nothing inconsistent in complying with both the Constitution and Title 15... [a]nd even if there were a conflict, the Supremacy Clause makes it very simple: the Constitution controls.”).

## B. Discriminatory “Positive Behavior Modification” Program

Youth with disabilities, especially youth with emotional disturbance and mental health needs, are over-represented in juvenile facilities.<sup>31</sup> These young people are particularly vulnerable to the negative impact of discipline and harsh behavior modification approaches.

JJC manages the general youth population using “Phase Privileges,” a four-day-cycle point system with three phases. Youth accrue or lose points based on their behavior. They will have access to more privileges and programs as they gain points and move to a higher phase of the program. Probation staff reported that staff regularly present points accrued or lost to the judge when determining disposition; thus, any unfairness in the discipline system will have a negative impact on a youth’s disposition.

**... one young person lost fifteen good behavior points (out of one-hundred) for expressing suicidal ideations.**

DRC and YLC are concerned that Fresno’s behavior modification system does not have accommodations for disability-related behavior. From interviews and record inspection, it appears that the point and level system lacks a method for determining whether a behavior was a manifestation of a disability, chronic stress, or

trauma. The system also does not enable probation staff to identify youth with disabilities and offer accommodations. DRC and YLC’s inspection revealed that the system inappropriately punishes youth behavior that is directly related to their disabilities.

For example, DRC and YLC identified evidence that JJC improperly disciplines young people for hearing impairments and for suicidal ideation. One young person with a hearing impairment revealed that probation staff refused to award him good behavior points, because he did not timely respond to staff instructions that he could not hear. He further explained to DRC and YLC that during school, the education staff were aware of his disability and his IEP identified appropriate accommodations. However, during the rest of the day, probation staff did not know of his disability or need for accommodations.

A probation staff member provided DRC a point-system chart that listed which young people had failed to receive points due to poor behavior and to what the poor behavior was attributed. The chart indicated that one young person failed to earn fifteen good behavior points (out of one hundred), because he expressed suicidal ideations. Suicidal ideation or behavior should never be met with a disciplinary response. Instead, a youth expressing suicidal ideation or engaging in suicidal behavior should receive prompt and continuing medical evaluation and treatment. Moreover, suicidal behavior in youth is strongly linked to “depression, sexual abuse, and trauma.”<sup>32</sup> Discipline or behavior

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<sup>31</sup> Quinn et al., *supra* note 19.

<sup>32</sup> Karen M. Abram, Ph.D, et al., *Suicidal Ideation and Behavior in Youth in the Juvenile Justice System*, 21(3) *Journal of Correctional Health Care* 222, 230 (July 17, 2015).

management practices such as this disproportionately burden youth with active mental health needs.

In addition, Probation applies different behavior management rules to youth in the Floyd Farrow Substance Abuse Unit (SAU), a special housing and treatment program for youth identified with co-occurring mental health and substance abuse disorders. This results in unfair disparities in treatment. Youth in the SAU must achieve the same number of points as other groups to gain the highest level of phase privileges. But there is a different and more difficult set of criteria for youth in SAU to meet and achieve that same level. By definition, youth in the SAU are all youth with disabilities, so the more difficult criteria amounts to disability-based discrimination. During interviews, the discrepancy in difficulty and length of time to acquire points was apparent to both staff and youth alike.

The Americans with Disabilities Act (ADA), Section 504 of the Rehabilitative Act, and state laws require affirmative steps by JJC to alter policies or practices to accommodate special needs of youth. DRC and YLC recommend that the County modify its behavior management programs to consider and accommodate the unique needs of students with disabilities, to eliminate disciplinary consequences for suicidal ideation or behavior, and to eliminate the disparity in rules for the SAU. DRC also recommends that the County develop a communication system between the FCSS and Probation about accommodations or special needs of youth. The County may consider an inter-system database—shared between FCSS and Probation—that identifies and monitors the needs of youth with disabilities in order to meet their legal obligations.

**Recommendations to Adequately Care for Youth with Disabilities:**

2. The County should modify its behavior management programs so that they alert staff to, and provide for mechanisms that accommodate the needs of, students with disabilities.
3. The County should implement an inter-system database—shared between FCSS and Probation—that identifies and monitors the needs of youth with disabilities.

## C. Poorly Integrated Mental Health System

The Fresno County Juvenile Justice Campus's mental health system lacks sufficient coordination and may not accurately assess mental health needs and risks. JJC first adopted the Positive Achievement Change Tool (PACT), a pre-screening instrument that measures a juvenile offender's risk of re-offending, in 2013.<sup>33</sup> At least one study has evaluated PACT as poorly differentiating between low and moderate risk of recidivism, inaccurately predicting risk for girls, and performing inequitably across racial groups.<sup>34</sup>

At intake, Probation staff assesses each youth using PACT. A Registered Nurse also conducts an assessment using Child and Adolescent Needs and Strengths (CANS), a "multiple purpose information integration tool."<sup>35</sup> Information from these assessment tools is accessible to medical and mental health staff in the Electronic Medical Record; however, a young person is only referred to mental health staff for further assessment if probation has flagged the individual as having mental health needs. In Fresno, this system has resulted in a very low rate of identification of youth with mental health needs. Only ten percent of Fresno County's detained youth have an open mental health case, compared to forty-nine percent of youth in custody statewide.<sup>36</sup> This significant discrepancy merits additional attention. Fresno County should continue to monitor the efficacy of their assessment tools and scrutinize whether assessments at intake contribute to disparities related to race and disability within the youth population at JJC.

DRC and YLC also identified questions regarding coordination of mental health services. The JJC mental health care system is made up of multiple mental health providers and services. Corizon Correctional Health Care is the County's primary contracted mental health provider. The other mental health services are provided by: Sierra Education and Research Institute (SERI), a behavioral health coordination service which is staffed with clinical forensic psychologists; Mental Health Systems, which provides mental health services to the Substance Abuse Unit and the New Horizons Treatment unit; and Focus Forward, a contracted program that provides social workers and mentorship to some youth. Each program has a separate needs assessment and delivery system. During the monitoring inspection, a representative from Corizon explained that Corizon staff are generally unaware of what occurs within the other behavioral health services contracted with the County. There are no systems in place to identify discrepancies in treatment approach, to address problems or to collaborate to resolve any issues.

The lack of service coordination is inconsistent with correctional guidelines. The Standards for Health Services in Juvenile Detention and Confinement Facilities call for

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<sup>33</sup> Juvenile Justice Commission of Fresno County, Annual Inspection Report (2015-16).

<sup>34</sup> Baird et al., *Comparison of Risk Assessment Instruments in Juvenile Justice* (August 2013).

<sup>35</sup> Child and Adolescent Needs and Strengths (CANS) Fresno Manual (October 15, 2014). This tool is used throughout California, e.g. All County Letter NO. 18-09, Mental Health and Substance Use Disorder Services Information Notice NO. 18-007 (January 25, 2018) ("California Department of Social Services... has selected the... CANS as the functional assessment tool to be used with the Child and Family Team (CFT) process to guide case planning and placement decisions.")

<sup>36</sup> CJCJ, *supra* note 3.

communication between providers regarding treatment programs.<sup>37</sup> Juvenile detention standards developed by the Annie E. Casey Foundation also state that coordination is essential for quality assurance and quality improvement for mental health services.<sup>38</sup> DRC and YLC are aware that the County will soon change their health services contract<sup>39</sup> and recommend the new contracted service require that mental health, medical, and substance abuse services be coordinated.

**Recommendations to Adequately Care for Youth with Disabilities:**

4. The County should evaluate the efficacy of its mental health assessment tools to analyze whether its tools adequately identify youth needs or whether they contribute to race and disability disparities within the youth population at JJC.
5. The County's new health services contract should require that mental health, medical, and substance abuse services be sufficiently coordinated to meet co-occurring needs of youth with complex mental health concerns.

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<sup>37</sup> NCCHC Juvenile Standards, Mental Health Services Y-G-04.

<sup>38</sup> The Annie E. Casey Foundation's Juvenile Detention Alternative Initiation (JDAI), Health and Mental Health Administration (J)(6) (2014). These standards have served as a guide to numerous jurisdictions around the country seeking to improve and maintain conditions, policies, and practices in juvenile facilities.

<sup>39</sup> The Fresno Bee, *Seven Years Later: County Jail Still Trying to Fix Problems with Inmate Health Care* (April 3, 2018) available at <http://www.fresnobee.com/news/local/article207823169.html>

## D. Planned ReEntry Program (PREP): A Promising Reentry Program with Concerning Limitations

In 2016, the County applied for and received funds from the Board of State and Community Correction's Title II Delinquency Prevention and Intervention Grant Project. With these funds, the County created PREP—Planned ReEntry Program, a leadership program designed to provide targeted services to youth in the facility “who are deemed to be the highest risk for reoffending.”<sup>40</sup> At its inception, PREP, although small, has received praise and claims responsibility for significantly reducing the risk of recidivism for those who completed the program.<sup>41</sup> For the County, this is a laudable move toward keeping youth with histories of trauma and mental health concerns out of the criminal justice system.

**“Currently, although Fresno County has a ‘transition plan’ for each youth released from the JJC, the only continuing lineage between the youth and staff who assisted in developing the reentry plan is the supervising DPO, so follow-up on compliance with the reentry plan is limited.” --Fresno County Probation**

However, PREP relies on the controversial PACT assessment and excludes important segments of the youth population at JJC. The County admits that those who are not in the PREP program receive “no systematic or coordinated reentry support services [once] released.”<sup>42</sup> Their transition services are limited to the resources of their assigned probation officer. PREP is the County's answer to its gap in transition services, but its admission criterion expressly exclude youth who do not have family to return to upon release.<sup>43</sup> The PREP program is also unavailable to young girls.<sup>44</sup>

Young girls and foster youth, or youth who do not have a family to return to upon release, are not provided equitable access to reentry programs developed by the County, exacerbating their high risk for negative outcomes, including recidivism.

Foster youth are acutely vulnerable to the lack of coordination between the child welfare and juvenile justice systems. The majority of youth who are in the foster care system have

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<sup>40</sup> Morghan Young-Alfaro, Ph.D., Anchoring Success, Planned Re-Entry Program (PREP) Year-1 Program Evaluation Report 4 (November 8, 2017) [hereinafter: PREP Evaluation Report].

<sup>41</sup> *Ibid.* at 20-21 (recommending that PREP staff receive trauma informed training, “[w]e heard youth referred to by JCOs and YSS in positive terms such as ‘clients’ and ‘youth’ and equally as often as ‘problems,’ ‘monsters,’ and ‘oppositional.’ The latter indicates a need for science training [in unresolved trauma and chronic stress.]”)

<sup>42</sup> *Ibid.* at Project Abstract, 2.

<sup>43</sup> Fresno County Probation Department, Title II Delinquency Prevention and Intervention Grant Program Application 7 (“Youth must be released from the JJC directly to family or kinship care setting...”).

<sup>44</sup> PREP Evaluation Report 7 (November 8, 2017).

a diagnosed psychiatric disability, receive special education services, and have been identified as having a substance abuse disorder.<sup>45</sup>

Girls who contact the juvenile justice system are disproportionately living with histories of violence perpetuated against them, such as sexual and physical abuse. Moreover, forty-four percent of young girls in the juvenile justice system have reported past suicide attempts, seventy-five percent have met the diagnosis criteria for two or more psychiatric disorders, and forty-seven percent have a substance abuse disorder.<sup>46</sup> The numbers are aggravated when girls in the juvenile justice system are also in the foster care system.<sup>47</sup>

DRC and YLC are concerned about any reentry program that excludes, whether implicitly or explicitly, youth who are the most vulnerable to the deleterious effects of the juvenile justice system when placed back into the community. Such a program discriminates against young people who disproportionately have psychiatric and special education needs. It also places the County at risk of violating the Equal Protection Clause of the Fourteenth Amendment, which prohibits governments from using sex as a determining factor of need for a reentry program.<sup>48</sup> DRC and YLC recommend that as Fresno County further develops its reentry services and scales up this pilot program, it include targeted and integrated services for foster youth and young girls.

**Recommendations to Adequately Care for Youth with Disabilities:**

6. As the County further develops its reentry services and scales up its pilot reentry program, it should include targeted and integrated services for foster youth and young girls.

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<sup>45</sup> Center for Juvenile Justice Reform and Robert F. Kennedy Children Action Corps, Addressing the Needs of Multi-System Youth: Strengthening the Connection between Child Welfare and Juvenile Justice (2012).

<sup>46</sup> United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Policy Guidance: Girls and the Juvenile Justice System (October 2015).

<sup>47</sup> Center for Juvenile Justice Reform and Robert F. Kennedy Children Action Corps, Addressing the Needs of Multi-System Youth: Strengthening the Connection between Child Welfare and Juvenile Justice iii (2012) (“...a disproportionate number of crossover youth are female and children of color.”); National Women’s Law Center, Let Her Learn: Stopping School Pushout for: Girls in Foster Care (2017).

<sup>48</sup> *Sassman v. Brown*, 99 F. Supp. 3d 1223 (E.D. Cal. 2015) (finding that California’s alternative custody program for female inmates only violates the Equal Protection Clause of Fourteenth Amendment).

## E. Punitive Telephone Access

JJC policies and practices limit access to telephone calls as a form of discipline for youth. All JJC youth have limited access to telephones, impairing their right to communicate with family and their support systems. Some youth are denied access altogether.

The JJC Operations manual limits non-attorney calls to what are referred to as “incentive telephone calls,” or collect telephone calls that are only “allowed to those minors who have maintained the highest stage in that unit.”<sup>49</sup> As a part of JJC’s behavior management program, JCOs use “phrase privileges.” Phase one requires four days of receiving eighty points, and phase two requires four days of receiving eighty-five points. At phase one, youth are not permitted phone calls; at phase two, youth are permitted one phone call per week; and phase 3 through 4 allot a maximum of two phone calls per week. According to documents posted in the youth pods, at times, length of calls are restricted to as little as

**...at times, length of calls are restricted to as little as one minute.**

one minute. Youth report that once they reach the “highest stage” in their unit, although their families are routinely charged fifteen dollars for fifteen minutes, JCOs cut off their phone access at five minutes.

Young people confined at JJC must have reasonable access to telephone calls. Family and community connections are essential to the development and well-being of children who are undergoing physical, intellectual, social, and emotional development.<sup>50</sup> According to the Juvenile Detention Facility Assessment Standards Instrument (JDAI), telephone calls should be free, available twice a week for at least ten minutes per call. And where youth do not receive a response to their call at first try, they should be given a second opportunity to reach their family members.<sup>51</sup> DRC and YLC recommend that Fresno County end the practice of limiting telephone calls as a means of discipline. The County should provide youth with reasonable access to telephone calls in accordance with JDAI’s standards.

### **Other Recommendations to Provide a Safe and Healthy Setting for Youth:**

1. The County should end the practice of disciplining youth by limiting telephone access and provide all youth with reasonable access to the telephone.

<sup>49</sup> JJC GENERAL OPERATIONS PROGRAM, TELEPHONE ACCESS; POLICY #406.2; Fresno Juvenile Justice Campus, Minor’s Handbook, Telephone Use 9.

<sup>50</sup> Roush, David W., *Desktop Guide to Good Juvenile Detention Practice: Research Report, National Juvenile Detention Association* 48-50 (October 1996).

<sup>51</sup> The Annie E. Casey Foundation’s Juvenile Detention Alternative Initiation (JDAI) standards, Access (B)(2), p. 49.

## **F. Failure to Provide Access to Adequate and Culturally Appropriate Personal Hygiene Supplies**

Youth are not provided with culturally appropriate personal hygiene products, prejudicing the ability of youth from distinct ethnic or racial backgrounds to maintain their personal hygiene and manage their well-being.

DRC and YLC received consistent reports that hygiene products were ineffective or harmful. The available hair care products have caused scalp irritation for Black youth, calling into question the availability of culturally appropriate hair and skin care. The deodorant and soap were reported to leave youth feeling unclean and embarrassed.

Personal hygiene is a basic right. Every young person should have the opportunity to maintain their personal hygiene using gender, ethnically and culturally appropriate personal hygiene care products.<sup>52</sup> While these may seem minor issues, they loom large for young people in detention facilities. It is very important for their mental health, adaptability, and coping skills in locked facilities. Addressing these concerns may lead to improved well-being for youth and better relations between youth and staff. DRC and YLC recommends that Fresno County provide suitable hygiene products that represents the ethnic, gender, and cultural diversity of its youth in custody.

**...youth feel unclean and embarrassed.**

### **Other Recommendations to Provide a Safe and Healthy Setting for Youth:**

2. The County should modify its policy on hygiene products so that it is sensitive to the ethnic, gender, and cultural diversity of its youth in custody.

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<sup>52</sup> NHCCH Juvenile Standards, Personal Hygiene Y-F-04; JDAI Standards Environment G.7 (“The facility provides adequate and culturally appropriate hair and skin care products, services, and supplies for youth.”).

## G. Defects in Food Service

Juvenile Justice Commission Annual Inspection reports of 2014, 2015, and 2016 all detailed complaints from youth about the quality of food provided by JJC.<sup>53</sup> In the reports, food was described by youth as “tasteless”<sup>54</sup> and visually unappealing.<sup>55</sup> Although the Commission repeatedly noted the concerns about the food, the County reported that “the new contract for meals...is saving a tremendous amount of money” and “meet[s] basic standards.”<sup>56</sup>

### Many youth reported that they are always hungry...

The complaints received by DRC and YLC from youth were universal and consistent with conclusions reached in the inspection reports. The extent, details, and uniformity of the complaints of hunger are concerning. Many youth reported that they were hungry, because they were not being

served enough food and were not able to receive seconds at meals. Other youth stated that they were hungry because the food was of very poor quality. Some youth reported finding foreign objects in their food, such as hairs or rocks, and others reported sometimes receiving food that was still frozen.

Inadequate nutrition in the ages of ten through seventeen can be extremely damaging. Malnourishment increases anxiety, aggression, and risk of chronic health conditions. It can also permanently affect brain development and cognitive ability. DRC and YLC recommend that Fresno County review its food services contract and determine whether their vendor is providing adequate portions and nutrition.<sup>57</sup> The County should also allow extra portions be served to hungry youth and provide for snacks in between meals. Finally, the County should adopt JDAI guidelines and permit youth an opportunity to give input for their food selection.<sup>58</sup>

In response to these recommendations, the Probation department reported the following:

Trinity Food Services, the County’s food service vendor, is meeting Title 15 standards. The food services contract was awarded to Trinity Food Services through the County RFP process. FCSS is currently providing youth with snacks during the school day. Further, JJC Administration is considering options to augment snacks for the youth.

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<sup>53</sup> The Juvenile Justice Commission Annual Inspection Report 2014, 2015, 2016. The Juvenile Justice Commission of Fresno County is a state mandated commission with court-appointed citizens of Fresno County.

<sup>54</sup> The Juvenile Justice Commission Annual Inspection Report 14 (2016).

<sup>55</sup> *Ibid.* at 2.

<sup>56</sup> *Ibid.*

<sup>57</sup> NHCCH Juvenile Standards, Personal Hygiene Y-F-02 Nutrition and Medical Diets.

<sup>58</sup> JDAI Environment: Food (C)(3) (“Youth in the facility receive a wholesome, appetizing and nutritionally adequate diet. Youth have an opportunity to provide input into the menu and, where possible, food reflects the cultural backgrounds of youth.”)

In light of this response, DRC and YLC recommend that the County conduct, in consultation with an expert who has specialized knowledge on youth nutrition, a comprehensive assessment of the provision of food to youth in custody.

**Other Recommendations to Provide a Safe and Healthy Setting for Youth:**

3. The County should allow extra portions to be served to hungry youth and provide for snacks in between meals. The County should also conduct, in consultation with an expert who has specialized knowledge on youth nutrition, a comprehensive assessment of the provision of food to youth in custody. The assessment should evaluate whether youth are receiving adequate food and whether the food services vendor is providing adequate portions and nutrition and otherwise meeting the terms of the contract.

## **Conclusion**

As the designated federal Protection and Advocacy System for individuals with disabilities in the state of California, Disability Rights California emphasizes that the concerns stated within this report disproportionately impact youth with disabilities who are uniquely vulnerable to stringent standards of traditional correctional approaches and to poor conditions of confinement. Fresno County Juvenile Justice Campus has a good court school program that tracks students with disabilities and coordinates regular transition meetings for youth who will soon be released. However, there remain opportunities for continued improvement and more purposeful protection of youth, such as eliminating the unwarranted use of pepper spray, modifying the discriminatory guidelines for behavior management, and ending the use of telephone access as a form of discipline.

