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**STATE OF CALIFORNIA**  
**OFFICE OF ADMINISTRATIVE LAW**

**2016 OAL DETERMINATION NO. 2**  
**(OAL MATTER NO. CTU2016-0219-01)**

**REQUESTED BY: ANGELO ESCALANTE**

**CONCERNING: Sensitive Needs Yard Placement Considerations; Memoranda dated February 19, 2002, June 24, 2003 and February 14, 2012, Issued by the Department of Corrections and Rehabilitation.**

**DETERMINATION ISSUED PURSUANT TO GOVERNMENT CODE SECTION 11340.5.**

**SCOPE OF REVIEW**

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of "regulation" as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of "regulation," but was not adopted pursuant to the APA and should have been, it is an "underground regulation" as defined in California Code of Regulations (CCR), title 1, section 250.<sup>1</sup> OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

**CHALLENGED RULE**

The rules challenged as underground regulations are three memoranda from the California Department of Corrections and Rehabilitation (Department). The first of the three memoranda is titled "Sensitive Needs Yard [SNY] Placement Considerations," dated February 19, 2002 (attached as Exhibit A). It was modified by a memorandum dated June 24, 2003 (attached as Exhibit B), and reaffirmed in a memorandum dated February 14, 2012 (attached as Exhibit C). The three memoranda will collectively be referred to as "Memoranda."

<sup>1</sup> As defined by title 1, section 250(a), an

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

## DETERMINATION

OAL determines that the challenged rules contained in the Memoranda meet the definition of “regulations” that should have been adopted pursuant to the APA, but were not.

## FACTUAL BACKGROUND

On February 19, 2016, Angelo Escalante (Petitioner) submitted a petition to OAL challenging the Memoranda as underground regulations.

OAL accepted the petition for consideration on April 19, 2016. The petition was published in the California Regulatory Notice Register (Notice Register) on May 6, 2016. Comments from the public were solicited until June 6, 2016. No comments were received. The Department declined to submit a response to the petition which would have been due by June 20, 2016.

The February 19, 2002 memorandum titled “Sensitive Needs Yard Placement Considerations,” was signed by Larry Witek, the Department’s Deputy Director, Institutions.

The February 19, 2002 memorandum was modified by a June 24, 2003 memorandum titled “Modification to Memorandum Dated February 19, 2002, *Sensitive Needs Yard Placement Considerations*, regarding Housing Sensitive Needs Yard Eligible Inmates with Unresolved Enemy Concerns.” The June 24, 2003 memorandum was signed by W.A. Duncan, the Department’s Deputy Director, Institutions Division.

The February 19, 2002 memorandum was subsequently the subject of a February 14, 2012, memorandum titled “Sensitive Needs Yard Placement Consideration for Validated Prison Gang Dropouts.” It is signed by R. J. Subia, the Department’s Director, Division of Adult Institutions. All three memoranda are addressed to Wardens and Classification Staff, as well as others.

The February 14, 2012 memorandum reaffirms the February 19, 2002 memorandum, stating that “inmates validated as active or inactive prison gang members or associates by the Office of Correctional Safety (OCS) are ineligible for SNY placement. Only those validated inmates whose status has been changed to ‘dropout’ by OCS may be considered for SNY placement.” The February 14, 2012 memorandum indicates that in unique cases, where a compelling reason exists, SNY placement may be considered for an inmate who does not meet the criteria articulated in the three memoranda.

Inmates who indicate a desire to be removed from a validated status, i.e., as being associated with a Security Threat Group (STG), go through a process called debriefing (the process by which an inmate is determined by the Department to have dropped out of a Security Threat Group, or gang) and transferred from being a validated gang member (or associate) to being a “dropout.” The debriefing process is to provide information about the STG’s “structure, activities, and affiliates.” (CCR, title 15, section 3378.5 (b)). The debriefing is a long

process, often lasting many months, where the inmate provides detailed information about their past, including in-depth criminal activity, which is reviewed and evaluated by Department staff (See sections 3378.5 and 3378.6 of title 15 of the CCR). Only fully debriefed inmates, as designated by the Department, are eligible for SNY placement according to the Memoranda.

In addition, the Memoranda challenged as underground regulations establish SNY placement for certain inmates pursuant to specific criteria, and establish procedures for when and how to assign SNY housing. Article 7 of title 15 of the CCR, titled "Segregated Housing," deals with various types of segregated housing for inmates. A search of this and other articles in title 15 did not reveal regulations concerning this type of SNY housing, or regulations detailing the criteria established in the attached Memoranda.

### UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (a), provides that:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5 it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of "regulation" as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA (Gov. Code sec.11340(b)). An OAL determination is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference" in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

### ANALYSIS

OAL's authority to issue a determination extends only to the limited question of whether the challenged rule is a "regulation" subject to the APA. This analysis will determine (1) whether the challenged rule is a "regulation" within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

... every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4<sup>th</sup> 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, §11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, §11342, subd. (g)).<sup>2</sup>

As stated in *Tidewater*, the first element used to identify a “regulation” is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.<sup>3</sup>

The challenged rules in the attached Memoranda affect current and future inmates. Certain inmates are allowed to be housed in these SNY placements based upon the criteria established in the Memoranda. The Memoranda concern current and future inmates under the custody of the Department and those inmates who seek placement in the SNYs. The special housing arrangement will be extended to some, but not all inmates, as identified in the Memoranda. Only those from STGs designated as “dropouts” are eligible. The Memoranda affect current and future inmates who may want to be placed in a SNY.

The Memoranda, therefore, apply generally to inmates throughout the state, and so the first element of *Tidewater* is met.

The second element used to identify a “regulation” as stated in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure.

Penal Code section 5054, states in part:

Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the Secretary of the Department of Corrections and Rehabilitation.

<sup>2</sup> Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

<sup>3</sup> See also *Roth v. Department Of Veterans Affairs*, (1980) 110 Cal.App.3d 14, 19; 167 Cal.Rptr. 552, 557.

Penal Code section 5058(a) states:

The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code [the APA], except as otherwise provided in this section and Sections 5058.1 to 5058.3, inclusive. All rules and regulations shall, to the extent practical, be stated in language that is easily understood by the general public.

The Memoranda indicate which inmates will be allowed to participate in the SNY placement, as well as how inmates are allowed in and out of the SNYs. Thus, the Memoranda establish administration criteria for management of the prisons, as well as provide for procedures for housing inmates at those institutions. The Memoranda thereby implement, interpret and make specific Penal Code sections 5054 and 5058.

The Memoranda, therefore, meet the definition of "regulation" in Government Code section 11342.600.

The final issue to examine is whether the Memoranda fall within an express statutory exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies. Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant to Government Code section 11346, the procedural requirements established in the APA "shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly.*" (Emphasis added.)

The Department has not identified an express statutory exemption from the APA that would apply to the Memoranda, nor did OAL find such an exemption.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the Department:

(c) The following are deemed not to be "regulations" as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility....

This exemption is called the "local rule" exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4<sup>th</sup> 841, 845), the court discussed the nature of a "local rule" adopted by the warden for the Richard J. Donovan Correctional

Facility (Donovan) which dealt with correspondence between inmates at Donovan. The court indicated that only policies that *did not apply generally* would meet the requirements of the “local rule” exemption.

The challenged rules in this case, the Memoranda, do not apply to only one institution, but provide rules generally applicable to all inmates throughout the state. The Memoranda establish criteria to determine which inmates will be allowed to participate in the SNY placements. Therefore, the rules contained in the Memoranda are not “local rules,” and do not fall within the local rule exemption.

### PUBLIC COMMENTS

OAL did not receive any public comments.

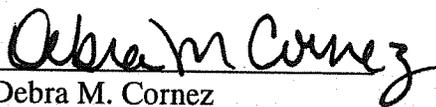
### AGENCY RESPONSE

The Department declined to respond to the petition.

### CONCLUSION

In accordance with the above analysis, OAL determines that the rules contained in the Memoranda meet the definition of “regulations” that should have been adopted pursuant to the APA, but were not.

Date: September 6, 2016

  
Debra M. Cornez  
Director

  
Elizabeth A. Heidig  
Assistant Chief Counsel

cc: Scott Kernan, Secretary  
Timothy Lockwood, Chief

2016 OAL Determination No. 2  
CTU2016-0219-01  
September 6, 2016

# EXHIBIT A

Attachment

DD 14-02

Department of Corrections

State of California

# Memorandum

CEP T. ENTER N  
CDV IC ICE

- 1 COPY REC'D *all CC-I's\**
- 1 COPY TO CDW
- 1 COPY TO AW - BS
- 1 COPY TO AW - CS
- 1 COPY TO AW - H & P
- 1 COPY TO AW - RC
- 1 COPY TO *all Captains*
- 1 COPY TO *CPAR-MC CPAR-RC*
- 1 COPY TO FILE

Date February 19, 2002

To Warden  
 Classification and Parole Representatives  
 Correctional Counselor III/Reception Center  
 Classification Staff Representatives

Subject: SENSITIVE NEEDS YARD PLACEMENT CONSIDERATIONS

*\*Distribute to all CC-I's*

This memorandum responds to staff's request for direction regarding making Sensitive Needs Yard (SNY) placement decisions. The following are some considerations and the SNY housing philosophy. Do not interpret these guidelines as rigid criteria; the decision to place an inmate in a SNY always requires a case-by-case review using sound correctional judgment and experience. There will always be unforeseen circumstances to make each case unique.

The primary concern is to ensure "Sleepers" or "Predators" are not endorsed into the SNY. This type of inmate is intent on carrying out assaults on SNY inmates and often has a documented affiliation with a prison or street gang. When you are reasonably confident that the inmate is not a " Sleeper" or "Predator," but are less confident that his or her safety concerns are more than his or her unwarranted feeling of defenselessness, it is better to error on the side of safety by placing this inmate into the SNY. As the number of inmates requesting and receiving SNY placement grows, so will the number of SNY beds. These facilities simply become housing for programming inmates who are willing not to prey upon other inmates in exchange for a feeling that they are less likely to be preyed upon. In this scenario, it is necessary to indicate on the California Department of Corrections (CDC) Form 128-G. *Chrono-Classification (Regular)*, and the endorsement chrono that the inmate is "approved for SNY housing in that it appears he or she would be compatible in a SNY housing setting."

Most inmates appropriate for SNY housing fall into one of the following general categories:

- **Prison Gang Dropout**

The six major prison gangs are the Nuestra Familia (NF), Mexican Mafia (EME), Black Guerrilla Family (BGF), Aryan Brotherhood (AB), Northern Structure (NS), and the Nazi Low Riders (NLR). The Law Enforcement and Investigation Unit (LEIU) must validate these inmates as dropouts. This is evidenced in the

Wardens  
Classification and Parole Representatives  
Correctional Counselor IIIs/Reception Centers  
Classification Staff Representatives  
Page 2

Central File (C-File) by the presence of a CDC Form 128-B2, *Gang Validation/Rejection Review*, signed by LEIU staff in accordance with California Code of Regulations (CCR) Section 3378(c), denoting the inmate's dropout status.

Disruptive group dropouts may also be appropriate SNY housing populations. The LEIU disruptive group dropout documentation is not required if the committee determines that the inmate is not a threat to other SNY inmates.

- **Victim of Assault**

Documented information in the C-File that the inmate has been a victim of serious assault(s). The inmate may have been assaulted because of a commitment offense or failure to commit an ordered assault upon another. This type of case generally includes dynamics involving a group or groups of enemies. The failure of the inmate to provide positive identification of an enemy or assailant does not cause, in and of itself, rejection of an inmate's need for SNY housing. However, there should be documentation in the C-File that staff have attempted to identify the assailant through some type of investigation.

- **Significant Enemy Concerns**

Testimony in open court, as well as highly publicized crimes (not just local to a particular area), may generate the need for SNY housing. Additionally, some inmates may incur many enemies for a variety of reasons. In these cases, General Population (GP) placement in a non-SNY GP is difficult, and the case should be considered for SNY placement.

Inmate "snitches" or informants are appropriately housed on SNY when their activity becomes known on the GP, making widespread, yet not necessarily identified, enemies.

- **Other Safety Concerns**

You may consider cases with other safety concerns for placement into or removal from a SNY facility. High notoriety, public interest cases and known sex offenders may experience safety issues that are significant statewide,

Wardens  
Classification and Parole Representatives  
Correctional Counselor IIIs/Reception Centers  
Classification Staff Representatives  
Page 3

limiting other housing options. These cases could also include an inmate's request based on an unsubstantiated fear, prior housing in a SNY facility, youthful appearance, physical or mental disability, etc. When the inmate has experienced multiple Administrative Segregation Unit (ASU) placements due to his or her claims of unsuccessful GP housing based on safety concerns, including commitment offense, former law enforcement officers, former CDC employees, etc., they should be evaluated for SNY housing.

This category includes inmates who have married across racial lines or who refuse to recognize inmate population-imposed racial or cultural lines, resulting in enemy concerns making them appropriate for SNY housing.

Sometimes inmates create their own safety concerns by running up drug or gambling debts. While these behaviors should be dealt with through the Inmate Disciplinary process, they do not preclude the inmate from obtaining SNY housing. The committee should impress upon such inmates that continued conduct of a similar nature, causing enemy situations on the SNY, may result in less desirable future housing, including placement on Indeterminate Security Housing Unit (SHU) status.

In general, take a liberal approach to placing an inmate in a SNY and a conservative approach on any considered action to remove an inmate from the SNY. The primary concern must always be the inmate's safety.

A Classification Committee reviewing a case for transfer to a SNY may have doubts as to whether an inmate requires placement into a SNY. Remember, as a general rule, if the inmate is requesting SNY housing; has had the behavioral expectations of a SNY inmate explained to him or her and agrees to abide by these expectations; and there is no information to indicate the inmate might be a "Sleeper" or "Predator," then liberally refer that inmate for SNY placement. If you have reason to doubt that he or she is compatible or nonthreatening to other SNY inmates, document your concerns and make an alternative recommendation.

The Classification Committee needs to clearly explain all considerations in making the SNY placement or removal recommendation in the CDC Form 128-G. This consideration must always document the inmate's desire to go or not go to a SNY. A transfer referral should address the double- or single-cell status of the

Wardens  
Classification and Parole Representatives  
Correctional Counselor IIIs/Reception Centers  
Classification Staff Representatives  
Page 4

inmate, as with any inmate. Single-celling is not required upon arrival at a SNY, and the sending institution should explain any "S" suffix they have applied to allow the receiving institution to determine if this issue continues to apply at their facility.

The following are some specific questions asked regarding this issue and Institution Division's perspective (without the added information gained from a face-to-face evaluation):

The inmate stated he or she is opposed to transfer to a SNY. Should he or she be referred for SNY anyway? In this instance, SNY housing is not a recommended option. Inmates housed in SNYs must be willing to leave the uncompromising, tough convict image behind. If he or she is not willing to get along without controlling other inmates, or willing to accept the "weak" perception other inmates will now have of him or her based on the SNY placement, other options should be explored. The CDC Form 128-G needs to document where the inmate thinks that he or she can successfully program.

Note: Ensure the Correctional Counselor has conducted a thorough C-File review to address all safety concerns.

The inmate is requesting SNY housing, but the confidential file notes that he or she is a Predator. Should he or she be precluded from SNY? Look at his or her safety concerns and evaluate his or her predatory behavior. Talk to the institution staff who work closely with him or her (housing officer, work supervisor, etc.) and document their assessment. If the committee determines that this inmate should be given an opportunity to program in a SNY facility, they should document in the chrono that the inmate has demonstrated some predatory behavior. They should also state that if this behavior continues, the inmate may be considered for Indeterminate SHU placement, putting him or her on notice that further predatory conduct will not be tolerated in a SNY.

How do you address it when the inmate needing SNY housing also fits the guideline for 180-degree housing? Document in the CDC Form 128-G that the inmate meets 180-degree housing guidelines, but SNY placement needs override the 180-degree issues.

Wardens  
Classification and Parole Representatives  
Correctional Counselor IIIs/Reception Centers  
Classification Staff Representatives  
Page 5

How do you address an inmate who requests SNY placement, but also fits the criteria for Minimum Support Facility (MSF) housing? In this case, we need to carefully review the reason(s) for requesting SNY placement. There are many MSFs in the state and it is unlikely that the inmate would be unable to program in at least one of them. It should be the exception to recommend placement of an MSF-eligible inmate in a SNY, but it is possible.

Since we have determined that SNY housing should be liberally approved, are we going to investigate an inmate's claim that he or she was assaulted in county jail, California Youth Authority, or while on parole/probation in the community due to his or her commitment offense? Yes. Whether considering SNY housing or not, we should investigate and identify any potential enemy who may come to CDC, if possible. The results of the investigation should then be documented on the inmate's CDC Form 812, *Notice of Critical Case Information-Safety of Persons*. This is a standard counseling responsibility.

What if the inmate fits the guidelines for SNY housing, but has enemies at each of the SNYs? In all SNY cases, the counselor is responsible to conduct exhaustive research regarding the validity and necessity for all of the enemies listed at the most appropriate placement option before taking the inmate to classification. The counselors for each of the enemies listed will work with one another telephonically to attempt to resolve enemy situations.

In some instances, the reasons for being an enemy run too deep and the passion surrounding the situation is too great to attempt to program the inmates on the same facility. This may be the case with codefendants when one inmate testified against the other, or it may occur when one inmate murdered the other inmate's family member. Staff need not attempt to resolve such obvious enemy situations.

In many cases, however, the situation may have arisen from minor issues, such as a fistfight, with no serious ramifications, or a "disrespect" issue. In these cases, both inmates may be ready to drop the enemy designation based on a willingness to get along with other inmates being a condition of SNY placement. At a minimum, enemies should be interviewed at both institutions to attempt to resolve the enemy concerns. This provides more SNY placement options for both inmates.

Wardens  
Classification and Parole Representatives  
Correctional Counselor Ills/Reception Centers  
Classification Staff Representatives  
Page 6

Whatever the result, a CDC Form 128-B, *Chrono-General*, should be placed in the inmates' C-Files to document efforts to resolve the issue. The CDC Form 128-B shall contain the requisite three elements:

- Statements of Inmate One.
- Statements of Inmate Two.
- Staff determinations.

If the inmates are found compatible, the CDC Form 812, *Notice of Critical Case Information-Safety of Persons*, shall also be updated for each inmate.

What if there are enemies at all SNYs and no appropriate SNY can be cleared by working with the inmates and institutions to delete enemies? If there is one inmate enemy (or two inmates if absolutely necessary) at an appropriate SNY whose enemy situation can not be resolved based on interviews, then staff should consider clearing that SNY by moving the enemy(ies) to another SNY appropriate to that inmate's needs. By researching/coordinating with the other SNY institution staff, the one SNY may be cleared of enemies. It would be appropriate in these cases to contact a Classification Services Unit (CSU) Facility Captain to discuss the case before exerting effort in this endeavor. In some cases, the SNY issues may be resolved by using an administrative override (probably "ENE" or "BEH") to place the inmate with a Level III Classification Placement Score, for example, in a Level II facility appropriate to his sensitive need issue(s).

If no appropriate SNY can be cleared, the next option would be a Protective Housing Unit (PHU) placement. If the PHU placement also proves inappropriate, the case should be referred to Departmental Review Board (DRB) for out-of-state placement consideration. It should be noted that out-of-state transfer requires the inmate's concurrence and may take a protracted period to complete. The last resort for a programming SNY-type inmate would be ASU or Indeterminate SHU housing. This placement must be pre-approved by the CSU SHU Facility Captain or Chief and must be reviewed by classification at least every 180 days to reexamine alternative placement possibilities.

Do different SNYs have different criteria? They have no different criteria concerning SNY issues, but would have exclusionary criteria related to some medical or mental health care needs. For example, the California Substance Abuse Treatment Facility and State Prison at Corcoran would be an appropriate placement for inmates

Refer to \* Dep Dir memo of 6/24/03. (attached)

Wardens  
Classification and Parole Representatives  
Correctional Counselor IIIs/Reception Centers  
Classification Staff Representatives  
Page 7

requiring wheelchair access (DPW); Mule Creek State Prison or California State Prison-Los Angeles County are able to house Enhanced Outpatient (EOP) Level of Care inmate. You should not recommend placement for an inmate on heat-sensitive medication in Calipatria State Prison. The custody and classification levels also differ based on sentence, history, and classification placement score. However, the determination for routine GP or SNY housing is consistent. This is because SNY housing is truly a GP placement for inmates who simply wish to live in a nonviolent environment. For this reason, rigid criteria would be self-defeating. You may receive EOP or DPW inmates on a SNY for housing who have no SNY concerns. Also, when an institution converts to a SNY, an existing population of inmates may remain for "FAM," "WOR," or "SCH," with no special case factor.

Are SNY inmates expected to return to GP? Unlike ASU and SHU, a programming SNY inmate is not generally expected to return to GP. This is because the SNY housing, in and of itself, adds a label or stigma to the inmate. However, as the inmate's classification placement score decreases, he or she may experience less pressure from lower-level peers. These inmates should always be considered for a MSF or other priority placement when qualified. If the inmate was placed in a SNY based upon his or her youthful appearance, the Classification Committee may consider this case for transfer to GP when the inmate has physically matured, if he or she wishes to be housed in a GP facility. There is no absolute preclusion to releasing a SNY inmate to GP if it can be safely accomplished.

How can a SNY facility deal with an inmate who becomes a management concern while on the SNY? These types of cases are beginning to manifest themselves in our SNYs. Generally, they fall into three basic categories:

- 1 Nuisance management concerns include non-SHUable, nonviolent disciplinary, drug users, program failures, general noncompliant inmates who are not considered a security threat.

These inmates are subject to the CCR disciplinary dispositions and penalties. These include credit loss, canteen loss, privilege loss, drug testing, etc. In addition, if their classification score increases, they may become candidates for increased custody transfers. With SNY nuisance inmates, these options remain the same as with GP inmates.

Wardens  
Classification and Parole Representatives  
Correctional Counselor IIs/Reception Centers  
Classification Staff Representatives  
Page 8

2. SNY inmates who commit staff assaults, but are not assaultive to other SNY inmates.

These inmates are also subject to the CCRs and eligible for ASU and SHU housing. If the Institution Classification Committee (ICC) assesses and imposes a SHU term, once the inmate serves his or her SHU term, absent further behavior, ICC must evaluate the case and make an appropriate recommendation for GP or SHU Indeterminate housing. These inmates do return to GP provided staff have responsible expectations that they will be safe in the GP housing units. If their SNY case factors remain after the SHU term expires, absent further behavior, they may be considered for return to an appropriate SNY. If a SNY inmate repeats this type of behavior, an Indeterminate SHU placement, following any imposed SHU term, would be appropriate. Placement on a 180-design facility will continue to be undesirable.

3. Those SNY inmates who become predatory or display repeated inmate-assaultive behavior toward other SNY inmates.

Again, these inmates are subject to a SHU term. As stated above, these inmates may be returned to GP, an appropriate SNY, or be placed on Indeterminate SHU status. One assaultive offense by a SNY inmate, by itself, does not make return to SNY placement inappropriate if the circumstances lead the ICC to believe the offense was isolated. The inmate returned to a SNY facility shall be advised that further assaultive behavior may result in Indeterminate SHU status.

Under no circumstances do we place an inmate in GP if we believe that his or her safety would be threatened by such housing; your correctional judgment is critical. It is important not to confuse SNY placement with PHU placement. The PHU housing is far more limited and the placement criteria far more rigidly controlled. Referral to the DRB is appropriate when ICC requires DRB action to place a particularly difficult case or an out-of-state case. When considering an inmate for SNY placement:

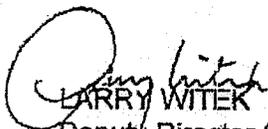
- The inmate *does not* have to prove "absolute" safety concerns/enemy concerns for SNY placement.

Wardens  
Classification and Parole Representatives  
Correctional Counselor IIIs/Reception Centers  
Classification Staff Representatives  
Page 9

- He or she *does not* have to be a "validated" dropout to have "valid" gang-related safety concerns.
- The inmate *does not* have to have testified in open court to have an "informant" or "snitch" status.

It is better to place an inmate who "does not need" SNY housing in a SNY than to place an inmate who "does need" SNY housing in GP because he or she had no evidence of the SNY need. Again, the above guidelines are not inclusive of all the reasons for SNY placement.

If you have any questions or require additional clarification, please call Bart Powell, Facility Captain, CSU, or Jeff Diggs, Chief, CSU, at (916) 322-2544.

  
LARRY WITEK  
Deputy Director (A)  
Institutions Division

cc: Edward S. Alameida, Jr.	Michael H. Jaime	Ernest C. Van Sant
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William A. Duncan	Gregory W. Harding	Gloria Rea
K. W. Prunty	Marilyn Kalvelage	M. B. Jones
Ana Ramirez-Palmer	John R. Depue	Academy Administrator (A)
Sandi Grout	Yvette M. Page	Ombudsmen's Office (7)
Wendy Still		

2016 OAL Determination No. 2  
CTU2016-0219-01  
September 6, 2016

# EXHIBIT B

State of California

Department of Corrections

## Memorandum

Date June 24, 2003

To Regional Administrators, Institutions Division  
Wardens  
Classification and Parole Representatives  
Correctional Counselor IIIs/Reception Centers  
Classification Staff Representatives

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*all CC-II's\**

*\* Distribute to CC-II's*

Subject: MODIFICATION TO MEMORANDUM DATED FEBRUARY 19, 2002, SENSITIVE NEEDS YARD PLACEMENT CONSIDERATIONS, REGARDING HOUSING SENSITIVE NEEDS YARD ELIGIBLE INMATES WITH UNRESOLVED ENEMY CONCERNS

This memorandum modifies policy stated in the February 19, 2002, memorandum, *Sensitive Needs Yard Placement Considerations*. Effective immediately, the authorization for housing Sensitive Needs Yard (SNY)-type inmates on Indeterminate Security Housing Unit (SHU) status, based solely on enemy concerns, shall require Departmental Review Board (DRB) approval.

The specific change in the above noted memorandum concerns page 6, fourth paragraph, which states, in part, that as a last resort a SNY-type inmate may be housed on Indeterminate SHU status with the approval of the Chief, Classification Services Unit (CSU), or SHU Facility Captain, CSU.

The concept of endorsing inmates with SNY case factors to Indeterminate SHU status is not fiscally sound nor does it embrace the expectation that inmates who meet SNY placement consideration, and who wish to participate in that type of General Population program, will depart from their personal differences with other inmates. Inmates who desire to live in a SNY environment must leave behind the habits and disruptive behavior that create less serious enemy situations associated with gang activity, victimization of other inmates based on their criminal offense, fistfights with no serious injury, past grudges based on unpaid drug debts, etc.

Staff will need to explain to the inmate that past problems need to be forgiven/forgotten as a part of being placed in a SNY. If there is one inmate enemy at an appropriate SNY whose enemy situation cannot be resolved based on interviews, then staff should consider clearing that SNY by moving the enemy(ies) to another SNY appropriate to that inmate's needs.

Regional Administrators, Institutions Division  
 Wardens  
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 Page 2

If no appropriate SNY can be cleared, the next option would be a Protective Housing Unit (PHU) placement. If the PHU placement also proves inappropriate, the case should be referred to DRB with a recommendation for alternate housing, such as out-of-state placement consideration or Indeterminate SHU if other factors are present. It should be noted that out-of-state transfer requires the inmate's concurrence and may take a protracted period to complete.

In all SNY cases, institution staff are responsible to conduct exhaustive research regarding the validity and necessity for all enemies listed prior to referring a case to DRB.

Institutions are encouraged to contact the CSU for assistance in identifying placement options prior to referring cases to the DRB.

If you have any questions or require additional clarification, please call Linda Rianda, Chief, CSU, at (916) 322-2544, or via e-mail at [Linda.Rianda@corr.ca.gov](mailto:Linda.Rianda@corr.ca.gov), or Bart Powell, Facility Captain, CSU, at (916) 445-1810, or via e-mail at [Barton.Powell@corr.ca.gov](mailto:Barton.Powell@corr.ca.gov).

*(Handwritten signature)*  
 W. A. DUNCAN  
 Deputy Director  
 Institutions Division

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2016 OAL Determination No. 2  
CTU2016-0219-01  
September 6, 2016

# EXHIBIT C

# Memorandum

Date : February 14, 2012

To : Associate Directors, Division of Adult Institutions  
Wardens  
Classification Staff Representatives  
Classification and Parole Representatives  
Correctional Counselors III, Reception Centers

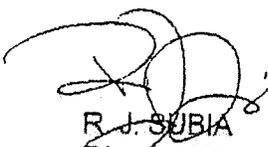
Subject: **SENSITIVE NEEDS YARD PLACEMENT CONSIDERATION FOR VALIDATED PRISON GANG DROPOUTS**

The purpose of this memorandum is to revisit the attached February 19, 2002, memorandum titled, *Sensitive Needs Yard Placement Considerations*, and reaffirm the direction provided as it relates to the placement of validated prison gang dropouts on Sensitive Needs Yards (SNY).

Specifically, inmates validated as active or inactive prison gang members or associates by the Office of Correctional Safety (OCS) are ineligible for SNY placement. Only those validated inmates whose status has been changed to "dropout" by OCS may be considered for SNY placement. An inmate's prison gang status may only be verified with the presence of an unmodified California Department of Corrections and Rehabilitation Form 128-B2, Gang Validation/Rejection Review chrono.

Institutions may have unique cases where a compelling reason exists to consider SNY placement that goes outside the direction provided herein. In those cases, the institution is directed to refer the case, via the Institution Classification Committee, to the Departmental Review Board for review and consideration.

If you have any questions, please contact Chris Brown, Facility Captain, Classification Services Unit (CSU), at (916) 445-1810, or Pat Kennedy, Correctional Counselor III, CSU, at (916) 322-4730.

  
R. J. SUBIA  
Director (A)  
Division of Adult Institutions

Attachment

cc: Kathleen Dickinson  
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