

I. INTRODUCTION

A. On August 30, 2002, the United States notified State of Maryland officials of its intent to investigate conditions of confinement at the Cheltenham Youth Facility ("Cheltenham") in Cheltenham, Maryland and the Charles H. Hickey, Jr. School ("Hickey") in Baltimore, Maryland, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141").

B. Between April 28 and June 12, 2003, the United States toured Cheltenham and Hickey with consultants in the fields of juvenile justice, medical care, mental health care, education and sanitation. At the time of these tours and until April 1, 2004, Hickey was operated by a for-profit corporation.

C. On April 9, 2004, the United States issued a findings letter pursuant to 42 U.S.C. § 1997 (a)(1), which concluded that certain conditions at Cheltenham and Hickey violated the constitutional and federal statutory rights of juveniles confined there. The United States recognizes that its letter notifying the State of Maryland of the results of its investigation focused, by virtue of statutory requirements, on conditions the United States believed to violate federal law and, therefore, did not discuss positive aspects of the State's facilities.

D. The State of Maryland does not admit that it has violated the federal rights of juveniles confined at Cheltenham or Hickey, but remains firmly committed to enhancing conditions at its residential facilities.

E. The parties to this Settlement Agreement ("Agreement") are the United States Department of Justice and the State of Maryland, the Maryland Department of Juvenile Services, and their successors, contractors and agents. While not named in this agreement, the parties recognize that the cooperation of the Maryland State Department of Education and other state agencies will be required to comply with this Agreement.

F. The State of Maryland represents that it has already taken measures to implement many provisions of this Agreement, most notably by dramatically reducing the population at

Cheltenham and by assuming control of and investing resources at Hickey. The State is further enhancing these facilities by adding millions of dollars in budgetary resources for these facilities in State Fiscal Year 2006, which begins on July 1, 2005. The United States applauds the State's efforts to address proactively the measures outlined in the Agreement, but has not yet had the opportunity to assess these efforts.

G. The State has cooperated and negotiated in good faith with the United States regarding its investigation of Cheltenham and Hickey, provided the United States and its consultants full access to the toured facilities and documents, and was receptive to the on-site recommendations of the Department of Justice's consultants.

H. In entering into this Agreement, the parties have given substantial consideration to its impact on public safety and the operation of the juvenile justice system in Maryland, and believe that this Agreement is narrowly drawn to provide the least intrusive means necessary to address the issues identified in the United States' investigation without adversely affecting the State's significant interest in protecting the safety of the citizens of Maryland through the use of secure juvenile facilities.

I. The United States agrees that once youth are admitted to State facilities, the State of Maryland has a right to impose policies and procedures for the protection of the public, the staff of DJS, and the juveniles within the State's custody. The parties agree that the relief provided in this Agreement extends no further than is necessary to ensure protection of youths' federal rights, and that so long as the State's policies and procedures are in accordance with federal laws and meet constitutional standards, the State of Maryland has the right to determine the philosophy by which it shall operate its juvenile justice system.

J. This Agreement is intended to enhance the conditions at the facilities. This Agreement is not intended to be used to prove deficiencies in the level of care provided by the State at any of the facilities in any proceeding other than an enforcement action between the parties.

K. It is not the intent of the DOJ to usurp the role of the State in determining how best to achieve constitutional standards, and this Agreement will be construed consistent with the principles of Federalism, to which the DOJ is firmly committed.

L. The provisions of this Agreement shall apply to all youth in the facilities.

II. DEFINITIONS

In this Agreement, the following definitions apply:

A. "Cheltenham" means the Cheltenham Youth Facility, located at 11001 Frank Tippet Road, Cheltenham, Maryland, and any facility that may be built to replace or supplement that facility.

B. "DJS" means the Maryland Department of Juvenile Services.

C. "DOJ" means the United States Department of Justice, which represents the United States in this matter.

D. "Effective Date" means the last date on which the Agreement has been signed by counsel or a party.

E. "The facilities" means Cheltenham and Hickey collectively.

F. "Hickey" means the Charles H. Hickey, Jr. School, located at 2400 Cub Hill Road, Baltimore, Maryland, and any facility that may be built to replace or supplement that facility, but specifically excludes the New Directions program which, while located upon the grounds of Hickey, is licensed by the Maryland Department of Health and Mental Hygiene ("DHMH") as a residential treatment center, is established pursuant to the State's Health Plan for Facilities and Services, is regulated by the DHMH pursuant to COMAR 10.24.07.02(3), and was not included in the tours of the facility or in the investigation undertaken by the United States.

G. "IEP" means Individualized Education Program as defined by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1490, and the regulations promulgated thereunder.

H. "Include" or "including" means "include, but not be limited to" or "including, but not limited to."

I. "Implement" means to give practical effect and to achieve actual fulfillment by concrete measures, including appropriate training of relevant staff.

J. "OPRA" means the Maryland Department of Juvenile Services' Office of Professional Responsibility and Accountability.

K. "Qualified medical professional" means a physician, nurse or other medical provider licensed and sufficiently trained to provide the services he or she undertakes to provide.

L. "Qualified mental health professional" means a mental health care provider licensed and sufficiently trained to provide the services he or she undertakes to provide.

M. "Quality Assurance Program" means a system of self-audit and improvement to assess the implementation and effectiveness of all remedies instituted pursuant to this Agreement, to identify deficits that may exist, and to effectuate new measures to cure deficits identified.

N. "Seclusion" means placement of a youth alone in a locked room.

O. "Secretary" means the Secretary of the Maryland Department of Juvenile Services.

P. "State" means the State of Maryland and the Maryland Department of Juvenile Services, and their successors, contractors and agents.

Q. "Suicide Precautions" means any level of watch, observation or measures to prevent self-harm.

R. "Train" means sufficiently instruct in the skills addressed, including ongoing assessment of mastery of instructional material.

S. "Youth" means any juvenile or juveniles residing at any of the facilities during the operation of this Agreement.

III. SUBSTANTIVE REMEDIAL MEASURES

A. IN GENERAL

The use of the future tense in this Section should not be construed to indicate that the State has not already put into place many of the measures set out in this Section. Rather, the use of the future tense in this Section indicates that these remedies are forward-looking and that the State intends not only to continue with those measures it has already undertaken, but to work diligently to identify problems and fashion solutions to them at the facilities. The DOJ has not had the opportunity to assess whether these measures have been implemented or are effective. Compliance with the provisions of this Agreement shall be measured solely by the Monitoring Team as set forth in Section V A. below.

B. PROTECTION FROM HARM

i. Protection from Abuse The State shall take all reasonable measures to assure that youth are protected from violence and other physical or sexual abuse by staff and other youth.

ii. Reporting of Staff Misconduct, Youth-on-Youth Violence, and Staff Uses of Force The State shall develop and implement appropriate policies, procedures and practices to enhance the reporting to appropriate individuals of incidents of staff misconduct, youth-on-youth violence and staff uses of force, and to provide that such reporting may be done through confidential means, without fear of retaliation for making the report. The State shall document and report appropriately and with sufficient detail all such incidents.

iii. Health Care Inquiries Regarding Injury A nurse or other health care provider shall question, outside the hearing of other staff or youth, if appropriate, each youth who

reports to the infirmary with an injury, regarding the cause of the injury. If, in the course of the youth's infirmary visit, a health care provider suspects abuse, that health care provider shall immediately:

- a. take all appropriate steps to preserve evidence of the injury (e.g., photograph the injury and any other physical evidence);
- b. if a report has not already been made, report the suspected abuse to the appropriate authorities;
- c. document adequately the matter in the youth's medical record; and
- d. if one has not already been initiated, complete an incident report.

iv. Uses of Force The State shall develop and implement comprehensive policies, procedures and practices governing uses of force to assure that the least amount of force necessary is used on youth for the safety of staff, youth residents, and visitors.

v. Senior Management Review The State shall develop and implement a system for review by senior management of uses of force, alleged child abuse and youth-on-youth violence.

vi. Staff Training in Behavior Management, De-Escalation and Crisis Intervention The State shall develop and implement a curriculum for appropriate competency-based staff training in behavior management, de-escalation techniques, appropriate communication with youth, and crisis intervention. Such training shall be completed before staff may work independently with youth.

vii. Behavior Management Program The State shall develop and implement an effective behavior management program at the facilities throughout the day, including during school time and shall continue to implement the behavior management plan. The State shall develop and implement policies, procedures and practices under which mental health staff provide regular consultation regarding behavior management to direct

care and other staff involved in the behavior management plans for youth receiving mental health services, and shall develop a mechanism to assess the effectiveness of interventions utilized.

viii. Structured Rehabilitative Programming The State shall provide appropriate structured rehabilitative programming to youth in the facilities.

ix. Staffing The State shall employ sufficient numbers of adequately trained direct care and supervisory staff to supervise youth safely, protect youth from harm, and allow youth reasonable access to: medical, mental health, education services, structured rehabilitative programming, and adequate time spent in out-of-room activities, and that it shall continue to provide sufficient numbers of staff at the facilities.

x. Security Systems The State shall adequately maintain housing unit security systems, including individual room door locks.

xi. Restraint Practices The State shall utilize only safe methods of restraint. The State shall take all reasonable measures to prevent the use of unsafe methods of restraint, including any restraint method that involves placing downward pressure on the torso or neck, or otherwise presents a risk of asphyxia or other serious injury.

xii. Seclusion The State shall develop and implement policies, procedures and practices for seclusion to be used only when appropriate and in an appropriate manner, and to document fully its use.

xiii. Due Process The State shall provide youth confined in seclusion for more than 24 hours with due process, including a hearing by an impartial official. The State shall develop and implement a due process procedure for disciplinary matters.

xiv. Access to Toilets The State shall develop and implement written procedures and practices at the facilities to provide all youth with timely access to toilets as needed.

xv. Admissions Intake and Orientation The State shall develop and implement policies, procedures and practices

to establish a consistent, orderly admissions intake system, conducive to gathering necessary information about youth, disseminating information to staff providing services and care for youth, and maintaining their safety. The State shall take all reasonable measures to assure that each youth entering the facility receives an effective orientation that includes: simple directions for reporting abuse, assures youth of their right to be protected from harm and from retaliation for reporting allegations of abuse, and which clearly sets forth the rules youth must follow at the facility, explains how to access medical and mental health care and the grievance system, and provides other information pertinent to the youth's participation in facility programs.

xvi. Employment Practices The State shall only employ individuals fit to work with youth residents at the facilities. The State shall utilize all reasonable measures to determine applicants' fitness to work in a juvenile justice facility prior to hiring employees for positions at the facilities.

xvii. Classification The State shall develop and implement a classification system that places youth appropriately and safely within the facility, and provides for reclassification in appropriate circumstances.

C. SUICIDE PREVENTION

i. Implementation of Policy The State shall take all reasonable measures to assure that all aspects of its Suicide Prevention Policy are implemented.

ii. Suicide Risk Assessments Timely suicide risk assessments, using reliable assessment instruments, shall be conducted at the facilities:

a. for all youth exhibiting behavior which may indicate suicidal ideation, and

b. when determining whether to place a youth on suicide precautions or change the level of suicide precautions. Suicide risks assessment shall be conducted by a qualified mental health professional. If no such

professional is available to conduct the assessment due to exceptional circumstances, it shall be conducted by another staff member who has received specific training in conducting such assessments. Youth shall not be removed from suicide precautions by anyone other than a qualified mental health professional.

iii. Mental Health Response to Suicidal Youth Youth at the facilities who demonstrate suicidal ideation or attempt self-harm shall receive timely and appropriate mental health care by qualified mental health professionals. This care shall include helping youth develop skills to reduce their suicidal ideations or behaviors, and providing youth discharged from suicide precautions with adequate follow-up treatment.

iv. Supervision of Youth at Risk of Self-Harm The State shall sufficiently supervise newly-arrived youth, youth in seclusion and other youth at heightened risk of self-harm to maintain their safety.

v. Housing for Youth at Risk of Self-Harm The State shall take all reasonable measures to assure that all housing for youth at heightened risk of self-harm, including holding rooms, seclusion rooms and housing for youth on suicide precautions, is free of identifiable hazards that would allow youth to hang themselves or commit other acts of self-harm.

vi. Restrictions for Suicidal Youth Youth in the facilities on suicide precautions shall not be restricted in their access to programs and services more than safety and security needs dictate.

vii. Documentation of Suicide Precautions The following information shall be thoroughly and correctly documented, and provided to all staff at the facilities who need to know such information:

- a. the times youth are placed on and removed from precautions;
- b. the levels of precautions on which youth are maintained;

- c. the housing location of youth on precautions;
- d. the conditions of the precautions; and
- e. the times and circumstances of all observations by staff monitoring the youth.

viii. Access to Emergency Equipment Direct care staff at the facilities shall have immediate access to appropriate equipment to intervene in the event of an attempted suicide by hanging.

ix. Suicide and Suicide Attempt Review Appropriate staff shall review all completed suicides and serious suicide attempts at the facilities for policy and training implications.

D. MENTAL HEALTH

i. Adequate Treatment The State shall provide adequate mental health and substance abuse care and treatment services (including timely emergency services) and an adequate number of qualified mental health professionals. Psychiatric care shall be appropriate to the adolescent population of the facilities and shall be integrated with other mental health services.

ii. Establishment of director of mental health The State shall designate a director of mental health. The director shall meet minimum standards, as specified by the State, to oversee the mental health care and rehabilitative treatment of youth at the facilities by performing the tasks required by this Agreement, including:

- a. oversight of mental health care in the facilities, including monitoring the performance of psychologists, counselors and psychiatrists, and developing and implementing policies and training programs;
- b. monitoring of whether staffing and resources are sufficient to provide

adequate mental health care and rehabilitative treatment services to the facilities' youth and to comply with this Agreement; and

c. development and implementation of a quality assurance program for mental health care.

iii. Admissions Consultation and Referral If a youth presents at admission to a facility with mental health needs which cannot be met safely at the facility, the State shall transfer the youth promptly to appropriate settings that meet the youth's needs. Qualified mental health professionals shall be readily available for timely consultations regarding admissions decisions.

iv. Mental Health Screening The State shall develop and implement policies, procedures and practices for all youth admitted to the facilities to be screened comprehensively by qualified mental health professionals in a timely manner utilizing reliable and valid measures. If, due to exceptional circumstances, no such professional is on-site to conduct the screening, it shall be conducted by another staff member who has received specific training in conducting such assessments and reviewed by a qualified mental health professional.

v. Mental Health Assessment Youth in the facilities whose mental health screens indicate the possible need for mental health services shall receive comprehensive, appropriate and up-to-date assessments by qualified mental health professionals.

vi. Treatment Plans Youth in the facilities in need of mental health and/or substance abuse treatment shall have an adequate treatment plan, including a behavior management plan, as appropriate, which shall be implemented in the facilities.

vii. Mental Health Involvement in Housing Decisions The State shall adequately consider mental health issues in providing safe housing for youth in the facilities.

viii. Informed Consent Consistent with State law, the State shall, prior to obtaining consent for the

administration of psychotropic medications, provide youth and, as appropriate, their parents or guardians with information regarding the goals, risks, benefits and potential side effects of such medications offered for their treatment, as well as an explanation of what the consequences of not treating with the medication might be, and whether a recommendation is made in a dosage or manner not recognized by the United States Food and Drug Administration.

ix. Mental Health Medications The State shall take all reasonable measures to assure that psychotropic medications are prescribed, distributed, and monitored properly and safely. The State shall provide regular training to all health and mental health staff on current issues in psychopharmacological treatment, including information necessary to monitor for side effects and efficacy.

x. Mental Health and Developmental Disability Training for Direct Care Staff The State shall develop and implement strategies for providing direct care and other appropriate staff with training on mental health and developmental disabilities sufficient for staff to understand the behaviors and needs of youth residents and supervise them appropriately.

xi. Transition Planning The State shall take all reasonable measures to assure that staff create appropriate transition plans for youth leaving the facilities. Such plans shall appropriately consider each youth's length of stay and subsequent placement. Plans shall include providing the youth and his or her parents or guardian with information regarding mental health resources available in the youth's home community; making referrals to such services when appropriate; providing appropriate orders for the continuation of prescribed medications; and providing assistance in making initial appointments with service providers.

E. MEDICAL CARE

i. Appropriate Care The State shall provide adequate, appropriate and timely medical and dental care to meet the individualized needs of youth, including treatment of acute and chronic medical conditions. The State shall provide

sufficient numbers of qualified medical professionals to meet these needs.

ii. Medical Director A qualified, licensed physician shall supervise clinical practices and medical policy development, and shall participate in quality assurance and infection control programs at the facilities.

iii. Health Assessments The State shall conduct adequate health assessments for youth upon entry or re-entry to the facilities.

iv. Medication Administration The State shall develop and implement standards for medication administration, and shall train all staff responsible for medication administration to prevent medication discontinuity and errors.

v. Medical and Mental Health Records Retrieval The State shall make all reasonable efforts to assure that the facilities obtain available pertinent youth records regarding medical and mental health care.

vi. Medical and Mental Health Record System The State shall develop and implement standards, procedures and practices to create an integrated medical and mental health record system, and shall maintain the system.

F. SPECIAL EDUCATION

i. Provision of Required Special Education The State shall provide all eligible youth confined at the facilities special education services as required by the IDEA, 20 U.S.C. §§1400-1490, and regulations promulgated thereunder, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and regulations promulgated thereunder.

ii. Supervision of Education The State shall designate a director of education within the facilities. The director shall meet minimum standards as specified by the State. The State shall provide the director with sufficient staff and resources to perform the tasks required by this Agreement, including:

a. overseeing the special education programming in the facilities, including development and implementation of policies and training programs;

b. monitoring whether special education staffing and resources are sufficient to provide adequate special education services to qualified youth at the facilities and to comply with this Agreement;

c. developing and implementing a quality assurance program for special education services; and

d. developing and implementing an adequate vocational education program for all eligible youth.

iii. Screening and Identification Qualified professionals shall provide prompt and adequate screening of facility youth for special education needs, including identifying youth who are receiving special education in their home school districts and those eligible to receive special education services who have not been so identified in the past.

iv. Parent, Guardian and Surrogate Involvement The State shall appropriately notify and involve parents, guardians or surrogate parents in evaluations, eligibility determinations, Individualized Education Programs ("IEPs"), placement and provision of special education services.

v. Individualized Education Programs The State shall develop and/or implement an adequate IEP, as defined in 34 C.F.R. § 300.340, for each youth who qualifies for an IEP. Consistent with the requirements of 34 C.F.R. § 300.343(b)(2), within 30 days of a determination that a youth is eligible for special education and related services, the State shall conduct an IEP meeting to develop an IEP. As part of satisfying this requirement, DJS must conduct required re-evaluations of IEPs, adequately provide and document all required instructional services, conduct appropriate assessments and comply with requirements regarding student and teacher participation in the IEP process. Mental health staff shall be involved in

development of IEPs of all youth with identified mental illness. Goals and objectives shall be stated in realistic and measurable terms.

vi. Vocational Education The State shall develop and implement adequate vocational education services for all eligible youth.

vii. Staffing The director of education shall provide adequate education staffing.

viii. Section 504 Plans The State shall develop and implement appropriate Section 504 plans for all eligible youth.

G. FIRE SAFETY

Fire Safety Precautions The State shall develop and implement adequate fire safety precautions. The precautions shall include appropriate maintenance of fire suppression and detection equipment and maintenance of doors and door locks so that they may be opened in the event of fire.

IV. COMPLIANCE AND QUALITY ASSURANCE

A. Document Development and Revision The State shall revise and/or develop policies, procedures, protocols, training curricula, and practices as necessary to make them compliant with the provisions of this Agreement. The State shall revise and/or develop as necessary other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement.

B. Document Review Written State policies, procedures, and protocols that address the provisions of this Agreement regarding the following topics shall be submitted to the Monitoring Team for review and approval within ninety (90) calendar days of the execution of this Agreement: use of force/crisis management; use of restraints and seclusion; mental health, medical and dental screening and assessment; treatment planning; and medication administration and monitoring. The State shall supply the DOJ with copies of all such policies, procedures, and protocols when it submits them to the Monitoring Team. The Monitoring Team shall approve and/or suggest revisions to these policies, procedures, and protocols within

thirty (30) days of receipt, unless a longer period is agreed upon by the parties.

C. Quality Assurance Programs The State shall develop and implement quality assurance programs for protection from harm, suicide prevention, mental health care, medical care, special education services, and fire safety.

D. Corrective Action Plans DJS shall develop and implement policies and procedures as necessary to address problems that are uncovered during the course of its quality assurance activities. The State shall develop and implement corrective action plans to address these problems.

V. MONITORING AND ENFORCEMENT

A. Monitoring Team Selection The State in its discretion may undertake to provide services consistent with "best practices" recommended by leading experts in the field of juvenile justice. However, the parties contemplate active monitoring solely for compliance with constitutional and federal statutory standards.

i. Members Within 45 days after the effective date of this Agreement, the State and DOJ shall together select a Monitoring Team. Members of the Monitoring Team shall include experts in the fields of juvenile justice/youth confinement practices/protection from harm, mental health care, medical care, education, and fire safety. The Monitoring Team shall have full authority to assess, review and report independently on the State's implementation of and compliance with the provisions of this Agreement.

a. The parties shall choose one Monitoring Team Member to be the Monitoring Team Leader, who shall be responsible for coordinating site visits to the facilities, arranging for appropriate information-sharing between Monitoring Team Members, and for preparing the reports to the parties as required in this Agreement.

b. If the parties are unable to agree on any Monitoring Team Member or on the

appointment of the Monitoring Team Leader within 45 days after the effective date of this Agreement, each party shall, within 60 days after the effective date of this Agreement, submit two names of qualified candidates for the position, along with resumes or curricula vitae and cost proposals, to dispute resolution as provided in Section VII N. of this Agreement.

ii. Non-delegation of Responsibilities The Monitors shall be considered key personnel; their responsibilities may not be delegated. The Monitors may employ a staff sufficient to complete their duties efficiently, but compensation for such staff shall be paid by the Monitors and a budget for same must be included in the contract entered into with the State.

iii. Independence of Monitoring Team Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitoring Team's activities, reports, findings, or recommendations. Members of the Monitoring Team may be terminated if both parties agree and upon good cause shown. Good cause shall include any violation of State or federal law which reasonably calls into question the Monitoring Team member's fitness to continue serving as a member of the Monitoring Team. In the event the parties do not agree upon the need for termination, the parties agree to submit the resolution of this matter to dispute resolution as described in Section VII N. of this Agreement.

iv. Costs The cost for the Monitoring Team shall be borne by the State, as set forth in the contracts executed with members of the Monitoring Team.

v. Replacement of Monitoring Team Members If a member of the Monitoring Team is terminated pursuant to section iii above, or becomes unavailable, the parties shall determine jointly whether a replacement is needed, and if so, jointly select a replacement within thirty (30) days of the member's unavailability. In the event that the parties do not agree upon the need for or identity of a replacement, the parties agree to submit the decision to dispute resolution as provided in Section VII N. of this Agreement.

B. Monitoring Team's Access The Monitoring Team shall have full and complete access to the facilities, records relevant and appropriate for the effective monitoring of this Agreement, staff, and residents. The Monitoring Team shall coordinate the timing of its on-site facility visits and requests for documents so as to minimize disruption to facility operations and State employee work functions. The Secretary shall direct all employees to cooperate fully with the Monitoring Team. All non-public information obtained by the Monitoring Team shall be maintained in a confidential manner. Other than as expressly provided in this Agreement, this Agreement shall not be deemed a waiver of any privilege or right the State may assert, including those recognized at common law and created by statute, rule or regulation against any other person or entity with respect to the disclosure of any information.

C. Monitoring Team's Communications Members of the Monitoring Team may communicate with the parties as necessary to monitor the Agreement effectively.

D. Role of the Independent Juvenile Justice Monitor The State has created an Independent Juvenile Justice Monitor (IJJM) with duties to evaluate and report on conditions within the facilities. Beginning on the effective date of this Agreement, the IJJM shall provide to the DOJ and the Monitoring Team the data and final reports produced by the IJJM in the course of performing his/her statutory duties. The Monitoring Team may request from the IJJM such additional data as necessary to avoid duplication and unnecessary interference with the operation of the facilities. Nothing in this section shall be construed to limit the Monitoring Team in ascertaining and reporting facts relevant to the State's compliance with the terms of this Agreement.

E. Limitations on Public Disclosures by Monitoring Team Members

i. Prohibition on Public Statements; Confidentiality Agreement Unless required by law, or as provided in this Agreement, neither the Monitoring Team members nor any of their staff shall make any public statements or issue findings with regard to any information provided to the Monitoring Team or the Monitoring Team's staff pursuant to this Agreement. Each member

of the Monitoring Team shall execute a confidentiality agreement limiting disclosure of information obtained, consistent with law, to protect the privacy of the children served in the facilities.

ii. Limits on Testimony Except when subject to compulsory process or for the purposes of testifying in litigation between the parties, no member of the Monitoring Team nor any member of their staff may testify in any public forum or legislative proceeding with regard to any matter or subject that he or she may have learned as a result of his or her participation on the Monitoring Team.

iii. Conflicts of Interest Unless such conflict is waived by both parties, members of the Monitoring Team shall not accept employment or provide consulting services that would present a conflict of interest with their responsibilities under this Agreement including being retained (on a paid or unpaid basis) by any current or future litigant or claimant or such litigant's or claimant's attorney, in connection with a claim or suit against the State or its departments, officers, agents or employees concerning matters relevant to this Agreement.

F. Monitoring Team's Reports The Monitoring Team shall provide the parties with reports describing the extent to which the State has substantially complied with each substantive provision of the Agreement and the steps taken by DJS to implement the Agreement. Such reports shall be issued semi-annually. The first report shall issue six months after the effective date of this Agreement, unless the parties jointly agree otherwise. The reports shall be provided to the parties in draft form for comment at least four weeks prior to their issuance. Comments/responses of the State and the DOJ shall be included separately in the reports. These reports shall be written with due regard for the privacy interests of individual youth and staff and the interest of the State and DJS in protecting against disclosure of non-public information. Monitoring Team reports shall not include names or personally identifying information of youth. Where Monitoring Team members identify individual events or concerns about this Agreement that involve particular youth, they shall employ alternative means (other than the Monitoring Team reports) to inform the parties of the identities of the involved youth.

G. Monitoring Team's Budget and Staff The Monitoring Team's budget shall be limited as set forth in their contracts with the State. The Monitoring Team shall be responsible to compensate any and all staff deemed necessary to allow the Monitoring Team to carry out the responsibilities described in this Agreement without exceeding their contractual amounts.

VI. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

A. DOJ Access The DOJ, upon reasonable notice to the State's counsel, shall have access to the facilities, youth and staff records, and staff and residents of the facilities. The DOJ shall have the right to conduct confidential interviews with staff, residents, and former residents. The United States shall abide by the Confidentiality Agreement reached by the parties in January 2003. Other than as expressly provided in this Agreement, this Agreement shall not be deemed a waiver of any privilege or right the State may assert, including those recognized at common law and created by statute, rule or regulation against any other person or entity with respect to the disclosure of any information.

B. State Response to DOJ Questions Within a reasonable time following receipt of written questions from the DOJ concerning the State's compliance with this Agreement, DJS shall provide the DOJ with written answers and any requested documents regarding the State's compliance with the requirements of this Agreement. Such inquiries and document requests will be coordinated with the activities of the Monitoring Team.

C. State Documentation of Compliance The State shall maintain sufficient records to document its compliance with all of the requirements of this Agreement. The State shall also maintain (so long as this Agreement remains in effect) any and all records required by or developed under this Agreement.

D. Department of Social Services Investigative Files Because child abuse investigation records of the Departments of Social Services in Maryland are confidential under State law and not considered by DJS in conducting its own independent investigation and addressing or remedying allegations of child abuse by staff, neither the Monitoring Team nor the United States shall seek such records. No representative of the State (including the Independent Juvenile Justice Monitor) shall

release such records to the United States or the Monitoring Team. The ultimate determination by the Department of Social Services that alleged child abuse is indicated, unsubstantiated or ruled out, if it is received by DJS, may be obtained from DJS by the United States and/or the Monitoring Team.

VII. IMPLEMENTATION AND TERMINATION

A. Information to Employees The State shall provide information and training so that all current and future employees at the facilities understand and implement the terms of this Agreement.

B. Implementation The State shall implement all measures reasonably necessary to achieve substantial compliance with this Agreement.

C. Integration This Agreement shall constitute the entire integrated Agreement of the parties. No prior or contemporaneous communications, oral or written, will be relevant for purposes of determining the meaning of any provisions herein.

D. Enforcement This Agreement is enforceable only by the parties and is binding upon the parties, by and through their officials, agents, employees, and successors.

E. Rule 41 Conditional Dismissal Upon execution of this Settlement Agreement, the DOJ shall file a complaint in the United States District Court for the District of Maryland, Northern Division, and file contemporaneously a Joint Motion for Conditional Dismissal of the complaint pursuant to Federal Rule of Civil Procedure 41(a)(2). A copy of this Agreement shall be attached to the Joint Motion for Conditional Dismissal and that motion shall: (1) request that the court dismiss the complaint upon the passage of three (3) years from the date of its filing or the State's earlier substantial compliance with the terms of this Agreement; (2) request that the court place the case on its inactive docket; and (3) retain jurisdiction over the case until three (3) years have passed or an earlier final dismissal is entered. The parties expressly declare that this provision shall not be interpreted to provide for active judicial supervision.

F. Notice to State and Opportunity to Cure If the DOJ believes that the State has failed to fulfill a significant obligation under this Agreement, the DOJ will, prior to seeking judicial action to enforce the terms of this Agreement, give written notice of the failure to the State. The State shall have sixty days from the date of such notice to cure the failure, or such additional time as is reasonable due to the nature of the issue and agreed upon by the parties, and provide the DOJ with sufficient proof of its cure. At the end of the sixty day period, or such additional time as is reasonable due to the nature of the issue and agreed upon by the parties, in the event that the DOJ determines that the failure has not been cured, the DOJ may seek judicial action without further notice. However, in case of an emergency posing an immediate threat to the health or safety of youths, the United States shall notify the State but may omit any period for cure described herein, before seeking judicial action. The DOJ commits to work in good faith with the State to avoid enforcement actions.

G. State's Reservation of Defenses If the United States seeks judicial enforcement of this Agreement, the State reserves the right to raise as a defense exigent circumstances in the State, including, but not limited to: economic recession, necessary diversion of resources and personnel in the event of widespread threat to public health, or act of war.

H. United States' Position on State's Reservation of Defenses Nothing in this Agreement shall be construed as an acknowledgment or admission by the United States that any defense raised by the State relieves the State of its obligation under this Agreement.

I. Integration This Agreement is the completely integrated agreement between the parties. The Agreement resolves the United States' current investigation of Cheltenham and Hickey pursuant to CRIPA and Section 14141. The United States shall not seek additional measures or requirements in enforcing this Agreement.

J. Non-waiver Failure by any party to enforce this entire agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions in this Agreement.

K. Legal Standard To the extent that the State's implementation of any provision of this Agreement requires the exercise of professional judgment, the standard articulated in *Youngberg v. Romeo*, 457 U.S. 307 (1982), shall be applied.

L. Technical Assistance The United States shall provide technical assistance to the State by assisting in identifying potential grants and other opportunities for low-cost or cost-free training or by providing consultants to train senior staff in the areas of Adolescent Behaviors, De-Escalation Techniques, and Identification and Recognition of Mental Health Needs in Facility Youth, and Integration of Mental Health Services into Direct Care Service Delivery. This technical assistance will be provided in a "train the trainers" format. Should the DOJ engage consultants to tour the facilities, the DOJ shall provide the State with an opportunity to conduct exit interviews with the consultants and with copies of the consultants' reports, if such reports are produced.

M. Agreement Coordinator The State shall appoint an Agreement Coordinator to coordinate and oversee compliance with this Agreement.

N. Dispute Resolution The parties recognize that there may be areas about which they can not easily agree during the course of implementation of this Agreement. In order to address this possibility, the parties agree to employ, when necessary, the services of a neutral party and to engage in good faith negotiations with such a mediator to resolve such differences promptly and effectively. The parties agree to first look to neutral mediators who may be available at no cost, such as ones selected with the assistance of the Federal Mediation and Conciliation Service or available with third party grant funding through the Maryland Mediation and Conflict Resolution Office. Should costs be incurred for a mediator, the parties agree to share equally such costs.

O. Termination

i. Three Year Time Frame This Agreement shall terminate definitively and unconditionally no later than three (3) years from the effective date.

ii. Section-by-Section and Facility-by-Facility Substantial Compliance The Agreement may end on a section-by-section, and facility-by-facility basis earlier than three (3) years from the effective date if the State has substantially complied with the provisions of that section of the Agreement at a facility for at least eighteen (18) months.

a. Burden of Proving Substantial Compliance The burden shall be on the State to demonstrate to the appropriate member or members of the Monitoring Team that the State has complied substantially with the Agreement. A finding of substantial compliance by the Monitoring Team may not be unreasonably withheld.

b. Substantial Compliance Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained noncompliance shall not constitute substantial compliance.

c. Standard for Substantial Compliance The parties agree that the standards against which substantial compliance will be monitored are those that are constitutionally required and required by Federal statute, as provided in Section V A. The State's unilateral implementation of best practices will not modify the standard.

P. Defense of Agreement The parties agree to defend the provisions of this Agreement. The parties shall notify each other of any court challenge to this Agreement. In the event any provision of this Agreement is challenged in any local or state court, removal to a federal court shall be sought.

Q. Unforeseen Delay If any unforeseen circumstance occurs which causes a failure to timely carry out any requirements of this Agreement, the State shall notify the DOJ in writing within a reasonable time after the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The State shall implement all reasonable measures to avoid or minimize any such failure.

R. Non-Retaliation No person reporting conditions which may constitute a violation of the laws or Constitution of the United States or this Agreement shall be subjected to retaliation in any manner for so reporting. See 42 U.S.C. § 1997d.

S. Subheadings All subheadings in this Agreement are written for convenience of locating individual provisions. If questions arise as to the meanings of individual provisions, the parties shall follow the text of each provision.

T. Severability In the event any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

FOR THE STATE:

/s/ Robert L. Ehrlich, Jr.

ROBERT L. EHRLICH, JR.
Governor
State of Maryland

/s/ Kenneth C. Montague, Jr.

KENNETH C. MONTAGUE, JR.
Secretary of Juvenile Services

APPROVED FOR LEGAL SUFFICIENCY:

/s/ Robert T. Fontaine

ROBERT T. FONTAINE
Assistant Attorney General
State of Maryland

FOR THE UNITED STATES:

/s/ Allen F. Loucks

ALLEN F. LOUCKS
United States Attorney
District of Maryland

/s/ Bradley J. Schlozman
BRADLEY J. SCHLOZMAN
Acting Assistant Attorney General
Civil Rights Division

/s/ Shanetta Y. Cutlar
SHANETTA Y. CUTLAR
Chief
Special Litigation Section

/s/ Daniel H. Weiss
DANIEL H. WEISS
Deputy Chief
Special Litigation Section
JOSHUA DELANEY
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-6255