



Jl-MD-001-002

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

MELVIN C., <u>et al.</u> ,	*
Plaintiffs,	*
v.	* CIVIL ACTION NO. HAR 91-497
JOSEPH L. SHILLING, <u>et al.</u> ,	*
Defendants.	*

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**STIPULATION OF DISMISSAL**  
**WITHOUT PREJUDICE ON CONDITIONS**

The parties to the instant case, through their undersigned counsel, agree and stipulate, pursuant to Fed. R. Civ. P. 41, to the dismissal of the instant case without prejudice, on the conditions stated below:

1. Plaintiffs and Defendants have addressed the substantive claims raised in the instant case and have embodied Defendants' commitments regarding the Maryland state correctional special education program in the attached "Action Plan." Defendants agree to implement the Action Plan as a condition of this Dismissal Without Prejudice on Conditions ("Dismissal").

2. All terms used in this Dismissal shall be construed consistent with the Action Plan.

3. Within ninety (90) days after approval of this Dismissal by the Court, Defendants agree to make all revisions in the Correctional Special Education Handbook that are necessary to fulfill their obligations under the Action Plan.

#### JURISDICTION OF THE COURT

4. Although the instant case is dismissed in all other respects, the Court shall retain jurisdiction for the limited purpose of enforcing the procedural provisions of this Dismissal. The Court shall not retain jurisdiction over the substantive provisions of the Action Plan. The procedures provided in this Dismissal, and any proceedings for enforcement of an arbitration award resulting from the procedures provided in this Dismissal, shall be the sole means for enforcement of the substantive provisions of the Action Plan.

5. The parties agree that the Court shall retain jurisdiction for this limited purpose unless and until (a) Plaintiffs agree that the Action Plan has been fully implemented, either expressly or by failing to identify in writing any areas of alleged non-implementation, as provided in Paragraph 15 below, or (b) the Arbitrator issues his/her final decision as set out in Paragraph 21 below.

#### ACCESS AND EVALUATING IMPLEMENTATION OF THE ACTION PLAN

6. The parties agree that Osa D. Coffey, Ph.D., will serve as Implementation Coordinator. The Implementation Coordinator will monitor whether Defendants have implemented the terms of the Action Plan, and, if not, state specifically in what way(s) one or more terms of the Action Plan have not been implemented. The Implementation Coordinator will report in writing his/her findings, conclusions and recommendations to the parties. Defendants agree to compensate the Implementation Coordinator up to \$20,000 for all

reasonably incurred costs, including compensation for the time spent evaluating and monitoring the extent to which the Action Plan has been implemented.

7. In the event that Dr. Coffey is unable to continue in the role of Implementation Coordinator, the parties shall select a replacement. The replacement shall have expertise in the field of special education.

8. Beginning within sixty (60) days following approval of this Dismissal by the Court, Defendants agree to provide the Implementation Coordinator with reasonable access to all state correctional facilities, as well as all relevant non-privileged documents, for the purpose of monitoring and evaluating the implementation of the terms of the Action Plan. If Defendants deny any specific request by the Implementation Coordinator for access to documents on the basis of privilege, Defendants will identify the withheld documents, individually or by category, with sufficient particularity to explain the basis for the assertion of privilege.

9. In providing documents to the Implementation Coordinator as provided in Paragraph 8, the Defendants will provide to counsel for Plaintiffs:

a. Copies of all documents copied and provided to the Implementation Coordinator;

b. After review of the quarterly or final reports of the Implementation Coordinator and identification of specific item(s) addressed in the Action Plan and contained in or omitted from the reports about which

Plaintiffs seek clarification, copies of all documents identified by the Implementation Coordinator which relate to or provide a basis for those specific items. The Implementation Coordinator will maintain records sufficient to identify those documents which he or she has inspected;

c. Copies of any identification of privileged documents provided to the Implementation Coordinator pursuant to Paragraph 8.

The parties recognize that the process of providing documents to the Implementation Coordinator and the Plaintiffs' counsel pursuant to Paragraphs 8 and 9 will proceed informally. The parties will work in good faith to provide Plaintiffs' counsel with reasonable access to the documentary support for the Implementation Coordinator's conclusions and recommendations while avoiding placing undue burdens to produce documents on the Defendants. The parties will seek to resolve informally any disputes over access to documents before submitting any such disputes to the Court.

10. The Implementation Coordinator shall monitor Defendants' implementation of each term of the Action Plan and shall conduct four (4) quarterly reviews of Defendants' compliance with those terms. The first quarter shall begin on the first day of the first full month following the date this Dismissal is approved by the Court. Each quarter shall last three calendar months.

11. Fifteen (15) days after the end of each quarter, Defendants will provide the Implementation Coordinator and Plaintiffs with a report setting forth the following information

concerning activity during that quarter:

a. In the first quarterly report, Defendants will provide a listing of the Maryland State Department of Education staff engaged in providing special education assessments and services at each Maryland adult correctional facility and institution. In each subsequent quarterly report, Defendants will report any personnel changes involving the departure or hiring of personnel in such positions.

b. In each quarterly report, Defendants will provide the following data for the quarter just concluded:

1. The total number of prisoners under the age of twenty-one (21) years in the Maryland adult correctional system as of a particular date during the quarter;

2. The total number of prisoners under the age of twenty-one (21) years who entered the Maryland adult correctional system during the quarter;

3. The number of prisoners entering the Maryland adult correctional system who were identified, during the quarter, as having an existing Individualized Education Program;

4. The number of prisoners referred to the Admission-Review-Dismissal Committee as a result of the student find process initiated at the Maryland

adult correctional intake facilities;

5. The number of prisoners screened for special education eligibility;

6. The number of prisoners referred for special education assessments;

7. The number of prisoners for whom an Individualized Education Program was developed and who were placed for special education services;

8. The number of prisoners for whom a sixty (60) day special education review was conducted;

9. The number of prisoners for whom an annual special education review was conducted;

10. The number of prisoners terminated from special education placements; and

11. The total number of prisoners who received special education services, broken down by type of educational disabling condition.

The data provided under items 4 through 11 will be broken down by correctional facility.

c. Defendants may provide with any quarterly report any additional information the Defendants believe is useful in monitoring implementation of the Action Plan.

12. In conducting the quarterly reviews, the Implementation Coordinator shall be permitted to make reasonable on-site inspections at all Maryland adult correctional facilities and institutions, review non-privileged documents, and interview staff,

contractors, sub-contractors, agents, employees, and prisoners as needed in order to evaluate the implementation of the terms of the Action Plan. The Implementation Coordinator shall also be permitted to review student files, subject to a Protective Order, attached hereto as Appendix A, after appropriate notice is provided to the prisoner and/or his/her parent.

13. For each quarterly review, the Implementation Coordinator shall provide a written report of findings, conclusions and recommendations with respect to implementation of each term of the Action Plan. The Implementation Coordinator shall present that report to the parties no later than thirty (30) days after receipt of the statistics and information required by Paragraph 11 of this Dismissal.

14. If any of the first three quarterly reports reveals that Defendants have not implemented one or more terms of the Action Plan, Defendants shall have fifteen (15) days to state in writing their intention to cure or not to cure the identified problem(s).

a. If Defendants state in writing that they do not intend to cure, then Plaintiffs may, within fifteen (15) days of receipt of Defendants' written statement of intention, file a Statement of Position with, and submit the dispute to, the Arbitrator as set forth in Paragraphs 18 through 21.

b. If Defendants state in writing that they intend to cure, then, in the quarter following such statement, the Implementation Coordinator shall make a specific written finding as to whether Defendants have

taken substantial steps to do so. If the Implementation Coordinator finds that Defendants have not taken substantial steps to cure, then Plaintiffs may, within fifteen (15) days of receipt of the Implementation Coordinator's written finding, file a Statement of Position with, and submit the dispute to, the Arbitrator as set forth in Paragraphs 18 through 21.

15. After the fourth quarterly review, the Implementation Coordinator will issue a final report. Within thirty (30) days following receipt of the final report, Plaintiffs will indicate whether they believe Defendants have implemented the Action Plan. If Plaintiffs believe that Defendants have not implemented one or more terms of the Action Plan, Plaintiffs will identify in writing the specific terms of the Action Plan that they assert have not been implemented. Defendants shall have fifteen (15) days after receipt of the Plaintiffs' statement to state in writing their intention to cure or not to cure each of the specific terms of the Action Plan that Plaintiffs or the Implementation Coordinator assert have not been implemented.

a. If Defendants state that they do not intend to cure one or more terms of the Action Plan identified by Plaintiffs or the Implementation Coordinator as having not been implemented, then Plaintiffs may, within sixty (60) days, file a Statement of Position with, and submit the dispute(s) as to those terms to, the Arbitrator as set forth in



Paragraphs 18 through 21.

b. If Defendants state their intention to cure one or more terms of the Action Plan identified by Plaintiffs or the Implementation Coordinator as having not been implemented, but at the end of sixty (60) days Plaintiffs are not satisfied that Defendants have or intend to cure the identified problem(s), then Plaintiffs may, within fifteen (15) days, file a Statement of Position with, and submit the dispute(s) as to those terms to, the Arbitrator as set forth in Paragraphs 18 through 21.

16. Plaintiffs' decision not to proceed to arbitration to implement or enforce specific terms of the Action Plan, at the earliest times permitted by Paragraphs 14 or 15 of this Dismissal, shall not preclude Plaintiffs from seeking arbitration as to those same terms, as otherwise permitted by this Dismissal. Nothing in this Dismissal shall preclude the parties from negotiating a settlement to any dispute in good faith, without resort to arbitration.

#### **ARBITRATION**

17. The parties agree that George L. Russell, Jr., Esquire, will serve as Arbitrator. In the event that Mr. Russell is unable to continue in the role, the parties shall select a replacement. The Arbitrator shall be compensated up to a total of \$10,000 for all reasonably incurred costs, including compensation for the time spent in deciding disputes about implementation of the terms of the

Action Plan. As part of his/her decision, the Arbitrator shall determine which party has prevailed on each issue and shall assess the costs of arbitration against the non-prevailing party. The Arbitrator shall apportion the costs if he/she determines that a party has prevailed on some issues and not others.

18. The parties agree that the Arbitrator's authority is limited strictly to determining whether Defendants have implemented the Action Plan. The Arbitrator shall not construe or interpret federal or state law, including but not limited to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 et seq., as a basis for decision. The Arbitrator shall not find a failure to implement any term of the Action Plan based on isolated or infrequent failures to follow any particular term.

19. Defendants may file a Statement of Position with the Arbitrator within thirty (30) days of receipt of Plaintiffs' Statement of Position, submitted pursuant to Paragraphs 14 or 15 of this Dismissal. Plaintiffs may file a Reply Statement with the Arbitrator within ten (10) days following receipt of Defendants' Statement of Position. If Plaintiffs file Statements of Position under both subsections (a) and (b) of Paragraph 15, then Defendants may file a single Statement of Position in opposition to both of Plaintiffs' Statements and Defendants' single Statement shall be filed within thirty (30) days after the later filed of Plaintiffs' two Statements.

20. The Arbitrator will conduct an informal hearing on any dispute(s) brought before the Arbitrator pursuant to this Dismissal. Plaintiffs and Defendants each will have an opportunity

to present their case, although the Arbitrator may prescribe the schedule for the presentations after consultation with the parties. The Arbitrator should consider the testimony and reports of the Implementation Coordinator, but the Arbitrator shall not be bound to accept any finding, conclusion or recommendation of the Implementation Coordinator. In rendering a decision, the Arbitrator also may take into account the State's fiscal constraints, although the parties agree that such constraints alone will not justify a failure to implement the Action Plan.

21. The Arbitrator will issue a written decision within thirty (30) days after the conclusion of the hearing. The decision of the Arbitrator shall be binding upon the parties.

22. Except as expressly provided herein, nothing in this Dismissal shall be interpreted to limit any right, remedy or obligation under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401, et seq., or existing law of any individual prisoner asserted in any individual proceeding.

23. A failure to implement the Action Plan shall not create a new, independent private cause of action for damages or compensatory relief for any person or entity, and the Action Plan shall be enforceable solely by the means created by this Dismissal. Causes of action existing outside the Action Plan and this Dismissal are in no way limited by this Dismissal.

#### LITIGATION EXPENSES


24. Defendants shall pay to the Public Justice Center, Inc. the total sum of \$61,050 for costs and expenses in connection with litigating this lawsuit. \$31,050 shall be paid within thirty (30)

days following execution of this Stipulation, and the remaining \$30,000 shall be paid on or before August 1, 1993. In consideration of these payments, the Plaintiffs and each of the undersigned Plaintiffs' counsel, on behalf of himself and the firm or organization he represents, hereby release forever the State of Maryland and any of its agencies, officials, or employees from any claim for attorney's fees, costs, expenses, damages, or money in connection with the above-captioned lawsuit and the events and actions alleged in it, specifically including but not limited to all claims accruing before the lawsuit was commenced, while it is pending, and through the conclusion of any and all arbitration proceedings as defined in Paragraph 21 of this Dismissal. In the event that any proceedings to enforce any arbitration award become necessary, Plaintiffs may claim additional attorney's fees and costs in connection with such proceedings, and the Defendants may assert any available defense to such a claim. Subject to the limitations set out below, this release also applies to any claim by the undersigned Plaintiffs' attorneys arising from the representation of any individual person who is now or in the past may have been a prisoner in the Maryland adult correctional system and whom any of the undersigned Plaintiffs' attorneys represented in connection with special education matters. This release does not apply to or limit any claim by an individual Plaintiff and/or the undersigned Plaintiffs' attorneys for services rendered after the date this Dismissal is executed by the Defendants and their counsel and related to the representation of any individual prisoner in the Maryland adult correctional system by the Public Justice Center, Inc., its staff and/or agents.

PARTIES:

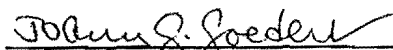
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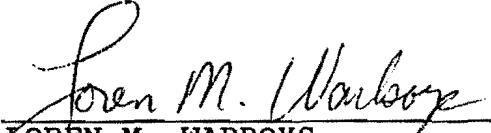
J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL OF MARYLAND

  
JEROME I. CHAPMAN  
Arnold & Porter  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 872-6750

LAWRENCE P. FLETCHER-HILL  
Assistant Attorney General  
200 Saint Paul Place  
Baltimore, Maryland 21202  
(410) 576-6345

MICHAEL A. MILLEMANN  
13009 Bottom Road  
Hydes, Maryland 21082  
(410) 625-9409

  
JOANN G. GOEDERT  
Assistant Attorney General  
200 Saint Paul Place  
Baltimore, Maryland 21202  
(410) 576-6340

  
LOREN M. WARBOYS  
Youth Law Center  
114 Sansome Street, Suite 950  
San Francisco, California 94104  
(415) 543-3379

RICHARD S. GORDON  
330 North Charles Street  
Suite 500  
Baltimore, Maryland 21201  
(410) 625-9409

ON BEHALF OF PLAINTIFFS  
AND THE PLAINTIFF CLASS

ON BEHALF OF DEFENDANTS

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 1993, as to both form  
and content:

John R. Hargrove  
United States District Judge

LFH9217

## MARYLAND CORRECTIONAL SPECIAL EDUCATION ACTION PLAN

### A. Introduction and Definitions

1. This Action Plan prescribes the steps the Maryland State Department of Education, Correctional Education Office and the Maryland Department of Public Safety and Correctional Services have taken or will take to enhance the programs and services provided to prisoners with educational disabilities confined in Maryland's Adult Correctional Facilities. Except where specified, the specific terms of this Action Plan are not necessarily required by the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 et seq. ("IDEA") or by Maryland State law. Nothing in this Action Plan is intended to abrogate or restrict any rights, remedies or obligations such prisoners have under federal or state law.

2. This Action Plan is adopted in conjunction with the Stipulated Dismissal on Conditions filed in Melvin C., et al. v. Shilling, et al., C.A. No. HAR-91-497 (United States District Court for the District of Maryland), to resolve the issues presented in that lawsuit without further litigation. Nothing in this Action Plan shall be construed as an admission of liability by any party to that suit.

3. Maryland's correctional special education programs currently are operated by the Maryland State Department of Education, Correctional Education Office ("MSDE") with the cooperation and assistance of the Maryland State Department of

Public Safety and Correctional Services ("DPSCS"). In the event that MSDE transfers part or all of its responsibility for the correctional special education programs to DPSCS, DPSCS shall be bound by this Action Plan to the same extent as MSDE would have been bound had MSDE retained responsibility for the programs.

4. The terms "Maryland Adult Correctional Facilities" and "Adult Correctional Facility" as used throughout this Action Plan refer to all correctional facilities and institutions for sentenced individuals operated by the Maryland Department of Public Safety and Correctional Services, including, but not limited to, the Patuxent Institution and all Division of Correction facilities, including Pre-Release Units and the Reception, Diagnostic and Classification Center ("RDCC").

5. The term "Maryland Adult Correctional Intake Facility" as used throughout this Action Plan refers to all facilities and institutions used for the intake or screening of prisoners by the Maryland Department of Public Safety and Correctional Services, including, but not limited to RDCC, the Maryland Correctional Institution for Women, and any other intake facility that may be established in the future.

6. The term "prisoner" or "student" as used throughout this Action Plan will mean any individual who is not a high school graduate and does not possess the equivalent of a high school diploma, who is under the age of twenty-one (21) years, and who is incarcerated in a Maryland Adult Correctional Facility.

## **B. Identification, Screening, Referral and Assessment**

1. All prisoners will be screened for possible special education eligibility through an intake interview and educational and medical tests which will be administered upon a prisoner's entry to the system. Absent extraordinary circumstances relating to individual inmates, within twenty-one (21) days after each prisoner's arrival at a Maryland Adult Correctional Intake Facility, MSDE and/or DPSCS will conduct the intake interview, administer educational screening tests, and review the results of the interview and educational tests to identify those prisoners with a history of special education services and/or with indicators of special education eligibility. The interview and educational screening tests will be administered and reviewed by staff with specific training designed to enable them to perform those functions. DPSCS also will conduct medical screening tests (hearing, vision and general physical condition) upon a prisoner's entry into the system.

2. With respect to any prisoner for whom the intake interview indicates that the prisoner previously received special education and/or related services, within five (5) working days of receipt of that information, MSDE will request the prisoner's prior special education records, including but not limited to prior IEPs, evaluations and assessments, and any reports indicating or regarding student progress in fulfilling the goals and objectives of the IEPs. When received, MSDE will forward those records to the MSDE staff at the prisoner's maintaining



institution. In implementing this provision, MSDE will use the following procedures:

a. In every instance in which the intake interview reveals an indication of prior special education eligibility, MSDE will make both a telephone and a written request for records to the school system;

b. In every instance in which MSDE does not receive a definitive response to the initial requests within fifteen (15) days, MSDE will make appropriate follow-up contact(s) by telephone or in writing to obtain, if possible, a definitive response;

c. For students whose last known school was within a Maryland school system, MSDE will make the initial request to the specific individual whom MSDE has identified as the contact person for the particular school system;

d. For students from out-of-state school systems, the same initial and, if needed, follow-up requests will be made to the out-of-state school system;

e. If MSDE is not able to obtain the student's prior educational records but is able to obtain other relevant information about the prisoner's prior special educational placement, that information will be communicated promptly to the MSDE staff at the prisoner's maintaining institution and will be recorded in the prisoner's education file; and

f. MSDE will maintain records of all contacts made in an attempt to obtain prior educational records, and that information will be transferred to the prisoner's educational file once all efforts to obtain the prior records are completed.

3. MSDE will develop and implement a tracking protocol(s) or form(s) designed to ensure that the procedures set out in §§ B.1 and B.2 of this Action Plan are implemented.

4. If the information gathered under § B.2 above indicates that the prisoner was previously placed in a special education program, then upon transfer to the prisoner's maintaining facility, that prisoner (A) will be referred promptly to the Admission-Review-Dismissal (ARD) Committee for appropriate action and (B) will be placed, within ten (10) working days after arrival at the maintaining institution, in an interim educational program as follows:

a. Each prisoner who was the subject of an individualized education program (IEP) developed by a school, local education agency (LEA), or other qualified agency within one (1) year prior to the prisoner's most recent arrest will be placed in a comparable special education program for a period up to sixty (60) days while the ARD Committee assesses the prisoner, and, if appropriate, develops a new IEP for the prisoner. The prisoner's existing IEP will be implemented on an interim basis by the school officials to the extent

feasible and appropriate, without referral to the ARD Committee, unless (a) there is specific information or reason(s) which would make such placement infeasible and/or inappropriate, or (b) MSDE has been unable after diligent effort to obtain the IEP from the education agency that developed it. In a case in which interim implementation is determined not to be feasible and/or appropriate, the specific information or reason(s) will be documented in the prisoner's education file and the prisoner will be placed in a regular education program.

b. Each prisoner who was the subject of an IEP developed by a school, LEA, or other qualified agency more than one (1) year prior to the prisoner's most recent arrest will be placed in a regular education program for a period up to sixty (60) days while the ARD Committee assesses the prisoner and, if appropriate, develops a new IEP for the prisoner.

5. Each month, DPSCS will provide to the principal or educational supervisor at each Maryland Adult Correctional Facility a list of all prisoners under twenty-one (21) years of age then incarcerated in that Facility. MSDE will ensure that these lists are reviewed to identify any prisoner who has not previously been screened for special education eligibility and who may be eligible. Any prisoner so identified will be screened for eligibility using techniques consistent with this Action Plan within thirty (30) days following such identification.

6. Within six months after the effective date of this Action Plan, MSDE will ensure that any prisoner who entered the Maryland Adult Correctional System before June 1, 1991, who currently is under twenty-one (21) years of age, and who is not a high school graduate and does not possess the equivalent of a high school diploma has been screened for special education eligibility using techniques consistent with this Action Plan.

7. Upon assignment or transfer to a special mental health unit, any prisoner who is under twenty-one (21) years of age, who is not a high school graduate and does not possess the equivalent of a high school diploma, and who is not currently receiving special education or related services shall be referred automatically to the ARD Committee for consideration of whether the prisoner should be assessed for special education eligibility, unless the prisoner already has been screened and his/her educational condition has not changed since that screening.

8. Within six (6) months after the effective date of this Action Plan, MSDE will develop and provide to all ARD Committees a list of assessment tools available to such Committees for assessing the existence and extent of the various educational disabilities enumerated in the IDEA and State law.

**C. Development and Implementation of Individualized Education Programs**

1. In developing individualized education programs (IEPs) for prisoners with educational disabilities, MSDE will ensure

that the ARD Committee will assess each prisoner's individual educational needs and will develop IEPs consistent with those needs.

2. IEPs will include a statement of the prisoner's present level of educational performance, a statement of specific short-term measurable instructional objectives within the capability of the prisoner, and a statement of the special education and related services to be provided to the student.

3. If the ARD Committee determines that a prisoner needs counseling services, MSDE will ensure that the prisoner will be provided with counseling services that relate to the prisoner's individual education needs and that the prisoner's IEP will include a statement of the type and frequency of counseling services to be provided.

4. MSDE will include, in each IEP, a transition plan which will include vocational or training services, where such vocational or training services are deemed appropriate by the ARD Committee.

5. MSDE will ensure that the goals and short-term instructional objectives of each IEP will be reviewed by the ARD Committee sixty (60) days after implementation of the IEP and at least annually thereafter to determine whether the goals and objectives are being met, whether specific services are being provided, and whether modifications are necessary.

**D. Provision of Special Education Services, Continuum of Services and Related Services**

1. MSDE currently provides special education and related services at most Maryland Adult Correctional Facilities. Nothing in this Action Plan shall prevent MSDE and DPSCS from modifying the manner in which services are distributed by making certain services available to eligible prisoners, specifically including but not limited to modifications consolidating services at fewer locations and transferring prisoners eligible for those services to those locations, provided that such modifications do not relieve MSDE or DPSCS of any obligation to locate eligible inmates and to prepare IEPs for eligible inmates under this Action Plan, including but not limited to Parts B and C of this Action Plan, and provided that such modifications do not affect inmate probation, parole or release dates. Until this Action Plan has been implemented fully, as provided in the Stipulated Dismissal on Conditions described in ¶ A.2 above, MSDE and DPSCS shall not implement any fundamental change in the manner in which special education services are distributed without describing the proposed changes to and consulting with plaintiffs' counsel before the changes are to be implemented.

2. MSDE will not place any generalized maximum or limit on the amount, type or intensity of special education and related services provided to prisoners with educational disabilities. MSDE will provide such services to prisoners in the amount, type or intensity specified in their IEPs.

3. Prisoners who are eligible to receive special education and related services and who are housed in a mental health or medical unit will be provided adjusted services to account for the prisoner's particular situation and condition. A prisoner placed in one of these special units need not receive special education and related services if the prisoner is not expected to remain in the unit for more than ten (10) days. If a prisoner is expected to remain in the special unit for more than ten (10) days, MSDE will consult with the prisoner's physician or other appropriate health professional to initiate the delivery of educational services. A prisoner in one of these special units shall receive a minimum of six (6) hours per week of educational services, provided that the prisoner's physician or other health professional agrees that the prisoner's condition does not require further limitations on the quantity or type of services. If a prisoner is expected to remain in the special unit for more than sixty (60) days, the ARD Committee must meet to review the services being provided no later than the sixtieth day of the inmate's assignment to the special unit.

4. Prisoners who are eligible for special education and related services and who are placed in disciplinary segregation will receive services as follows:

a. A prisoner may spend up to ten (10) days in segregation without receiving any special education or related services;

b. A prisoner in segregation for more than ten (10) and up to thirty (30) days will receive modified special education services, generally consisting of two hours per week of direct instructional time and, if such are provided in the prisoner's IEP, related services to the fullest extent practicable;

c. If a prisoner is expected to remain in segregation for more than thirty (30) days, the prisoner will be referred for scheduling of an ARD Committee meeting, to be held no later than forty-five (45) days after the prisoner's entry into segregation, to determine the appropriate services to be provided to the prisoner while in segregation;

d. MSDE will not impose any generalized maximum or limit on the quantity of services provided to prisoners who are in segregation for more than thirty (30) days, although security and other issues associated with disciplinary segregation will be considered by the ARD Committee as factors in determining the adjustment of the quantity and type of services provided to a prisoner in segregation for more than thirty (30) days.

e. In addition to the procedures set forth in this paragraph, MSDE is currently exploring the use of computer and other technology to supplement the special education services offered to prisoners confined in segregation. Although MSDE will make all efforts to do



so, it is explicitly agreed that a failure by MSDE to identify and utilize such technology in this context shall not constitute a failure to implement this Action Plan, for which the parties may invoke arbitration as provided by Paragraphs 18 through 21 of the Stipulated Dismissal Without Prejudice on Conditions.

5. Prisoners classified to the Maryland Correctional Adjustment Center ("Supermax") will be subject to the procedures concerning disciplinary segregation above, including the circumstances in which an ARD Committee meeting is required.

6. MSDE will ensure that all prisoners who are in need of Intensity IV and V special education and/or related services, as determined by the ARD Committee, will receive those services, subject to the provisions of this Action Plan.

#### E. Procedural Safeguards

1. For each prisoner referred for assessment to the ARD Committee, MSDE will seek the participation and involvement of the prisoner's parent(s) or guardian or, where appropriate under applicable law, a surrogate parent. MSDE will establish the following timetable for contacting parents or guardians, or, where appropriate, appointing a surrogate parent:

a. Within ten (10) days of a referral to the ARD Committee, MSDE will prepare and mail to the prisoner's parent(s) or guardian notice of the ARD Committee meeting. This notice will include a summary of the

parent's or guardian's procedural rights, instruction on how to contact school officials to arrange a mutually convenient time and place for the ARD Committee meeting, and information concerning resources available to assist the parent or guardian in the ARD process;

b. If, within ten (10) days of the mailing of the notice to the prisoner's parent(s) or guardian, MSDE has not received a response from the parent(s) or guardian, MSDE will attempt alternative means of contacting the parent(s) or guardian; and

c. If a prisoner's parent(s) or guardian cannot be identified or located or if the prisoner is a ward of the State, MSDE will appoint a surrogate parent for the prisoner.

2. MSDE will ensure that the prisoner's parent(s), guardian, or surrogate parent is afforded a reasonable opportunity to be present for each ARD Committee meeting.

3. Within three months after the effective date of this Action Plan, MSDE, with the assistance of plaintiffs' counsel, will develop a listing of resources available to provide parents, guardians, and/or prisoners with information and assistance concerning the ARD process. This listing will include Parent Information and Training Centers as such are available throughout the State and legal and other advocacy groups offering assistance to educationally disabled individuals. MSDE will update this listing annually. In addition to notifying prisoners and their

parents or guardians of the availability of this listing in the initial notices of the ARD Committee meetings, MSDE will maintain the listing at each institution school and make it available upon request.

4. Within thirty (30) days of the effective date of this Action Plan, MSDE, with the assistance of Plaintiffs' counsel, will develop a Notice that contains a concise summary of inmate rights, remedies and responsibilities for special education. The Notice will be posted in each correctional facility (a) in the library; (b) in the institution school; and (c) on the facility's inmate bulletin board(s). The Notice also will be provided to all inmates under the age of twenty-one (21) years upon entry into the corrections system.

5. MSDE will assign one (1) or more persons to serve as Parent Coordinator(s). The Parent Coordinator(s) will ensure that the procedural safeguards described in this Action Plan are provided.

#### **F. In-Service Training**

1. Within six (6) months before or six (6) months after the effective date of this Action Plan, all employees in each of the groups described below will have attended at least one in-service training program:

a. All employees of MSDE or DPSCS who participate in ARD Committee meetings;

b. All school principals and assistant principals at Maryland's Adult Correctional Facilities;

c. All special education teachers and special teachers' aides at Maryland's Adult Correctional Facilities;

d. All non-special education teachers and teachers' aides at Maryland's Adult Correctional Facilities;

e. The Parent Coordinator;

f. All Classification Counselors; and

g. All employees responsible for conducting intake interviews.

2. MSDE's in-service training will emphasize the importance of notifying the appropriate personnel if a prisoner is believed to be educationally disabled and properly assessing and placing the prisoner in a timely manner.

3. MSDE's in-service training for ARD Committee members will include specific training concerning the identification of each educational disabling condition enumerated in the IDEA and State law and instruction on any revised IEP procedures. MSDE's in-service training will emphasize the importance of identifying each prisoner's individual educational needs as well as the importance of developing IEPs that are tailored to and consistent with those needs.

4. MSDE will ensure that the MSDE Correctional Education Handbook is available to every individual who performs psychological or educational evaluations in connection with a prisoner's confinement in a Maryland Adult Correctional Facility.

**SIGNATORIES:**

**PUBLIC JUSTICE CENTER, INC.**

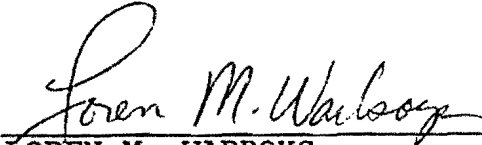


**JEROME I. CHAPMAN**  
Arnold & Porter  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 872-6750

**NANCY GRASMICK**  
State Superintendent of Schools  
Maryland State Department  
of Education  
200 West Baltimore Street  
Baltimore, Maryland 21201  
(410) 333-2100

**MICHAEL A. MILLEMANN**  
13009 Bottom Road  
Hydes, Maryland 21082  
(410) 592-2590

**BISHOP L. ROBINSON**  
Secretary  
Maryland Department of Public  
Safety and Correctional  
Services  
6776 Reisterstown Road  
Baltimore, Maryland 21215  
(410) 764-4100



**LOREN M. WARBOYS**  
Youth Law Center  
114 Sansome Street, Suite 950  
San Francisco, California 94104  
(415) 543-3379

**RICHARD S. GORDON**  
330 N. Charles Street, Suite 500  
Baltimore, Maryland 21201  
(410) 625-9409

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