

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

**THE UNITED STATES OF AMERICA, Plaintiff**

v.

**COMMONWEALTH OF PUERTO RICO; The Honorable PEDRO ROSSELLO, Governor of Puerto Rico in his official capacity; THE JUVENILE INSTITUTIONS**

**ADMINISTRATION; NYDIA COTTO VIVES, Secretary of Corrections and Rehabilitation in her official capacity; MIGUEL RIVERA, Administrator, Juvenile Institutions Administration; in his official capacity;**

**VICTOR FAJARDO, Secretary, Department of Education, in his official capacity;**

**CIVIL ACTION NO. 94-2080 (CC)**

**JOSE A. FUENTES AGOSTINI, Secretary, Department of Justice for the Commonwealth of Puerto Rico, in his official capacity;**

**CARMEN L. RODRIGUEZ, Secretary, Department of Services to the Family (formerly Social Services Dept.), in her official capacity;**

**DR. CARMEN FELICIANO VDA. DE MELECIO, Secretary of Health, Department of Health, in her official capacity;**

**CIVIL ACTION NO. 94-2080 (CC)**

**DR. JOSE ACEVEDO MARTINEZ, Administrator, Mental Health and Anti-Addiction Services Administration (formerly Anti-Addiction Services Dept.), in his official capacity;**

**ANGEL VICTOR MARTINEZ, Director, Cabo Rojo Industrial School (also known as Mayaguez) and Detention Center, in his official capacity;**

**FRANCISCA APONTE, Director, Ponce Central Training School, in her official capacity;**

**ANGEL VAZQUEZ, Director, Ponce Detention Center for Girls and Ponce Industrial School for Girls and Boys, in his official capacity;**

**DANIEL VAZQUEZ TORRES, Director, Guaynabo Training School, in his official capacity; and**

**JOSE SANTOS, Acting Director, Central Metropolitan Training School of Bayamón, in his official capacity;**

Defendants.

## **SETTLEMENT AGREEMENT**

### Table of Contents

Page	
I. Introduction .....	4
II. Definitions.....	8
III. New Construction.....	8
IV. Capital Improvements to Existing Facilities.....	12
V. Fire Safety.....	12
VI. Policies and Procedures.....	15
VII. Staffing and Staff Training.....	16
VIII. Classification.....	17
IX. Basic Care.....	18
X. Mental Health and Substance Abuse Care.....	18
XI. Disciplinary System.....	22
XII. Protective Custody.....	25
XIII. Education and Vocational Services - General Population...	25
XIV. Education and Vocational Services - Juveniles with Disabilities.....	26
XV. Recreation.....	29
XVI. Emergency Measures to Address Conditions at Bayamon.....	29
Implementation and Timing of Compliance....	30
XVII. Construction,	

### **I. Introduction**

1. This agreement between the Commonwealth of Puerto Rico and the United States, acting pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 *et seq.*, addresses conditions in juvenile detention and training facilities now or in the future operated by or on behalf of the Commonwealth.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.
3. The United States has standing to maintain this action pursuant to 42 U.S.C. § 1997a.

4. The United States is authorized to institute this civil action by 42 U.S.C. § 1997a and has met all the prerequisites for the institution of this civil action prescribed by the statute.
5. Venue in the United States District Court for the Commonwealth of Puerto Rico is proper pursuant to 28 U.S.C. § 1391.
6. Defendant COMMONWEALTH OF PUERTO RICO ("Commonwealth") owns and operates the juvenile detention and training facilities that are at issue in this action.
7. Defendant PEDRO J. ROSSELLO is the Governor of Puerto Rico. The Governor of Puerto Rico, as chief of the executive branch, has the duty to ensure that the heads of the Commonwealth's governmental departments that compose the Executive Branch of the Commonwealth of Puerto Rico guarantee the constitutional and statutory rights of all of the citizens of Puerto Rico, including the juveniles confined in the Commonwealth's correctional facilities.
8. Defendant NYDIA COTTO VIVES, Secretary of the Department of Corrections and Rehabilitation, was appointed by the Governor to supervise, among other things, the operation of Defendant JUVENILE INSTITUTIONS ADMINISTRATION ("AIJ").
9. Defendant MIGUEL RIVERA, Administrator of the AIJ, which was created by Law 154, dated August 5, 1988, is responsible together with the other Defendants in this case to provide and/or guarantee, among other things, the administration of juvenile facilities to rehabilitate and resocialize the juveniles confined in them.
10. Defendant ANGEL VICTOR MARTINEZ is the Director of the Cabo Rojo Industrial School, also known as Mayaguez ("Cabo Rojo Industrial"), and the Cabo Rojo Detention Center ("Cabo Rojo") and is responsible for the day-to-day operation of these facilities.
11. Defendant FRANCISCA APONTE is the Director of the Ponce Central Training School ("Ponce CTS") and is responsible for the day-to-day operation of this facility.
12. Defendant ANGEL VAZQUEZ is the Director of the Ponce Detention Center for Girls ("Ponce Detention") and the Ponce Industrial School for Girls and Boys ("Ponce Industrial") and is responsible for the day-to-day operation of these two facilities. 13. Defendant DANIEL VAZQUEZ TORRES is the Director of the Guaynabo Training School ("Guaynabo") and is responsible for the day-to-day operation of this facility.
14. Defendant JOSE SANTOS is the Acting Director of the Metropolitan Training School at Bayamón ("Bayamón") and is responsible for the day-to-day operation of this facility.
15. The individual Defendants named in ¶¶ 7-14 above are officers of the Executive Branch of the Commonwealth of Puerto Rico and are sued in their official capacities.
16. The detention and training facilities that are at issue in this case are institutions as that term is defined in 42 U.S.C. § 1997 (1)(A), (1)(B)(i) and (1)(B)(v).
17. Defendants are legally responsible, in whole or in part, for the operation of and conditions at the Commonwealth juvenile correctional facilities, as well as for the care and treatment of the juveniles residing at those institutions.
18. At all relevant times, Defendants have acted under color of state law.
19. Juveniles residing at the Commonwealth juvenile correctional facilities include youths with special

needs including those with mental illness, mental retardation, and other learning disabilities.

20. In February and October 1991, the Attorney General of the United States, through the Assistant Attorney General, Civil Rights Division, notified the Governor of the Commonwealth, the Advisor on Public Safety, and the Directors of the facilities that are at issue in this case of his intent to investigate allegations of unconstitutional conditions in the facilities pursuant to CRIPA.

21. Following a thorough investigation, in December 1992 and September 1994, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, notified the Governor of the Commonwealth, the Advisor on Security Affairs, and the Directors of the facilities that are at issue in this case that he had determined that juveniles confined in the facilities were being subjected to conditions that deprived them of rights, privileges and immunities secured by the Constitution of the United States and by federal statutory law.

22. For purposes of this civil lawsuit only and in order to settle this matter, Defendants agree and represent to the Court that the prospective relief set forth in this agreement complies in all respects with the provisions of 18 U.S.C. § 3626 (a)(1) & (c)(1).

23. This agreement shall be applicable to and binding upon all of the parties and their officers, agents, employees, assigns and successors. The Secretary for the Department of Justice for the Commonwealth, as signatory to this agreement, is specifically authorized to bind each of the Defendants and their successors to the terms of this agreement.

24. The remedial provisions of this agreement shall be applicable to and binding upon all present and future private providers whose services are secured to implement this agreement, as specified in ¶ 30.

## **II. Definitions**

25. The terms "juvenile" or "juveniles" shall refer to one or more individuals detained at or otherwise confined at residential facilities operated by or on behalf of the Commonwealth as well as any facility that is built or renovated to replace the existing facilities.

26. The term "detention" shall refer to the confinement of a juvenile pending court action in a facility operated by or on behalf of the Commonwealth.

27. The term "commitment" shall refer to the court's transfer of custody to AIJ.

## **REMEDIAL PROVISIONS**

### **III. New Construction**

28. Defendants agree to construct new facilities, remodel existing facilities and to contract with private providers consistent with the following AIJ Capital Development Plan. 29. Each new facility shall be built in accordance with: (1) the American Correctional Association's (hereinafter "ACA") standards in effect at the time of the construction; (2) the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 and 47 U.S.C. §§ 225 and 611, and the regulations thereunder; and (3) all Commonwealth fire codes and regulations.

30. Unless there is a showing of impossibility, an Act of God, or other situations that reasonably prohibit compliance with the following schedule, Defendants agree to build and renovate the following facilities within the time periods indicated:

### **A.I.J. Capital Development Plan**

	1995-2000				
	Fiscal Year	Fiscal Year	Fiscal Year	Fiscal Year	Fiscal Year
	1995- 1996	1996-1997	1997-1998	1998-1999	1999-2000
<u>Training Schools</u>					
Centro Metro Bayamón	192	96	96	192	192
E.I. Ponce (f)	44	0	0	0	0
E.I. Ponce (m)	155	200	200	200	200
E.I. Cabo Rojo Industrial	96	96	96	0	0
CTS Guaynabo	65	65	65	120	120
CTS Ponce	85	133	0	0	0
Campamento Santana	80	80	80	80	80
Villalba (new)	0	0	120	120	120
CTS Oeste (new)	0	0	0	120	120
Ponce (1st Phase)	0	120	120	120	120
Total	<u>717</u>	<u>886</u>	<u>873</u>	<u>952</u>	<u>952</u>
<u>Private Institutions</u>					
CENA Río Grande	150	150	150	150	150
Canóvanas	75	75	75	75	75
Juana Díaz	44	44	44	44	44
Parcelas Falu	37	37	37	37	37
RTC	0	20	75	75	75
P.R. Key (f)	0	102	102	102	102
Total	<u>306</u>	<u>428</u>	<u>483</u>	<u>483</u>	<u>483</u>
<u>AIJ Group Homes</u>					
Guali	8	8	8	8	8
Vida Independiente	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>
Total	<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>
Grand Total	<u>1,043</u>	<u>1,334</u>	<u>1,376</u>	<u>1,455</u>	<u>1,455</u>
<u>Detention Centers</u>					
Ponce (f)	20	0	0	0	0
Cabo Rojo (m)	56	56	*56	0	0
Humacao	72	0	0	0	0
CENA Barbosa (contract)	100	100	0	0	0
Detention Este (Humacao)	0	0	120	120	120
Anexo - Bayamón	0	120	120	120	120
Ponce (2nd Phase)	0	0	0	120	120
Guaynabo	0	140	**140	0	0
Moca	0	0	120	120	120
P.R. Key (f)	0	48	48	48	48
Total	<u>248</u>	<u>464</u>	<u>604</u>	<u>528</u>	<u>528</u>

\* Will close during f.y. to coincide with opening of Moca facility

\*\* Will close as detention center during f.y. to coincide with opening of Detention Este (Humacao).

#### **IV. Capital Improvements to Existing Facilities**

31. Existing facilities expected to be occupied by juveniles beyond Fiscal Year 1996-1997 shall conform to applicable federal, state and/or local building codes. Sleeping areas in which juveniles are confined shall conform to 35 square feet per one occupant. Toilets shall be provided at a minimum ratio of one for every 12 juveniles in male facilities and one for every eight juveniles in female facilities. Juveniles will have access to operable wash basins with running water, to operable showers, and to potable drinking water.

32. Defendants shall eliminate ventilation and acoustical echoing problems at Centro Juvenile Metropolitano in Bayamón.

33. Defendants will ensure that ventilation and acoustical systems provide healthful living and working conditions for juveniles and staff in all facilities.

#### **V. Fire Safety**

34. In order to properly equip and swiftly evacuate the facilities in the event of a fire or other emergency, in each facility, Defendants shall provide sufficient staff with appropriate keys to unlock exit doors in all buildings occupied by juveniles. The keys shall be color coded and notched or otherwise readily identifiable. Defendants shall also store a backup set of emergency keys at a place accessible at all times to staff on duty on all shifts.

35. Defendants agree that designated exit doors in all facilities will be maintained in operable condition and shall be readily unlocked in case of an emergency.

36. In each facility, Defendants must install and maintain an emergency generator system in order to provide essential lights, power and communication during emergencies.

37. AIJ policy shall ensure safety for juveniles and staff by requiring compliance with fire safety code requirements. Specific emergency plans shall be developed and copies made available to staff members. There shall be ongoing training programs and emergency procedures shall be reviewed and updated annually.

38. A person having knowledge of the NFPA Life Safety Code and of the requirements of the specific building and fire codes for Puerto Rico will be designated as the Fire and Safety Officer. This Fire Safety Officer will have the authority to conduct monthly inspections of each facility for compliance with safety and fire prevention requirements. The Fire and Safety Officer shall prepare a monthly report of his findings and submit the report to the Monitor. Defendants shall correct in a timely manner any fire safety deficiency noted in the reports of the Fire and Safety Officer. A staff member in each facility who has received training in and is familiar with weekly inspection procedures, including the use of checklists and methods of documentation, will be appointed to work with the Fire and Safety Officer.

39. Each facility director shall develop written procedures which include the requirements of the Life Safety Code, and the Director shall ensure the existence of an emergency evacuation plan that is approved by the Fire Safety Officer utilizing the following:

A. The Director or his/her designee shall be responsible for scheduling fire drills. Fire drills shall be conducted at least four times per year on each shift, for a total of 12 fire drills per year per housing unit. Prior notification of the drill shall be limited so as to increase the drill's effectiveness.

B. The drill shall begin when the "fire" location is established and not completed until all juveniles and staff assigned to the location have been evacuated and identified.

C. Fire drills shall include the evacuation of all juveniles except when there is clear and convincing evidence that institutional security would be jeopardized. Upon such showing, evacuation during drills is not required, although staff supervising such juveniles are required to perform their roles/activity in the drills.

D. When the building is clear, a population count shall be conducted.

E. When all are accounted for, staff and juveniles shall return to their regularly assigned area.

F. The drill shall be timed to measure the effectiveness and efficiency of the fire plan.

40. AIJ agrees to limit the use of electrical extension cords by providing at least one duplex electrical receptacle for each bed in the housing units. Where electrical extension cords are used, the cords shall be free of damage and modifications.

41. Defendants agree to prohibit the use of electrical appliances which are not maintained in accordance with manufacturers' specifications.

42. Defendants agree that all facilities shall prepare and maintain incident reports that document each occurrence of a fire. The reports shall contain the date and time of the fire, a description of the fire, the probable cause of the fire, the actions taken by staff in response to the fire, and the corrective action taken by the facility in order to prevent future similar occurrences.

43. With the exception of those facilities that will be replaced, Defendants agree to provide sufficient space for storage for each juvenile to store his or her clothes, reading materials, etc., without compromising institutional security and in a place of constant surveillance.

44. Defendants agree to provide mattresses constructed of fire retardant materials.

## **VI. Policies and Procedures**

45. Within one year of the approval of this agreement by the Court, Defendants agree to provide an agency policy and procedure manual governing all operational aspects of the institutions. Within eighteen months of the approval of this agreement by the Court, Defendants shall further insure that the facilities are strictly operated within these policies and procedures and that all staff have been trained accordingly.

46. All staff members must sign a statement indicating that they have read and understood the manual. Defendants shall review and update the manual annually.

47. Defendants shall draft a handbook advising juveniles of their rights and of the rules of conduct applicable to Commonwealth facilities. Defendants shall distribute the handbook to every juvenile at intake. The handbook shall include a section delineating proscribed conduct and the potential sanctions for violations of rules.

## **VII. Staffing and Staff Training**

48. Defendants shall ensure that the facilities have a sufficient number of staff to implement all terms of this agreement. A sufficient number of direct care staff means not less than one (1) worker to eight (8) juveniles during day and evening shifts and not less than one (1) worker to sixteen (16) juveniles during

normal sleeping hours. Direct care staff shall supervise and participate in recreational, leisure and treatment activities with the juveniles.

49. Direct care staff shall have at least forty (40) hours of pre-service training before being given supervisory responsibility for juveniles.

50. Defendants shall ensure that current and new facility direct care staff are sufficiently well-trained to implement the terms of this agreement. Each direct care staff, whether current or new, shall receive at least forty (40) hours of training per year by qualified personnel to include, but not be limited to, the following areas: CPR (cardiopulmonary resuscitation); recognition of and interaction with suicidal and/or self-mutilating juveniles; recognition of the symptoms of drug withdrawal; administering medicine; recognizing the side-effects of medications commonly administered at the facility; HIV related issues; use-of-force regulations; strategies to manage juveniles' inappropriate conduct; counseling techniques and communication skills; use of positive reinforcement and praise; and fire prevention and emergency procedures, including the fire evacuation plan, the use of keys, and the use of fire extinguishers.

51. AIJ will develop and implement a curriculum that will afford training sufficient to enable all staff to implement the terms of this agreement.

### **VIII. Classification**

52. At both the detention phase and following commitment, Defendants shall establish objective methods to ensure that juveniles are classified and placed in the least restrictive placement possible, consistent with public safety. Defendants shall validate objective methods within one year of their initial use and once a year thereafter and revise, if necessary, according to the findings of the validation process.

53. AIJ agrees that no juvenile under the age of 13 shall be housed with juveniles aged 13 or older. AIJ agrees that no juvenile aged 13 or older shall be housed with juveniles under 13 except where professionals recommend placement contrary to this provision consistent with the best interests of the juvenile.

54. Juveniles being detained shall not be housed with committed juveniles awaiting classification and evaluation. Defendants shall develop plans for instituting Classification Centers for the purpose of receiving, evaluating, and classifying juveniles who have been committed to AIJ or who otherwise require re-classification.

### **IX. Basic Care**

55. Defendants shall provide each juvenile with a bed, a mattress, a mattress cover, blankets and/or sheets, a pillow, a pillowcase, and a towel. Defendants will provide juveniles with clean clothes. All bedding, towels and clothes shall be cleaned at least once per week.

56. Defendants shall provide each juvenile with an adequate supply of non-caustic soap that does not cause skin irritation, hair shampoo, toothbrushes, toothpaste, toilet paper, combs, and razors for shaving.

57. Defendants shall ensure that all living areas, including toilet facilities, are cleaned at least once a week.

58. Defendants shall repair any defective faucet, toilet, shower, lavatory, water fountain, or lighting fixture within a reasonable time.

## **X. Mental Health and Substance Abuse Care**

59. Defendants, specifically the Department of Health (ASSMCA), shall provide an individualized treatment and rehabilitation plan, including services provided by AIJ psychiatrists, psychologists, and social workers, for each juvenile with a substance abuse problem.
60. Defendants, specifically the Department of Health (ASSMCA), shall provide training to treatment staff in each facility concerning substance abuse prevention counseling. Thereafter, facility treatment staff shall provide substance abuse prevention counseling to all juveniles.
61. At each facility, Defendants, specifically the Department of Health (ASSMCA), shall provide substance abuse programs on site in coordination with AIJ.
62. In addition to the mental health staff required by ¶ 36 of the Consent Order approved by the Court in this case in October 1994, Defendants shall provide ambulatory psychiatric services by a team. This team shall be composed of a child psychiatrist, a child psychologist and a social work counselor. All mental health care personnel shall have written job descriptions and meet applicable Commonwealth licensure and/or certification requirements. Defendants, specifically AIJ, will provide for residential treatment and, if needed, in-patient hospitalization for those cases where such service is needed.
63. For each juvenile who expresses suicidal or self-mutilating ideation or intent while incarcerated, staff shall immediately inform a member of the health care staff. Health care staff shall immediately complete a mental health screening to include suicide or self-mutilation ideation for the juvenile. For each juvenile for whom the screening indicates active suicidal or self-mutilating intent, a psychiatrist shall immediately examine the juvenile. The juvenile, if ever isolated, shall be under constant watch. Defendants shall develop written policies and procedures to reduce the risk of suicidal behavior by providing screening for all juveniles at all points of entry or re-entry to AIJ's facilities and/or programs and by providing mechanisms for the assessment, monitoring, intervention and referral of juveniles who have been identified as representing a potential risk of severe harm to themselves. Treatment will be provided consistent with accepted professional standards.
64. All staff who come into contact with juveniles shall be trained by a licensed mental health professional or suicide prevention expert. Such training shall include, but not be limited to, training in the proper response to a suicide attempt, including cutting techniques on hanging victims and other first aid measures.
65. Defendants, specifically AIJ, shall purchase and maintain in an area easily accessible to all living quarters appropriate rescue equipment or any other equipment deemed appropriate to ensure that staff can effectively intervene in an attempted suicide.
66. An AIJ child and/or adolescent psychiatrist shall develop a protocol for the use of psychotropic medication by other physicians. A training program will complement this protocol. A child and/or adolescent psychiatrist will be available on an on-call basis at all times.
67. Defendants shall obtain specific informed consent from a juvenile's parent or legal guardian or from the state court for the use of psychotropic medication for each juvenile on such medication. All psychotropic medications will be prescribed by a licensed psychiatrist and/or physician. All psychotropic medication will be reviewed and approved by an AIJ child psychiatrist. In all cases, the family of any juvenile taking psychotropic medication will be informed in writing by the family's case manager.
68. Defendants shall make arrangements for EKGs to be done for juveniles who will be taking tricyclic antidepressants.

69. Defendants, specifically AIJ, shall train all nursing personnel regarding the use of psychotropics, including: side effects of psychotropic medications; target symptoms; specific medical testing for follow-up; and the use of instruments to evaluate muscle movement side effects of psychotropics.

70. The AIMS instrument shall be completed at least once every six (6) months for each juvenile taking psychotropic medications.

71. Stimulants, tranquilizers, and psychopharmacological drugs shall only be used as deemed medically necessary and shall not be administered for punishment.

72. All juveniles receiving emergency psychotropic medication shall be seen at least once during each of the next three shifts by a nurse and within twenty-four (24) hours by a physician to reassess their mental status and medication side effects. Nurses and doctors shall document their findings regarding adverse side effects in the juvenile's medical record. If the juvenile's condition is deteriorating, a psychiatrist shall be immediately notified.

73. Defendants, specifically AIJ, shall design a program that promotes behavior modification by emphasizing positive reinforcement techniques. Defendants, specifically AIJ, shall provide all juveniles with an individualized treatment plan identifying each juvenile's problems, including medical needs, and establishing individual therapeutic goals for the juvenile and providing for group and/or individual counseling addressing the problems identified. Defendants, specifically AIJ, shall implement all individualized treatment plans.

## **XI. Disciplinary System**

74. Defendants shall specify the rules of the facilities with a complete list of possible punishments for violations of such rules in the handbook described in ¶ 47 above. Written notice of any rule violation, a hearing before a facility staff person not involved in the investigation of the violation, and an appeal to the facility director shall be provided to a juvenile prior to any punishment being imposed, except that Defendants may administratively segregate a juvenile in emergency or life-threatening situations. In the event of an emergency, when circumstances make it inappropriate to hold a hearing prior to segregation, a hearing shall take place within forty-eight (48) hours from the time of segregation.

75. The handbook described in ¶ 47 above shall include a description of the grievance process. Grievance decisions that are appealed by the juvenile beyond the facility shall be reviewed by Defendant Director of the AIJ or his or her designee.

76. The terms of this agreement relating to safety, crowding, health, hygiene, food, education, recreation and access to courts shall not be revoked or limited for any juvenile for disciplinary reasons.

77. No corporal punishment shall be imposed on any juvenile. The use of physical force by staff shall be limited to instances of justifiable self-defense, protection of others, and prevention of escapes. Defendants agree that under no circumstances shall restraints be used as a form of punishment. In cases where restraints are necessary to prevent a juvenile from causing serious bodily harm to himself or to another, the facility director or his/her designee must approve the use of restraints before they are applied.

78. Defendants shall take prompt administrative action in response to allegations of abuse and mistreatment. An incident report shall be prepared for each allegation of physical or mental abuse, including juvenile on juvenile assaults, staff on juvenile abuse, and excessive use of force by staff, within 24 hours of the incident. A copy of each incident report together with the preliminary investigation prepared by the Police Department and/or AIJ shall be forwarded to Defendant Department of Justice, where the allegations shall be investigated and a final report shall be made in 30 days. In

addition, a copy of each incident report alleging physical or mental abuse by staff or excessive use of force by staff together with the preliminary investigation prepared by the Police Department and/or the AIJ, shall be forwarded to Defendant Department of Social Services.

79. Juveniles shall be placed in isolation only when the juvenile poses a serious and immediate physical danger to himself or others and only after less restrictive methods of restraint have failed. Isolation cells shall be suicide resistant. Isolation may be imposed only with the approval of the facility director or acting facility director. Any juvenile placed in isolation shall be afforded living conditions approximating those available to the general juvenile population. Except as provided in ¶ 91 of this agreement, juveniles in isolation shall be visually checked by staff at least every fifteen (15) minutes and the exact time of the check must be recorded each time. Juveniles in isolation shall be seen by a masters level social worker within three (3) hours of being placed in isolation. Juveniles in isolation shall be seen by a psychologist within eight (8) hours of being placed in isolation and every twenty-four (24) hours thereafter to assess the further need of isolation. Juveniles in isolation shall be seen by his/her case manager as soon as possible and at least once every twenty-four (24) hours thereafter. A log shall be kept which contains daily entries on each juvenile in isolation, including the date and time of placement in isolation, who authorized the isolation, the name of the person(s) visiting the juvenile, the frequency of the checks by all staff, the juvenile's behavior at the time of the check, the person authorizing the release from isolation, and the time and date of the release. Juveniles shall be released from isolation as soon as the juvenile no longer poses a serious and immediate danger to himself or others.

## **XII. Protective Custody**

80. The terms of this agreement relating to safety, crowding, health, hygiene, food, education, recreation and access to courts shall not be revoked or limited for any juvenile in protective custody.

## **XIII. Educational and Vocational Services - General Population**

81. Defendants, specifically the Department of Education, shall provide academic and/or vocational education services to all juveniles confined in any facility for two weeks or more, equivalent to the number of hours the juveniles would have received within the public education system. Specifically, this education shall be provided 5 (five) days per week, 6 (six) hours per day, 10 (ten) months per year. AIJ shall provide adequate instructional materials and space for educational services. Defendants shall employ an adequate number of qualified and experienced teachers to provide these services.

82. Within five (5) business days of a juvenile's placement in a detention center or training school, Defendants shall assess the juvenile's educational achievements to date and identify the educational needs of the juvenile.

83. Using the information obtained in the assessment required in ¶ 82, Defendants shall develop and implement an educational plan for each juvenile. The educational plan shall include meaningful and specific educational and vocational goals as well as educational problems, if any have been identified. Educational plans shall be kept in the juvenile's record at each facility.

84. The educational plans required by ¶ 83 shall be reviewed and revised, if appropriate, at least twice a year by qualified professionals.

85. Defendants shall provide reading materials in designated areas of each living unit.

## **XIV. Education and Vocational Services - Juveniles with Disabilities**

86. Defendants, specifically the Department of Education, shall abide by all mandatory requirements and time frames set forth under the Individuals with Disabilities Education Act, 20 USC §§ 1401 *et seq.*

Defendants shall screen juveniles for physical and learning disabilities. The screening shall include questions about whether the juvenile has been previously identified by the public school system as having an educational disability, previous educational history, and a sufficient medical review to determine whether certain educational disabilities are present, such as hearing impairments, including deafness, speech or language impairments, visual impairments, including blindness, mental retardation, or serious emotional disturbances adversely affecting educational performance.

87. If a juvenile has been previously identified as having an educational disability, Defendants shall immediately request that the appropriate school district provide a copy of the juvenile's individualized education plan ("IEP"). Defendants shall assess the adequacy of the juvenile's IEP and either implement it as written if it is an adequate plan or, if the IEP is inadequate, rewrite the plan to make it adequate, and then implement the revised IEP.

88. If the juvenile has not been previously identified as having an educational disability, but indications of such a disability exist, an adequate evaluation must be performed within the time limits prescribed by federal law. The Commonwealth shall use only professionally accepted tests to complete the evaluation. The evaluation shall include a complete psychological battery and intellectual achievement tests. A copy of this educational evaluation shall be kept in the juvenile's record at the facility.

89. If a juvenile referred for an evaluation pursuant to the above paragraph is discharged from the system before the evaluation is complete, Defendants shall forward all information regarding screenings and evaluations completed to date, noting what evaluations are yet to be performed, to the juvenile's receiving school district.

90. Defendants shall provide appropriate services for juveniles eligible for special education and related services. Defendants shall provide each such juvenile with educational instruction specially designed to meet the unique needs of the juvenile, supported by such services as are necessary to permit the juvenile to benefit from the instruction. Defendants shall coordinate such individualized educational services with regular education programs and activities.

91. Qualified professionals shall develop and implement an IEP reasonably calculated to provide educational benefits for every juvenile identified as having a disability. When appropriate, the IEP shall include a vocational component.

92. All juveniles 18 years old or older shall be permitted to participate in the development of the IEP. Juveniles under age 18 have a right to have a parent present during the development of the IEP. If a parent is unwilling or unable to attend, Defendants shall appoint a surrogate parent trained in the relevant provisions of federal and state law to participate in the development of the IEP. Appointed surrogate parents may not be employees of any public agency involved in the education or care of the juvenile. All juveniles, parents, and surrogate parents shall be informed that they have the right to challenge the IEP.

93. Services provided pursuant to IEPs shall be provided year round. Defendants shall ensure that juveniles with educational disabilities receive a full day of instruction five (5) days a week.

94. Juveniles shall not be excluded from services to be provided pursuant to IEPs based on a propensity for violence or self-inflicted harm or based on vulnerability. Juveniles in isolation or other disciplinary settings have a right to special education. If required for institutional security, services provided pursuant to IEPs may be provided in settings other than a classroom.

95. When an IEP is ineffective, Defendants shall timely modify the IEP.

## XV. Recreation

96. Defendants shall employ one full time Recreation Facilitator at each detention and training school. The Recreation Facilitator shall plan and implement a comprehensive recreation program during non-school waking hours.

97. Defendants shall provide adequate educational and recreational material in designated areas housing the general population.

## XVI. **Emergency Measures to Address Conditions at Bayamon**

98. Based upon recent events at Bayamon, additional steps are needed to ensure the safety of the juveniles confined at that facility. Defendants agree that they will ensure the safety of the juveniles confined at Bayamon by no later than July 15, 1997.

Among the measures that Defendants may take to ensure the safety of the juveniles is to contract with a private provider to establish safe conditions at the facility. Defendants further agree to establish monitoring mechanisms to ensure that the private provider is taking all necessary actions to protect the juveniles confined at Bayamon from harm and to comply with the provisions of this agreement. In the event that the private provider is not ensuring the safety of the juveniles, Defendants agree to take immediate steps to protect the juveniles at Bayamon from harm.

## XVII. **Construction, Implementation, and Timing of Compliance**

99. This agreement shall take effect on the date of its approval by the Court. Except where otherwise specifically indicated, Defendants shall implement all provisions of this agreement within 180 days of its approval by the Court.

100. Mr. Orlando Martinez, or in the event that he is unavailable, another person jointly selected by the parties, or if they cannot agree, the Court, will act as the Monitor to oversee Defendants' compliance with the provisions of this agreement. Fees for services rendered will be borne by Defendants. The Monitor shall execute the following duties:

A. He will provide a written report to the Court and to the parties within 30 days after the agreement is approved by the Court.

B. Thereafter, the Monitor shall report to the Court and the parties every ninety (90) days unless otherwise directed by the Court. This report shall include the precise steps Defendants have taken to implement this agreement and evaluate the extent to which Defendants, in fact, have complied with the requirements of this agreement.

C. The Monitor and his assistants shall not be empowered to direct Defendants or any of their subordinates to take or to refrain from taking specific action to achieve compliance.

D. The duties of the Monitor will be to observe, find facts, report and/or testify as to his findings. He will also assist Defendants in any manner, even by conferring informally with Defendants and their subordinates on matters affecting compliance.

E. The Monitor and his assistants shall have access to all facilities and programs operated by or on behalf of the Commonwealth as well as any facility that is built, renovated or contracted with in order to implement the provisions of this agreement.

F. Defendants shall provide the Monitor and his assistants access to records, files and papers related to compliance with the provisions of this agreement. Such access shall include, but not be limited to, departmental, institutional, and juvenile records, including but not limited to medical and mental health

records. These records shall be not disclosed to parties other than the United States in order to protect the confidentiality of such records.

G. The Monitor may conduct confidential interviews with staff members and employees of AIJ as well as staff of private programs contracted with in order to implement this agreement. Before interviewing Defendants Cotto Vives, Fajardo, Fuentes, or Feliciano Vda. de Melecio, the Monitor must notify them prior to his interview. In addition, he may engage in informal conferences with such staff members and employees. AIJ must promulgate to their employees a policy of cooperation to all inquiries made by the Monitor or his staff in compliance with his duties.

H. The Monitor or his staff may conduct confidential interviews and meetings with any confined juvenile or group of juveniles. These meetings, however, must be held at the institution where the juvenile is confined.

I. The Monitor may attend release hearings or any formal institutional meeting or proceeding at any institution of AIJ.

J. The Monitor, with 30 days notice, may require written reports from Defendants regarding compliance with this agreement.

K. Any report prepared by the Monitor or his assistants shall be submitted to the parties in draft form with time limitations for the parties to informally comment on the reports.

L. After the Monitor files a report with the Court, any party may file written objections to the report within fifteen days of receipt of the same unless they have already informally objected to the findings before. The objection shall note each particular finding or recommendation to which objection is made. Any party, however, upon receipt of the report may request a hearing with the Court.

101. Defendants shall keep sufficient records to document compliance with this agreement.

102. Upon reasonable notice to counsel for Defendants, the United States shall have access to all staff, juveniles, facilities, programs and documents related to the implementation of this agreement.

103. To ensure that the plans and provisions of this agreement are properly and timely implemented, the Court shall retain jurisdiction of this action for all purposes during the lifetime of this agreement and until such time as the Commonwealth has fully and faithfully implemented all requirements of the agreement and such full compliance has been maintained for one year. At such time as the Commonwealth has determined that it is in full and faithful compliance with the agreement and that full compliance has been maintained for no less than one year, the Commonwealth shall advise the United States in writing. Thereafter, the parties shall promptly confer as to status of compliance. If, after a reasonable period of consultation and the completion of any evaluation the United States may wish to undertake, including tours of the facilities and programs, the parties cannot resolve any compliance issues, the Commonwealth may file a motion to dismiss. If the Commonwealth moves for dismissal of this agreement, the United States will have an adequate time after the receipt of the Commonwealth's motion to object to the motion. If the United States does not object, the Court may grant the Commonwealth's motion. If the United States does make an objection, the Court shall hold a hearing on the motion and the burden shall be on the Commonwealth to demonstrate that it has fully and faithfully implemented all provisions of this agreement and maintained such compliance for at least one year.

104. This agreement incorporates by reference ¶¶ 28-36 and ¶¶ 38-46 of the Consent Order signed by the parties and entered as an Order in October 1994. The parties will be bound by the provisions of this agreement and by ¶¶ 28-36 and ¶¶ 38-46 of the October 1994 Consent Order.

105. Defendants shall immediately explain the terms of this agreement to all persons connected with the facilities. Defendants shall translate this agreement into Spanish. All facility staff and other individuals providing services required by this agreement shall sign a statement indicating that they have read and understand this agreement. Such statement shall be retained by the Defendants. Defendants shall require compliance with this agreement by their respective employees, agencies, assigns, or successors.

106. In each living area in each facility, Defendants shall provide continuous notice of this agreement's terms to all juveniles by posting, within ten (10) days of the signing of this agreement and continuously thereafter, a copy of the translated agreement in a place within easy access to all juveniles, such as a common dayroom area. In addition to the general posting of this agreement, the handbook described herein shall advise juveniles that the facilities are being operated under the terms and conditions of an agreement approved and enforceable by the United States District Court for the Commonwealth of Puerto Rico, and that upon request, any juvenile will be afforded a copy of the complete agreement.

107. The United States acknowledges the good faith of the Government of Puerto Rico in trying to address the remedial measures needed for the improvement of the juvenile system as a whole in Puerto Rico. The United States, however, reserves its right to seek enforcement of the provisions of this agreement if it determines that Defendants have failed to fully comply with any provision of this agreement. The United States agrees to consult with officials from the government of Puerto Rico before instituting enforcement proceedings.

**CONSENTED TO BY THE UNDERSIGNED:**

**FOR THE DEFENDANTS: FOR THE PLAINTIFF:**

**JOSE A. FUENTES AGOSTINI ISABELLE KATZ PINZLER**

Secretary Acting Assistant Attorney

Department of Justice for General

the Commonwealth Civil Rights Division

**NYDIA COTTO VIVES STEVEN H. ROSENBAUM**

Secretary Chief

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Washington, D.C.

**CARMEN FELICIANO VDA. DE MELECIO**

Secretary

Department of Health