

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|---------------------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA, |) | CIVIL ACTION NO. |
| |) | |
| Plaintiff, |) | 1:98-CV-836-JEC |
| |) | |
| vs. |) | |
| |) | |
| THE STATE OF GEORGIA, <u>et al.</u> , |) | JOINT MOTION TO AMEND |
| |) | THE ORDER OF CONDITIONAL |
| |) | DISMISSAL |
| Defendants. |) | |
| |) | |
| |) | |
| |) | |
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| |) | |
| |) | |

In March 1998, the United States Department of Justice and the named Defendants reached a settlement agreement ("Memorandum of Agreement" or "MOA") concerning allegations of civil rights violations at secure juvenile justice facilities operated by the Georgia Department of Juvenile Services. On March 18, 1998, the United States simultaneously filed the Complaint underlying the present case as well as a Joint Motion for Conditional Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). The MOA was included as an exhibit to the Joint Motion for Conditional Dismissal. On March 31, 1998, this Honorable Court signed an Order that placed the case on inactive status, and retained jurisdiction of the case until the State has satisfied the terms of the MOA.

On June 30, 2008, the Parties agreed to a modification of the MOA ("Modification"), whereby certain provisions shall no longer be subject to monitoring, and creates an independent monitor to be paid by the State to verify compliance with the remaining agreement provisions. The Modification, attached as Exhibit 1, supplements and amends the MOA.

Accordingly, the United States and the State of Georgia move this Honorable Court to amend its Order of March 31, 1998 by adopting the attached proposed Modified Order of Conditional Dismissal.

DATED this 22nd day of July, 2008.

Respectfully submitted,

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**Modification of the
Memorandum of Agreement**

**Between the United States of America
and the State of Georgia**

**Regarding Conditions at Georgia
Juvenile Justice Facilities**

Originally Filed in Civil № 1:98-CV-836 in the United States
District Court for the District of Georgia:
March 18, 1998; As Amended: June 30, 2008

Modification of the Memorandum of Agreement
Between the United States and the State of Georgia
Concerning Georgia Juvenile Justice Facilities

This agreement modifies the terms of the Memorandum of Agreement between the United States and the State of Georgia filed on March 18, 1998 (MOA). The MOA is attached as Exhibit A, and is incorporated by reference herein.

1.

Statement of Purpose of this Modification

It is the intent of the parties to modify Section XI. MONITORING AND ENFORCEMENT of the MOA in its entirety and substitute this Modification as it relates to all issues regarding monitoring, enforcement and termination of the MOA. The Parties agree that based upon Georgia's substantial compliance with the terms and requirements of certain provisions of the MOA, the citations contained in the areas of Education, the Office of Investigations and Apprehensions' responsibilities for investigating child abuse investigations, and the Office of Continuous Improvement have been released from any further monitoring or verification, and will not be subject to this Modification. This Modification provides the process to be followed by the Parties to determine substantial compliance in the Georgia Juvenile Justice Facilities related to all remaining citations in the MOA and the mechanism for dismissal with prejudice of the lawsuit United States v. Georgia, U.S.D.C. Northern District of Georgia, Case No. 1 98-CV-836.

2.

Definition of Terms

DOJ: The United States Department of Justice, Civil Rights Division, its agents and employees.

Effective Date: The effective date shall be the date the parties file the Amended Joint Motion for Conditional Dismissal pursuant to paragraph ten (10) of this agreement.

Parties: The parties to this Modification are the DOJ and the State of Georgia (DJJ).

Juvenile Justice Facility(ies): This term describes and is limited to the Georgia Regional Youth Detention Centers (RYDC) and the Georgia Youth Development Campuses (YDC).

MOA Citation: The individual agreed upon requirements listed in the MOA, as modified by subsequent agreements of the Parties, other than Education, Investigations and Apprehensions and Quality Assurance.

Monitoring: The process for inspection of the selected Juvenile Justice Facilities to include, but not limited to, the review of records, youth interviews, staff interviews, and site visits of specified duration.

Verification: After monitoring and evaluation by the Monitor, substantial compliance by the Georgia DJJ will be determined based upon all the facts discovered and the independent professional opinion of the Monitor. A finding of substantial compliance by the Monitor will be considered verification and lead to termination of the MOA.

Substantial Compliance: Maintenance of compliance in a subject area of the MOA for a sustained period of time. With regard to an individual Georgia Juvenile Justice Facility, substantial compliance in a subject area is achieved if any violations are minor or occasional, and are not systemic. On a systemic level, substantial compliance is achieved so long as, when evaluating DJJ's system as a whole, any noted deviations from specific MOA requirements at individual Juvenile Justice Facilities does not frustrate the essential purposes of the Agreement. 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, but may be considered by the Monitor when considering overall systemic substantial compliance.

3.

The Monitor and Monitoring Team

The Parties have jointly selected David W. Roush, Ph.D. as the Monitor under this Modification Agreement. The Monitor has selected, and the Parties have agreed, to the following subject matter experts to serve as members of the Monitoring Team: Anne McCulloch Nelson, Rodney Erwin M.D., and Yvonne M. Friday, M.D.

4.

Termination or Replacement of Monitor or Team Members

The Monitor or members of the Monitoring Team may be terminated only for good cause and only with prior notice to and approval of both Parties. Good cause shall include any violation of State or federal law which reasonably calls into question the Monitor or Monitoring Team member's fitness to continue serving as a member of the Monitoring Team. If the Monitor or a member of the Monitoring Team is terminated 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 termination or unavailability. The Monitor shall be well qualified with education, training and experience in the field of juvenile justice. In the event the Parties do not agree upon the need for termination or a replacement, the Parties agree to submit the resolution of this matter to dispute resolution through binding arbitration.

5.

Independence of Monitor and Monitoring Team

Neither Party, nor any employee or agent of either Party, shall have any supervisory authority over the Monitor's activities, reports, findings or recommendations.

Duties and Responsibilities of the Monitora. Monitor Access

The Monitor and the Monitoring Team shall have full and complete access to the selected DJJ Juvenile Justice Facilities for the purpose of monitoring and evaluation of said facilities related to outstanding provisions of the MOA. Records, reports and interviews with youth and staff shall also be made available from the selected DJJ Juvenile Justice Facilities. Either Party may choose to attend any of the selected site visits but will not participate or attempt to influence the monitoring process. Either Party may provide information or documents to the Monitoring Team that may be relevant to the MOA.

b. Monitor Ex Parte Communications

The Monitor shall be permitted to initiate and receive *ex parte* communications with both Parties.

c. Privilege

This Agreement shall not be deemed to waive the attorney/client, attorney work product, deliberative process, or any other privilege applicable under State or federal law. The State shall not assert physician/patient or psychotherapist/patient privileges with respect to the monitoring or enforcement of this Agreement.

d. Costs of Monitoring

The costs for the services of the Monitor shall be paid for by the State. The Monitor shall have a budget and staff sufficient to carry out the responsibilities described in this Modification Agreement. The Parties will review and agree to the Monitor's proposed budget prior to the expenditure of any funds. In the event of the need for subsequent visits or expenditures not included in the initial budget, DJJ will review and approve the proposed additional budget items prior to the expenditure of any funds. In the interest of expediting the selection and contracting processes for the Monitoring Team, the State will be exempt from local contracting procurement regulations and all such regulations will be considered waived for this purpose.

e. Site Selection for Monitoring

The Monitor shall inspect six (6) DJJ Juvenile Justice Facilities, which shall include random inspections of DJJ Juvenile Justice Facilities for compliance with MOA citations relating to medical care mental health care, and protection from harm. These DJJ Juvenile Justice Facilities will be chosen randomly by the Monitor using a process approved by the Parties. Each site shall be required to produce up to (6) six months of documentation related to the MOA citations being reviewed, at the discretion of the Monitor. If the Monitor determines that the State has failed to achieve substantial compliance with this Modification Agreement at two (2) or more selected DJJ Juvenile Justice Facilities, the Monitor shall, subject to all other provisions of this

agreement, inspect an additional two (2) DJJ Juvenile Justice Facilities to determine if the same substandard conditions exist at those facilities.

f. Duration of Site Visits

These monitoring visits shall last in duration no more than five (5) consecutive days at a site. Subject to the provisions of paragraph 10, there shall be no more than one visit per selected site, and the time frame for all visits, monitoring activities and reports on compliance shall be no more than nine (9) months from the Effective Date of this agreement.

g. Report of Site Visit

After each site visit the Monitor shall provide a verbal report to the Parties followed by a written report stating the results of the monitoring and the status of compliance with the operative provisions of the MOA. This written report shall be provided within thirty (30) days following each site visit. Each Party may request clarification on any item or finding and provide additional information for the Monitor to consider for inclusion into a revised report.

h. Limitations on Public Disclosure by Monitor or Team

Except as required or authorized by the terms of this Agreement, or the parties acting together, the Monitor or a member of the Team shall not: make any public statements (at a conference or otherwise); issue findings with regard to any act or omission of the State or its agents, representatives or employees; or disclose non-public information provided to the Monitor or a member of the Team pursuant to this Agreement. Any press statement made by the Monitor or a member of the Team regarding his or her employment must first be approved by the Parties.

i. Privileged or Confidential Information

Legally confidential or privileged information or documents obtained pursuant to the MOA shall not be disseminated or released to any person not a party to the MOA, unless consented to by the Parties or otherwise required by law. Both Parties will adhere to the requirements of state or federal law governing disclosure of confidential information by a government agency, department or employee including the Privacy Act, 5 U.S.C. §552a, and the Freedom of Information Act "FOIA," 5 U.S.C. § 552. In the event of a request for materials pursuant to FOIA, DOJ shall notify the state of all such requests prior to the release of all materials and agrees to assert all applicable exemptions in protecting materials in this matter.

j. Monitor's Records

The Monitor is not a state or local agency or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection.

k. Testimony by Monitor or Team

Other than this lawsuit as between the United States and the State, the Monitor shall not testify in any litigation, legislative or other proceeding with regard to any act or omission of the State, DJJ or any of their agents, representatives, or employees, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Agreement. In this lawsuit as between the United States and the State, either party may call the Monitor as a witness. Neither Party will call the Monitor as their own expert or designate the Monitor as their own expert pursuant to the federal rules of civil procedure. The scope and purpose of the Monitor's testimony shall be left to the discretion of the Court. Other than this lawsuit as between the United States and the State, reports issued by the Monitor shall not be admissible against the State in any proceeding for any reason. In this lawsuit as between the United States and the State, the admissibility into evidence of the Monitor's reports, or portions thereof, shall be governed by the Federal Rules of Evidence, and the Parties reserve all rights to either seek admissibility or object to admissibility of those reports. In the event of a proceeding before a court, in which the court needs to determine whether or not the Monitor has performed any contracts or subcontracts for monitoring this Agreement, such testimony as is necessary for the determination of such issue(s) may be allowed, in the discretion of the court, notwithstanding this paragraph.

7.
DOJ Access

The DOJ shall have access to the selected DJJ Juvenile Justice Facilities, and to the records, staff and residents of those facilities. The DOJ shall have the right to conduct visits to said facilities, up to but no more than two (2) unannounced visits, provided that the DOJ will notify the State upon arrival at a facility, and of any plans to interview residents, former residents and the parents and caregivers of residents and former residents. The DJJ shall be present at witness interviews with management-level staff. In light of the anticipated difficulty in locating witnesses outside of DJJ facilities, and in coordinating these witness interviews, the DOJ shall provide notice and permit the DJJ reasonable access to interviews with former residents, parents and caregivers of residents and former residents, and non-management-level staff, provided that these individuals do not object to the presence of the DJJ representatives. The DOJ shall have the right to conduct confidential interviews with current facility residents. The Monitor's findings as to substantial compliance shall be independent of DOJ information gathering and the Monitor shall be the full and final factual determination of compliance.

Consistent with its law enforcement obligations, nothing in this Agreement shall preclude the DOJ from initiating new investigations of any juvenile justice facility in this State.

8.

Mediation of Disputes

The Parties shall conduct good faith discussions to resolve any dispute arising under this Agreement and may agree in writing to adopt a resolution to the dispute. If the Parties are unable to reach agreement within thirty (30) days the Parties will submit the dispute to mediation. The Monitor shall select a mediator within ten (10) days. The Parties shall attempt in good faith to mediate the dispute for a minimum of thirty (30) days prior to initiating a court action to resolve the dispute. In the event the immediate health and safety of youths is at risk, the DOJ shall attempt to expeditiously reach agreement with the DJJ regarding emergency conditions, but reserves the right to seek immediate judicial relief.

9.

Termination of the Agreement

Within nine (9) months of execution of this Agreement, the Monitor shall complete site visits and reports of each of the selected facilities and prepare a final comprehensive written report on system-wide compliance by the DJJ. This finding will be based on the site visits, records and professional opinion as it relates to the citations reviewed by the Monitor. The State shall maintain six (6) months of documentation related to the MOA citations being reviewed to permit the Monitor to assess substantial compliance. Each Party may request clarification on any item or finding and provide additional information for the Monitor to consider for inclusion into a revised final report. For purposes of this Agreement, the burden shall be on the State to demonstrate substantial compliance. The Monitor's findings as to substantial compliance shall be independently determined by the Monitor and will be the full and final factual determination of substantial compliance. If substantial compliance is found with respect to all or only certain remaining sections, DOJ will jointly stipulate with the State of Georgia to a dismissal with prejudice of the lawsuit referred to in this Modification Agreement or to termination of those sections for which there was a finding of substantial compliance. This stipulation will be entered into within thirty (30) days after the final comprehensive report is received by the Parties. The Parties may agree to extend this time period for good cause.

If there are deficiencies identified by the Monitor that result in a finding of a failure to reach substantial compliance, DJJ will develop and implement an appropriate remedy to cure any deficiencies within three (3) months. Upon implementation of the remedies, DJJ will notify the Monitor of the need to reevaluate substantial compliance. Notwithstanding paragraph 7.f., the Monitor may, in his or her discretion, conduct a return site visit(s) at select facilities found to have deficiencies to review documents, and/or conduct interviews to reassess substantial compliance in order to determine whether the deficiencies have been cured. Within thirty (30) days of receipt of notice to reevaluate, the Monitor shall reassess substantial compliance and issue a written report. Upon a determination by the Monitor that substantial compliance has been achieved with respect to those citations found deficient, DOJ will jointly stipulate with the State of Georgia to a dismissal with prejudice of the lawsuit within thirty (30) days. This process may continue until substantial compliance with all remaining sections of the MOA has been reached.

This agreement and the MOA shall terminate no later than twelve (12) months from the effective date of this agreement. If the Monitor has determined that the State has not achieved substantial compliance with all citations, the Parties may agree to reasonable extensions of the MOA, until such time as the State has achieved substantial compliance in the remaining citations. If, after reasonable extensions of time and good faith efforts to resolve any remaining areas of noncompliance, the State fails to achieve substantial compliance with all citations, the DOJ may move the court to reactivate the complaint.

Upon execution of this Agreement by both parties and within thirty (30) days, the DOJ shall file an Amended 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 Amended Joint Motion for Conditional Dismissal and that motion shall request that the court dismiss the complaint upon the State's substantial compliance with the terms of the MOA, as modified by this Agreement. The Parties expressly declare that this provision shall not be interpreted to provide for active judicial supervision.

10.

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 thirty (30) 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 thirty 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 other than notice required by the Federal and local rules of civil procedure. The Parties commit to work in good faith to resolve disputes and to avoid enforcement actions.

11.

Notice

"Notice" under this Agreement to DJJ shall be provided by courier or overnight delivery and shall be provided to the Governor of Georgia, the Attorney General of Georgia and DJJ.

"Notice" under this Agreement to DOJ shall be provided by courier or overnight delivery.

12.

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.

13.

Construction of Terms

This Modification Agreement reflects the entire agreement of the parties and supersedes any prior written or oral agreements related to the issues described in this document. No extrinsic evidence whatsoever may be introduced in any judicial proceeding to provide the meaning or construction of this Modification Agreement. Any modification to the terms herein must be in writing and be signed by the attorney's for both Parties.

14.

No Waiver for Failure to Enforce



Failure by either 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 or provisions of this Agreement.

15.

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.

IT IS AGREED BY:

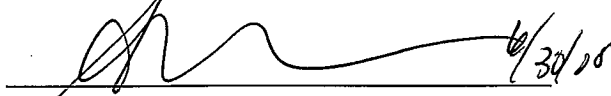
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|--|-----------------------|------------|
|  ALBERT MURRAY Commissioner Georgia Department of Juvenile Justice | <u>6-4-08</u> Date | _____ Date |
|  JOSEPH DROLET Sr. Assistant Attorney General State of Georgia | <u>6/5/08</u> Date | _____ Date |

This _____ day of _____, 2008.

FOR THE UNITED STATES:

 6/30/08
Date

GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division

 6/30/08
Date

SHANETTA Y. CUTLAR
Chief
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Memorandum of Agreement

Between the United States and the State of Georgia

Concerning Georgia Juvenile Justice Facilities

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MEMORANDUM OF AGREEMENT

I. INTRODUCTION

On March 3, 1997, the United States notified Governor Zell Miller and other Georgia officials of its intent to investigate various juvenile facilities in the State of Georgia under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997a, et seq., and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act, 42 U.S.C. § 14141. By letter dated March 6, 1997, Governor Miller notified the then-Acting Assistant Attorney General for the Civil Rights Division that the State, through its Department of Juvenile Justice ("DJJ"), would fully cooperate with this review.

During its year-long investigation and inspection of facilities, the United States received complete cooperation and access to all requested documents and facilities from DJJ Commissioner Dr. Eugene P. Walker, the staff of DJJ, and the Georgia Attorney General's office.

On February 13, 1998, the United States, through the Acting Assistant Attorney General for the Civil Rights Division, issued a findings letter in which it concluded that certain conditions in Georgia's juvenile justice facilities allegedly violated particular constitutional and federal statutory rights of juveniles.

Immediately upon their receipt of the United States' findings letter, Governor Miller, Commissioner Walker, the Georgia Attorney General, and their respective staffs expressed their intent to cooperate with the United States in an effort to address the findings contained in the February 13, 1998, letter.

The parties have engaged in good-faith negotiations to reach agreement on this Memorandum of Agreement (hereinafter referred to as the "Agreement"). The parties agree that the provisions of this Agreement are necessary to ensure compliance with federal law, while also preserving the State's legitimate and significant interests in public safety, facility security, and in determining the philosophy by which it shall operate its juvenile justice system within federal constitutional and statutory limitations.

Furthermore, 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, 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 Georgia through the use of secure juvenile detention facilities.

The United States further agrees that once juveniles are detained in State facilities, the State of Georgia has a right to impose policies and procedures for the protection of the public, the staff of DJJ, 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 Georgia has the right to determine the philosophy by which it shall operate its juvenile justice system.

The United States further recognizes that its letter notifying the Governor 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 fully discuss positive aspects of the State's juvenile justice system or improvements to the quality of the State's juvenile justice programs in recent years. The purpose of this Agreement is to effectuate and continue that progress for the benefit of youths in the DJJ system and the citizens of the State of Georgia.

II. DEFINITIONS

1. "Department" or "DJJ" shall mean the Georgia Department of Juvenile Justice. "Department of Juvenile Justice facility" or "DJJ facility" means any secure juvenile facility operated by, or on behalf of, the Georgia Department of Juvenile Justice, and shall include all Regional Youth Detention Centers ("RYDCs"), 90-day programs (including boot camps), and Youth Development Campuses ("YDCs"), including those facilities operated by private contractors for the State.
2. "Direct care staff" means staff involved in the daily supervision of youth, and include Juvenile Corrections Officers and their supervisors, security staff, and cottage life supervisors.
3. "Long-term security unit" means any higher security unit with locked cells used for housing youths who exhibit behavior problems for more than 72 hours. This shall include, but not be limited to, the Detention Unit at the Macon YDC, Unit 14 at the Bill E. Ireland YDC, and the "Brig" at the Irwin YDC, and similar units in other facilities.
4. "Major disciplinary infraction" means a violation of a facility rule that imposes a serious risk of: (a) harm to persons; (b) substantial damage to property; or (c) breach of facility security.
5. A "mental health and suicide risk screening" means, at minimum, an interview with a youth and review of available records, in accordance with a DJJ screening instrument and relevant policies, to identify immediate mental health and suicide risks upon admission to a DJJ facility.
6. A "mental health evaluation" means, at minimum, a complete initial psychological or psychiatric evaluation, performed by a psychiatrist or psychologist, and any additional psychological or psychiatric testing, in accordance with professional standards.
7. A "mental health needs assessment" means, at minimum, an interview and review of available records and other pertinent information by a mental health professional with at least a master's degree in a mental-health-related field, designed to identify significant mental health treatment needs to be addressed during a youth's confinement.
8. A "plan of correction" shall mean a plan detailing steps to be taken by a facility to correct deficiencies identified during quality assurance activities, and shall include a timetable for implementation of the corrective measures and a schedule for timely reinspection by the quality assurance auditors to verify that the corrective measures have been implemented and have effectively addressed the deficiencies.
9. "Qualified mental health professional" or "QMHP" means a professional with education, training and experience adequate to perform the duties required in accordance with professional standards. At minimum, a QMHP must have a bachelor's degree in a mental health-related field. When the QMHP is required to provide individual counseling to mentally ill youths, the QMHP shall have at least a master's degree in a mental health-related field and appropriate training and experience in the provision of mental health counseling.

10. A "Quality Assurance Program" shall have, at minimum, the following components:

a. Comprehensive audits by qualified professionals of relevant programs at each DJJ facility to monitor compliance with DJJ policies and the terms of this Agreement. A comprehensive audit shall be conducted at each facility within one year of the implementation of the quality assurance plan, and on a bi-annual basis thereafter. A comprehensive audit shall include, at minimum:

i. Review of a relevant documents (for example, medical, mental, institutional records; incident, use of force, OC spray, and disciplinary reports; grievances; unit logs, room check records, appointment books; lesson plans, IEPs, test results; behavior management and treatment plans). Records shall be reviewed for both adequacy of documentation and for quality of services.

ii. Interviews with relevant staff, including not only those staff directly involved in the service being audited, but also other staff who may have relevant information, including administrators.

iii. Interviews with youths.

iv. Observation of relevant activities (such as treatment team and IEP meetings, classes, admission screenings, educational testings, physicals, etc.).

v. Steps to determine whether there are youths in the facility who should be receiving the relevant service but are not, including random re-evaluations of recent intakes and interviews of line staff who may be aware of youths who should be, but are not, receiving the relevant service.

vi. Written findings and the development of plans of correction.

vii. Review of the adequacy of each facility's internal quality assurance activities when relevant.

b. Regular unannounced site-visits, in addition to comprehensive audits, to monitor compliance with DJJ plans, policies and the terms of this Agreement, and to conduct other quality assurance activities.

c. Monitoring and review of serious incidents relevant to the area of care supervised by the quality assurance program, in accordance with written guidelines that determine when such review is triggered. Such review shall involve debriefings with relevant staff to determine whether policies, practices or training should be modified to minimize the risk of such events in the future.

d. System-wide and facility-based collection and analysis of relevant data to measure compliance with DJJ policies and the terms of this Agreement.

e. Quarterly reports summarizing quality assurance activities, findings and recommendations.

III. GENERAL PROVISIONS

11. This Agreement shall apply to the administration of all DJJ facilities.

12. The State shall be responsible for assuring the fulfillment of all responsibilities and obligations imposed by this Agreement upon State employees, contractors, departments or other sub-units of the State government, including provision of adequate resources for the fulfillment of these responsibilities and obligations.

IV. EDUCATIONAL SERVICES

13. The State shall provide all youths confined in the DJJ facilities with adequate general, vocational and special education in compliance with the Fourteenth Amendment of the United States Constitution, the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 et seq, and regulations promulgated thereunder, Section 504, 29 U.S.C. § 794, and regulations promulgated thereunder, Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12134, and regulations promulgated thereunder, Georgia state law, and this Agreement.

A. General and Vocational Education

14. The Department shall recruit and hire, from outside the Department, a Director of Education, who shall be highly qualified for the position. The Director shall begin employment on or before August 1, 1998. The Department shall provide the Director of Education with sufficient staff and resources to perform the tasks required by this Agreement, including:

- a. Oversight of the educational programming in all DJJ facilities, including development and implementation of policies and training programs.
- b. Monitoring whether educational staffing and resources are sufficient to provide adequate education to all DJJ youths and to ensure compliance with this Agreement;
- c. Development and implementation of a quality assurance program for educational services.

15. The Director of Education shall, in consultation with the State Department of Education, develop and implement a curriculum for instruction in DJJ facilities that meets the requirements of Georgia law for public schools and the rules and regulations of the State Board of Education for the provision of regular, special and vocational education services.

16. The Department shall not be eligible for waivers of any State Board of Education requirements if the waiver would result in a reduction in the amount or quality of educational services required of other public schools.

17. The Department shall offer preparation for testing and testing that leads to the attainment of a General Educational Development certificate to qualified students in YDCs and all other qualified youths who have been confined in DJJ facilities for at least 6 months. If a youth is released before completion of the testing, the Department shall ensure that he or she is provided with appropriate information on how to complete the examination process.

18. Within 72 hours of admission to a DJJ facility, each youth shall receive adequate educational testing to determine educational level for class assignment and the possibility of eligibility for special education services. All youths shall be enrolled in educational programming within 72 hours of admission, even if educational testing or special education evaluation has not been completed.

19. To the extent possible, students shall be assigned to classes according to educational criteria.

20. The Department shall maintain daily school attendance records. The Department shall devise appropriate criteria for the exclusion of students from school and maintain a document that lists the number and names of all students who were excluded from school. The Department shall also record the name of the youth excluded, the name of the person who authorized his or her exclusion, the reason for his or her exclusion, and the duration of the exclusion.

21. The Director of Education shall develop and implement policies for the provision of a reasonable level of educational services to youths who are (a) in disciplinary isolation or (b) otherwise unable to attend school for a significant period of time.

22. The Department shall provide adequate classroom space, administrative space, instructional and reading materials, and supplies so that the Department shall be able to implement the provisions of this Agreement.

23. In accordance with state law, the Department shall provide an appropriate curriculum such that all youths will be eligible to receive academic credit and educational advancement for their educational achievements at a DJJ facility according to standards equivalent to those used by the public schools. The Department shall provide appropriate records to the local schools to facilitate transfer of such credits according to the general practice of public schools in Georgia. The Department shall undertake efforts to encourage schools to recognize course work completed in the DJJ educational system.

24. The Department shall provide all youths with adequate information regarding the procedures to be followed in order to return to the youth's home, or another, school. The Department shall provide a youth's school records to the superintendent of the school system to which the youth returns, and will make such records available to any other school upon request.

B. Special Education

25. The Director of Education shall develop and implement policies and procedures, consistent with federal regulations, to identify students who are receiving special education services in their home schools, or who may be eligible to receive special education services but have not been so identified in the past. The procedures shall include:

- a. Guidelines for interviewing students to determine past receipt of special education services.
- b. Protocols, developed in conjunction with local school districts and the State Department of Education, for expedited reporting of special education status of students entering a DJJ facility.
- c. Procedures identifying criteria under which staff or teachers must refer a student for evaluation for special education eligibility, including identifying criteria under which youths whose behavior has led to repeated exclusion from class must be referred for evaluation.
- d. Policies describing the required activities of Student Support Team pre-referral and support team functions.
- e. Policies describing the requirements for comprehensive evaluation procedures to determine eligibility for special education services.
- f. Policies describing the criteria for multidisciplinary team decision-making regarding eligibility for special education.

26. The Department shall ensure that qualified professionals participate in the process for determining special education eligibility, as required by federal regulations.

27. If a youth is discharged from any DJJ facility before the educational evaluation required in ¶ 25(e)-(f), is complete, the Department shall forward to the superintendent of the youth's receiving school district all information regarding screening and evaluations completed to date, noting what evaluations are yet to be performed.

28. The Department shall substantially implement pre-existing valid Individual Education Plans ("IEPs") and, when no such IEP is in existence, shall hold team meetings to develop an IEP for qualified special education students in accordance with federal regulations.

29. In developing or modifying an IEP, the Department shall assure that the IEP reflects the individualized

educational needs of the student.

30. When the nature or severity of a student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, the Department shall provide an appropriate alternate educational setting.

31. Each IEP developed or modified at a DJJ facility shall include documentation of the team's consideration of the youth's need for related services and transition planning. The Department shall employ or contract with appropriate professionals to ensure the timely availability of related services to youths in all DJJ facilities.

32. The Director of Education shall develop and implement a system to promote parent, guardian, and surrogate parents' involvement in IEP development and placement meetings. This shall include, at minimum, holding such meetings through telecommunications technology or during times reasonably calculated to accommodate the schedules of parents and guardians. The Department shall post notices in each facility stating the rights of students, parents, or guardians regarding education services, including special education services.

C. Staffing

33. The Director of Education shall develop and implement an education staffing plan to ensure adequate staff to comply with the terms of this Agreement, and in accordance with Appendix B. This plan shall provide, at minimum:

a. Sufficient numbers of certified general education and certified special education teachers and staff, including substitute teachers and staff, to provide all youths with the opportunity to attend school full-time (except as provided in ¶ 21) and to obtain adequate educational services, and to provide teachers with sufficient time to plan lessons and grade assignments, participate in special education meetings, and where applicable, undertake administrative tasks.

b. Sufficient psychologist services to provide psychologist participation in the development of IEPs, administration of psycho-educational assessments, consultation with teachers and staff, and individual counseling related specifically to issues in youths' IEPs and educational plans.

c. Sufficient numbers of other counseling staff in all DJJ facilities to adequately complement the counseling services provided by the school psychologist.

d. An individual at each facility who shall be responsible for ensuring compliance with all provisions in this Agreement related to educational services.

D. Staff Training

34. The Director of Education shall design and implement annual in-service training requirements for education staff, of not less than four days per year, to enhance their ability to implement their duties under the provisions of this Agreement. This shall include, but not be limited to, training regarding the identification of students who may need special education and/or related services.

E. Educational Quality Assurance

35. The Director of Education shall be charged with quality assurance of all educational services at all of the juvenile facilities. The Director of Education shall develop and implement a written quality assurance program.

This program shall include a system of on-going review by the Director's office of at least a representative sample of IEPs developed or modified in DJJ facilities to monitor quality and assure compliance with the requirements of DJJ policy and the IDEA.

V. MENTAL HEALTH CARE

36. The Department shall ensure that adequate mental health care and treatment services are provided to youths in all DJJ facilities.

37. The Department shall recruit and hire, from outside the Department, a Director of Mental Health, who shall be highly qualified for the position. The Director shall begin employment on or before August 1, 1998. The Department shall provide the Director of Mental Health with sufficient staff and resources to perform the tasks required by this Agreement, including:

a. Oversight of the mental health care and treatment services in all DJJ facilities. This shall include development and implementation of:

i. Policies and training programs.

ii. Programs and services required to meet the mental health needs of youths, which may include programs relating to drug and alcohol abuse, histories of sexual or physical abuse, and sexual offenders.

b. Monitoring whether mental health staffing and resources are sufficient to provide adequate mental health care and treatment services to all DJJ youths and to ensure compliance with this Agreement.

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

A. Intake Screening and Assessment

38. The Mental Health Director shall develop and implement a mental health and suicide risk screening instrument for use in all DJJ facilities. The Director shall also develop and implement a training program for staff who will administer the screenings.

39. In accordance with the policies and screening instruments developed by the Director of Mental Health, a qualified mental health professional shall conduct an intake screening for each youth as soon as practicable upon admission to any DJJ facility. When 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. The staff member shall as soon as is practicable then contact the mental health professional and confer.

40. In accordance with policies developed by the Director of Mental Health, each youth admitted to a YDC shall receive a timely mental health needs assessment. The mental health professionals who administer the assessment shall receive specific training in conducting such assessments.

41. A psychologist must review and sign the mental health needs assessment. Pursuant to protocols issued by the Director of Mental Health, the psychologist shall make appropriate referrals for further evaluation or treatment, or take other appropriate steps.

42. The Director of Mental Health shall issue protocols to assure appropriate action when an intake screening indicates that a youth is taking, or prior to admission may have been prescribed, psychotropic medications. This shall include appropriate steps to contact the prescribing psychiatrist when necessary and referral to the facility's psychiatrist for evaluation.

B. Evaluation

43. The Director of Mental Health shall develop and implement protocols for referral of youths for mental health evaluations based on the results of the mental health and suicide risk screening or the mental health needs assessment, other referrals from staff, or the conduct of the youth during the course of confinement in a DJJ facility. These protocols shall require referrals, at minimum, when:

- a. A youth's mental health poses a risk of physical harm to himself or others or the youth has been diagnosed as mentally ill.
- b. The youth exhibits mental health problems but does not have a current mental health diagnosis from a psychologist or psychiatrist.
- c. The youth is determined to be taking psychotropic medications, or has taken them in the recent past;
- d. The youth requires a change of medication prescribed as a result of any mental health condition.

44. If a need for mental health treatment is indicated, the youth shall receive adequate treatment, which shall include:

- a. In a YDC, treatment in accordance with a treatment plan developed for the youth, as described in §§ 47-54.
- b. In an RYDC, the psychologist or psychiatrist must document findings and a plan of treatment that takes into account the extent of the youth's mental health needs and the likely length of the youth's stay in the facility. This plan may include treatment team planning and must include appropriate periodic monitoring of any psychotropic medications.

C. Placement

45. The Department shall identify youth whose severe mental illness requires treatment that cannot be provided adequately in an RYDC, YDC or short-term program. Such youths shall be identified through a needs assessment upon or prior to admission to a YDC (pursuant to criteria developed by the Director of Mental Health) or by a determination by a treating psychologist or psychiatrist at any DJJ facility at any time. Once a youth has been designated as in need of an alternative placement, the Department shall as soon as is practicable provide for placement in a forensic psychiatric facility or other setting consistent with the youth's mental health needs.

46. The Director of Mental Health shall develop and implement a plan to provide an adequate number of appropriate alternate placements, which may include forensic units or cottages at existing facilities, special forensic facilities, and/or placements in private facilities or a psychiatric hospital. The plan shall provide for at least 100 mental health slots for appropriate alternative mental health placements by fiscal year 2001. The Director shall monitor the utilization of such placements and the number of referrals to assure the maintenance of an adequate number of alternative placement options.

D. Treatment

47. Each youth receiving psychotropic medication or otherwise in need of mental health treatment in a YDC shall have a treatment plan in accordance with professional standards and practice. The treatment plan shall be developed by a treatment team pursuant to policies developed by the Director of Mental Health, which shall include identification of the required members of the treatment team.

48. The Director of Mental Health shall develop and implement protocols for the required content of treatment plans, which shall include, at a minimum:

- a. That the treatment plan be individualized;
- b. An identification of the psychiatric or psychological issues to be addressed;
- c. A description of any medication or medical course of action to be pursued, including the initiation of psychotropic medication;
- d. A description of planned activities to monitor the efficacy of any medication or the possibility of any side effects;
- e. A description of any behavioral management plan or strategies to be undertaken;
- f. A description of the counseling or psychotherapy to be provided;
- g. A determination of whether the type or level of treatment needed can be provided in the youth's current placement;
- h. A determination of whether family counseling is required as a part of the youth's treatment;
- i. A plan for monitoring the course of treatment; and,
- j. A transition plan for when the youth leaves the care of DJJ, which 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; and providing assistance in making initial appointments with service providers. However, nothing in this Agreement shall make the Department responsible for providing mental health services to youths no longer in the custody of the Department.

49. The Department shall ensure cooperation by all facility staff in implementing all treatment plans. Each facility shall take necessary steps to ensure that all relevant staff are aware of, and implement, their responsibilities under the treatment plan. The Department shall take reasonable steps to implement the plan including, for example, reasonable steps to enable family participation in family counseling when indicated by the treatment plan.

50. All mental health treatment shall be documented in accordance with professional standards in a youth's medical record.

51. Prior to initiating a prescription for psychotropic medications, a psychiatrist shall give and document a complete psychiatric examination, including an initial psychiatric exam, mental status exam, differential diagnosis, review of the youth's medical chart, a DSM-IV five-axis diagnosis, and clinical recommendations.

52. The Director of Mental Health shall issue and implement protocols to require that youths prescribed psychotropic medications at DJJ facilities be given information regarding the risks and potential side effects of the medication. The protocol shall also direct when such information should also be provided to the youth's parents or guardians. Compliance with this requirement shall be documented in the youth's chart.

53. The Director of Mental Health shall issue and implement protocols to assure that each youth receiving psychotropic medication shall be seen by the treating psychiatrist for periodic reassessment and monitoring in accordance with professional standards.

54. The Director of Mental Health shall issue and implement protocols for the administration of appropriate

tests (including, for example, blood tests, EKGs, and Abnormal Involuntary Movement Scale tests), to monitor the efficacy and side effects of psychotropic medications in accordance with professional standards.

E. Suicide Prevention

55. The Director of Mental Health shall issue and implement uniform regulations for the detection of and appropriate response to suicide risks in all DJJ facilities, which shall provide:

- a. That youths generally shall not be isolated in response to suicide risk or significant or substantial suicidal threats or gestures;
- b. That suicidal youth shall be immediately referred to an appropriate mental health professional for evaluation.
- c. That as soon as practicable, any youth determined to be at continued risk for suicide shall have a written, individualized suicide prevention plan developed by a qualified mental health professional and implemented by the facility.

F. Staffing

56. The Director of Mental Health shall develop and implement a staffing plan to ensure adequate mental health staff to comply with the terms of this Agreement, and in accordance with Appendix B. The plan shall identify the numbers and qualifications of staff needed and shall provide, at minimum, that:

a. Each youth in need of psychiatric services, including monitoring of the use of psychotropic medications, shall be under the care of a licensed psychiatrist. Where available, the psychiatrist shall be a board-certified in child and adolescent psychiatry. When no board-certified child and adolescent psychiatrist is available, the Director of Mental Health shall ensure the psychiatrist receives periodic training related to child and adolescent psychiatry and shall arrange for a board-certified child and adolescent psychiatrist to provide consultation. The Department shall employ or contract for sufficient psychiatric services to permit a psychiatrist to fulfill the following functions:

- i. Conduct needed psychiatric evaluations prior to placing a youth on psychotropic medications.
 - ii. Monitor, at least monthly, the efficacy and side effects of psychotropic medications, including consultation with facility medical, counseling and line staff when appropriate.
 - iii. Participate in treatment teams in conjunction with facility staff.
 - iv. Provide individual counseling and psychotherapy when needed, in coordination with facility psychologists.
 - v. Evaluate and treat in a timely manner all youths referred as possibly in need of psychiatric services, including emergency evaluation of youths believed to be at potential risk for suicide or self-harm.
 - vi. Provide adequate documentation of treatment in the facility medical records.
- b. In each YDC, there shall be at least one full-time qualified mental health professional who shall function as the treatment coordinator for the youths in that facility.
 - c. In each RYDC there shall be a qualified mental health professional who shall who shall function as the

treatment coordinator for the youths in that facility and who shall conduct mental health and suicide risk screenings.

d. In each YDC and RYDC, there shall be sufficient numbers of qualified mental health professionals to perform the following functions:

- i. Conduct mental health and suicide risk screening (or review of screening) for all new intakes upon admission.
- ii. Perform evaluation of youths believed to be in psychological distress or at risk for suicide or self-harm, and referral for treatment team meetings, psychiatric consultation or hospitalization as appropriate.
- iii. Participate in treatment planning when required to do so by the policies promulgated by the Director of Mental Health in ¶ 47.
- iv. Implement the mental health services required in this Agreement.
- v. Review every incident report involving youths identified as having mental health problems.

G. Staff Training

57. The Director of Mental Health shall design and implement pre-service and annual continuing education requirements for mental health staff appropriate to the staff member's responsibilities.

58. All direct care staff at DJJ facilities shall receive pre-service and annual refresher training in suicide prevention, side effects of psychotropic medications, and methods for managing the behavior of youths with mental health problems.

H. Quality Assurance

59. The Director of Mental Health shall create and implement a written quality assurance program which shall include, at minimum, activities to monitor the involvement of mentally ill youth in major disciplinary infractions and use of force incidents.

60. The Director of Mental Health shall also create policies for quality assurance activities within each DJJ facility, including review of both documentation and quality of treatment.

VI. MEDICAL CARE

61. The Department shall ensure that adequate medical care is provided to youths in all DJJ facilities.

62. The Department shall continue to employ a Medical Director. The Department shall provide the Director with sufficient staff and resources to perform the tasks required by this Agreement, including:

- a. Oversight of medical care in all DJJ facilities, including monitoring the performance of private medical contractors and the development and implementation of policies and training programs.
- b. Monitoring whether medical staffing and resources are sufficient to provide adequate medical health care and treatment services to all DJJ youths and to ensure compliance with this Agreement.

c. Development and implementation of a quality assurance program for medical care.

A. Admissions Screenings and Physicals

63. The Medical Director shall develop and implement policies and procedures to ensure that youths in DJJ facilities are provided timely, uniform and adequate physicals, including a uniform set of screening and laboratory tests, and shall ensure that test results are available to health care personnel in a timely manner to permit adequate treatment of residents.

B. Sick Call

64. The Department shall provide all youths with reasonable access to physicians for medical care through a reasonable sick call system. The Medical Director shall create and implement policies setting forth the requirements of facility sick call systems.

C. Treatment

65. The Department shall provide adequate medical care to all youths in its facilities, including:

- a. Adequate dental care services, including treatment necessary to prevent loss of teeth and ameliorate pain and, for youths committed to YDCs, cleaning and restorative services according to professional standards;
- b. Timely access to appropriate medical specialists and hospitalization when indicated; and
- c. Twenty-four-hour infirmary services at each YDC.

66. DJJ administrators other than the Medical Director shall not overrule medical decisions made by physicians, including medical decisions to refer a youth for specialty consultation or dental services.

67. The Medical Director's office shall review and update, where appropriate, agency health policies to encompass all aspects of the health program in the facilities.

D. Medical Records

68. Every medical encounter, including all sick call encounters, shall be documented in a progress note in the youth's medical record.

69. The Medical Director shall develop and implement a plan to assure that when a youth leaves a DJJ facility, a copy or complete medical summary of the youth's medical records will be transferred upon request to the youth's destination facility or, when appropriate, to the youth or youth's family in the case of release.

E. Staffing

70. The Medical Director shall develop and implement a medical staffing plan to ensure adequate medical staff to comply with the terms of this Agreement, and in accordance with Appendix B. This plan shall provide, at minimum:

- a. At each RYDC, a registered nurse shall be on duty at least 8 hours a day, seven days a week. Each facility shall have round-the-clock medical coverage on at least an on-call basis.
- b. At each YDC, registered nurses shall be on duty twelve hours a day, seven days a week. During the day shift, there shall be at least two registered nurses on duty.
- c. At each RYDC, a physician's assistant or nurse practitioner shall be employed one-quarter-time for each 50 youths housed at the facility. These mid-level practitioners shall conduct initial physical examinations, as well as diagnose and treat sick or chronically ill residents.
- d. In each YDC, one full-time physician's assistant or nurse practitioner shall be employed for every 100 youths residing in the YDC. These mid-level practitioners shall complete initial health evaluations and physicals, supervise the nurses, direct the primary and preventative care for the residents, and manage the health unit to focus on program improvement and staff development under the direction of the central office Medical Director.
- e. Each DJJ facility shall provide sufficient physician services to permit the physician to adequately see patients referred from sick call, provide required supervision of the care of chronically ill youths, and review the work-quality of facility nursing and mid-level professional staff.

F. Staff Training

71. The Medical Director shall develop and implement a comprehensive training plan for DJJ medical personnel, which shall include pre-service training requirements, annual in-service training requirements, and such other continuing education deemed appropriate. The training requirements shall cover areas appropriate to the staff's position and function. The topics covered in such training shall include:

- a. For nursing staff: assessment and management of health problems commonly seen at sick call; the routine follow-up of problems identified in the initial health history, physical examination, and screening tests; and proper implementation of the State Clinical Guidelines.
- b. For Nurse Practitioners, Physician's Assistants and Physicians: the evaluation and management of significant acute and chronic conditions found among youths in the facilities; and proper implementation of the State Clinical Guidelines.
- c. For line or other staff who may conduct initial medical screenings: training in the proper administration of the medical screening instrument.

G. Quality Assurance

72. The Medical Director shall create and implement a written quality assurance program.

73. The Medical Director shall also create policies for quality assurance activities within each DJJ facility, including review of both documentation and quality of treatment.

VII. PHYSICAL AND PROGRAMMATIC CAPACITY

74. The Department shall provide adequate direct care staff in every DJJ facility to protect youths from harm; provide adequate security for the facility; safely evacuate the facility in the event of a fire; and to provide a sufficient level of supervision to allow youths reasonable access to medical services, exercise, recreation and

adequate time spent in out-of-cell activities.

75. Within a reasonable time, the Department shall provide and maintain adequate living, sleeping, classroom and recreational space for youths in every DJJ facility. This shall include assuring that every youth shall be provided a bunk in a room with no more than one other youth, except in dormitory settings or in exigent circumstances of limited duration.

A. Staffing and Staff Training

76. The Department shall develop and implement a staffing plan for direct care staff to ensure adequate staff to comply with the terms of this Agreement, and in accordance with Appendix B.

77. The Department shall present a plan to provide for adequate training for all DJJ direct care staff, including pre-service training, annual in-service training, and the equivalent of pre-service training for all current direct care staff who have not previously received the DJJ pre-service training or its substantial equivalent. The United States acknowledges that the DJJ has begun implementing a plan for comprehensive training of juvenile corrections officers that may form the basis of this plan. This plan shall:

- a. Set forth minimum competency standards for DJJ employment.
- b. Set forth a time line under which all staff shall meet the training requirements as outlined in the plan.
- c. Provide for sufficient training resources to assure compliance with the requirements of this Agreement.
- d. Acknowledge that Office of Quality Assurance staff (provided for in ¶ 114) or other DJJ staff may conduct random or unannounced visits to DJJ facilities to ensure that staff are carrying out their duties in accord with the training required by the plan and described in this section of the Agreement.

B. Population and Physical Plant Capacity

78. The United States acknowledges that the State has undertaken a significant expansion of its physical facilities in recent years and has plans for further expansions. Based upon these plans, the State shall submit a plan under this Agreement to reduce crowding in its facilities. At a minimum, this plan shall include:

- a. State-wide uniform detention standards based on a Risk Assessment instrument and protocols that evaluate youth for placement in alternative detention programs based on the individual risk factors of the youth, and development of a continuum of alternatives to RYDC detention.
- b. Commitments to expand the physical capacity of RYDCs and YDCs.

1) Risk Assessment Standards

79. The Department shall create a Risk Assessment instrument for pre-adjudication detention decisions and related policies on the use of the Risk Assessment instrument. The Risk Assessment policies shall identify youths who may not legally be held in secure detention facilities, youths whose risk factors make use of non-secure detention alternatives appropriate, and youths whose risk factors make secure detention mandatory. The Department shall require that youths appropriate for non-secure placement be so placed when such placements are available and shall forbid placement of youths in secure facilities when such placement is prohibited by the requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5601 etseq. and its implementing regulations.

80. The Department shall compile statistics regarding the use of alternative placements, including: the number of youths determined to be appropriate for alternate placements; the number of such youths actually placed in alternate placement settings; and the number placed in RYDCs.

81. To effectuate the Risk Assessment Standards, reduce the harms associated with crowding in the secure detention facilities, and seek to prevent the secure detention of status and certain other offenders, the Department shall create and implement a plan for the development of a continuum of alternatives to detention in RYDCs. At a minimum, this plan shall provide sufficient alternatives in every RYDC catchment area to ensure compliance with the requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5601 et seq. and its implementing regulations, and shall provide for the creation of at least 380 additional alternative placement slots for youth who would otherwise be confined in RYDCs between fiscal year 1999 and fiscal year 2001.

2) Capital Improvement and Expansion

82. The State shall develop and implement a plan for the expansion of its physical facilities. The parties agree that the State's on-going capital improvement project may form the basis of the physical plant expansion plan required by this paragraph. The plan shall set forth specific time tables indicating the extent of the increase in capacity and the number of youth to be housed in each facility. The United States acknowledges that, prior to the initiation of its investigation, the State developed plans to replace and demolish the Fulton County Detention Center. The State commits that it will begin tearing down the building formerly housing the Fulton County Detention Center during fiscal year 1999. Once that is completed, the United States shall consider all matters concerning the Fulton County Detention Center closed and at an end.

VIII. PROTECTION FROM HARM

83. The Department shall provide youths in all DJJ facilities with reasonably safe living conditions and shall protect them from abuse.

A. Classification

84. The Department shall issue and enforce classification criteria regarding room assignments in RYDCs and YDCs. The criteria shall include risk factors based on age, maturity, size, offense history, present offense charge, and any special needs of the youth.

B. Supervision of Youth

85. The Department shall ensure that youths confined in locked rooms during the day or at night, and all youths sleeping in dormitories, are visually checked at least every 30 minutes by line staff. To monitor compliance with this requirement, the Department shall install and maintain in good working order, Morse Watchman or similar devices in all living units and require supervisors to regularly conduct random audits of the records produced by the devices.

C. Use of Force

86. The Department shall ensure that youths are not subject to unreasonable restraints or excessive force in accordance with DJJ Policy 9.6, attached as Appendix C and hereby incorporated by reference, as clarified as follows:

a. A Unit or Shift Supervisor shall be responsible for periodic reassessment of the youth to determine whether the youth's behavior can be controlled without the continued use of restraints. The Supervisor shall document such periodic assessments and the reason for continuing the restraint.

87. The Department shall ensure that youths are not subject to unreasonable or excessive application of chemical sprays, in accordance with current DJJ Policy 1019, attached as Appendix D and hereby incorporated by reference.

88. The Department shall develop and implement specific policies and training materials that shall instruct staff of the permissible and preferable responses to common behavior problems, including at minimum:

- a. Youths persistently kicking or banging their cell doors;
- b. Youths obstructing their toilets and flooding their cells or hallways;
- c. Youths persistently refusing to refrain from loud or noncompliant behavior.

The Department shall undertake periodic reassessment, in conjunction with the Office of Quality Assurance ("OQA"), provided for in ¶ 114, to determine whether additional policies and training are appropriate to respond to other common behavior problems identified by OQA or other DJJ staff.

D. Protection from Staff Abuse

89. The Department shall take appropriate steps to ensure that youths in all DJJ facilities are protected against staff abuse.

90. Each youth entering an RYDC or YDC shall be given an orientation which shall include simple directions for reporting abuse and assuring youth of their right to be protected from retaliation for reporting allegations of abuse.

91. The Department shall ensure that every child who reports to a facility infirmary with an injury shall be questioned by a health care staff, outside the hearing of officers or other youths, regarding the cause of the injury. If in the course of the youth's infirmary visit a health care staff suspects abuse, the health care staff shall immediately contact the Office of Quality Assurance and adequately document the matter in the youth's medical record, fill out an incident report, and log the incident.

92. The Director of OQA shall create a system for reporting allegations of abuse, including policies directing how, when and to whom allegations of abuse shall be referred (including policies regarding reporting to the Department of Family and Children Services, law enforcement officials, other DJJ officials, and facility administrators).

93. Every allegation of abuse shall be reported to OQA. OQA may request a preliminary investigation to be conducted by an appropriate investigator at the facility from which the allegation arose. OQA shall then conduct an independent investigation of the allegation unless the preliminary investigation demonstrates that the allegation is unfounded. This determination shall be based upon training and guidelines issued by the Director of OQA. The Director of OQA shall also issue a policy describing the qualifications and investigative training required of such facility-based investigators and shall make arrangements for the provision of such training.

94. Within the Office of Quality Assurance, the Department shall recruit and hire, from outside the Department, an Assistant Director for Investigations who shall be qualified to conduct and supervise investigations of child abuse in institutional settings. The Department shall hire sufficient numbers of qualified investigators to permit investigations of all allegations of abuse, and shall provide them with appropriate training. The Department shall consult with the Georgia Bureau of Investigations and other professional investigative agencies periodically to maintain the quality of its investigative staff.

95. Abuse investigations shall also be initiated by OQA staff review of grievances, incident reports, use of force reports, and injury reports when it appears that abuse may have occurred but was not reported. Abuse investigations may also be initiated by OQA staff as a result of staff tours of facilities and interviews with youths, parents or staff.

96. The Director of OQA shall issue policies regarding steps that must be immediately taken upon the reporting of an allegation of abuse in order to preserve evidence and protect youths pending an OQA investigation.

97. The Director of OQA shall develop and implement an Investigations Manual and training program for abuse investigations. The training shall include specific instruction by qualified individuals on the conduct of abuse investigations relating to youth, and investigations within a correctional setting, and shall include an annual in-service training requirement.

98. The Investigations Manual shall require, at minimum:

- a. An interview with the alleged victim and perpetrator.
- b. Identification and interview of all possible witnesses, including other youth and staff in the building or unit at the time of the incident.
- c. Examination of the youth and staff member's institutional and personnel records, including any prior allegations of abuse against the staff person whether substantiated or not.
- d. Examination of any potentially relevant medical records.
- e. Determination whether any facility staff knew of, but did not report the alleged abuse, or provided false information during the investigation.

99. The OQA shall produce a written report of each investigation. The report shall describe steps taken during the investigation, the information obtained, and the factual conclusions reached by the investigators finding the allegation substantiated, not resolved, or unfounded.

100. Upon receipt of the investigative report, the Commissioner or the Commissioner's designee shall approve or disapprove the report's conclusion that the allegation was substantiated, not resolved or unfounded, or shall order further investigation. Only the Commissioner shall have the authority to disapprove a report's conclusion that the allegation of abuse was substantiated. In such cases, the Commissioner must explain the reason for such a decision in writing.

101. Staff discipline for any substantiated abuse shall be determined by the Commissioner of DJJ or the Commissioner's designee.

102. The OQA shall keep records of all its investigations, and any disciplinary action taken in response to the investigation, including investigations that do not substantiate abuse.

IX. OTHER GENERAL CORRECTIONAL MATTERS

A. Discipline

103. In all DJJ facilities, the Department shall implement a uniform positive behavior management system which shall provide for positive incentives for good behavior as well as disciplinary measures for misbehavior. The positive behavior management system shall be explained to all youths during an orientation session, which shall also set forth basic facility rules and the possible sanctions for violating those rules. The rules shall be posted conspicuously in facility living units and youths shall have access to written policies upon request.

104. The Department shall adopt a policy for punishments that are permitted in DJJ facilities and shall prohibit the use of any disciplinary measure not included in the policy. The policy shall also designate the maximum permissible extent or duration of the punishment.

105. The use of isolation shall be limited to major disciplinary infractions and shall not exceed 72 continuous hours, absent extraordinary circumstances and authorization from the facility director and notification of the Office of Quality Assurance (provided for in ¶ 114). The Department shall assure that each youth placed in isolation for more than 24 hours shall receive daily visits from a counselor or mental health staff, at least one hour of large muscle exercise each day, and such access to educational services as is provided for in the policies promulgated pursuant to ¶ 21.

106. Disciplinary hearings shall be afforded youth pursuant to current DJJ Policy 11.5, attached as Appendix E and hereby incorporated by reference. Isolation may be used as an immediate response to out-of-control behavior until the youth's behavior no longer poses a threat, but shall not be used as punishment unless a youth has first received a due process hearing.

107. Youths assigned to long-term security units shall be provided comparable access to education, exercise, recreation and other out-of-cell activities as other youths, absent compelling justification related to an individual youth's behavior. Youths in such units shall be given concrete behavioral criteria under which they may be released to the general population and shall be reassessed at least weekly to determine whether the youth may, consistent with the State's legitimate security interests, be removed from the security unit.

B. Boot Camp Admissions and Practices

108. The Department shall develop and implement a plan to accommodate youth sentenced to short-term programs, such as boot camps, who, because of physical disabilities, mental retardation or mental illness, may be harmed by participation in certain activities.

109. The Department shall create guidelines for, and specific training regarding, punishments or "on-the-spot corrections" that will be permitted in boot camp programs.

C. Grievance Procedures

110. The Department shall assure that youths in all DJJ facilities shall have access to a reasonable grievance procedure.

111. Youths shall be able to file grievances directly with facility administrators through confidential means, without mediation through line staff.

D. Miscellaneous Correctional Issues

112. Youths shall be permitted to have reading material in their rooms in addition to a Bible, unless and until

that privilege is abused.

113. The Department shall develop and implement uniform policies limiting the amount of time youths may be locked in their rooms during waking hours and on weekends.

X. JUVENILE JUSTICE QUALITY ASSURANCE

114. The Department shall create an Office of Quality Assurance ("OQA") within the Department of Juvenile Justice to consolidate and supplement quality assurance activities already undertaken by the DJJ. The Department shall recruit and hire, from outside the Department, a Director of the Office of Quality Assurance, who shall be highly qualified for the position and shall serve as a Deputy Commissioner. The Director shall begin employment on or before August 1, 1998. The Department shall provide the Director with sufficient staff and resources to perform the tasks required by this Agreement, including:

- a. Monitoring compliance with DJJ policies in all DJJ facilities, with emphasis on policies relating to issues addressed in this Agreement.
- b. Conducting audits and other quality assurance activities as described in ¶ 117.
- c. Reviewing and, where appropriate, investigating allegations of staff abuse.
- d. Assuring the implementation and adequacy of the educational, medical and mental health quality assurance programs required by this Agreement.
- e. Coordinating quality assurance activities performed by various DJJ offices to prevent unnecessary duplication of efforts.

115. To meet the above requirement, the Department shall hire, at minimum, 13 staff members in fiscal year 1999, and an additional 12 in fiscal year 2000.

116. The Director of the Office of Quality Assurance shall work closely with the Commissioner of the DJJ. The Director shall be removable by the Commissioner only with the prior approval of the Board of Juvenile Justice.

117. The Director of OQA shall create and implement a written quality assurance program, as defined in ¶ 10 with the following elaboration and supplementation:

- a. The comprehensive audits required by ¶ 10(a), shall include, at minimum:
 - i. Inspection of institutional, medical and educational records, unit logs, incident reports, use of force reports, major disciplinary report, documentation of room checks by line staff, etc.
 - ii. Interviews with staff, administrators and youths at each facility.
 - iii. Where appropriate, interviews with the parents or other care givers of youth confined in DJJ facilities.
 - iv. Inspection of the physical plant.

v. Interviews with juvenile court judges, public defenders and other officials having regular contact with the facility or its residents.

vi. Determination of compliance with DJJ policies relating to: suicide prevention, staffing levels and youth supervision, use of force, disciplinary practices, positive behavior management programs, grievance procedures, use of chemical and mechanical restraints, fire safety, adequacy of youth recreation and exercise, sanitation, youth access to hygiene items and clothing, the effectiveness of alternatives to detention, youth-on-youth violence, implementation of classification criteria, conditions in security units, adequacy of counseling and rehabilitative services, and the adequacy of all facility documentation.

vii. A written report recording the findings of the audit.

b. Additional unannounced, periodic site visits at each facility. OQA staff shall have complete and unfettered access to all DJJ facilities, records, staff and residents. All DJJ staff shall be informed of their obligation to cooperate in all OQA operations.

c. Investigation of significant incidents (as defined by the Director of OQA), which shall include, at minimum: deaths; serious injuries or hospitalizations; suicides and serious suicide attempts; escapes or other serious breaches of security; and medical emergencies. The investigation shall result in a written report to the Commissioner of DJJ and shall include findings and recommendations. The Director of OQA shall issue protocols for coordination of such investigations with other law enforcement, administrative disciplinary, or other quality assurance investigations.

d. Review of all incidents of use of force, chemical sprays, mechanical restraints, and the use of isolation in excess of 24 hours. OQA shall be sent copies of every Use of Force and OC Spray report. The Director of OQA shall establish criteria under which such incidents shall be independently investigated for compliance with DJJ policies. Such criteria shall include, at minimum, review of all incidents of use of force resulting in serious injury or hospitalization, all use of chemical sprays, and all use of restraint chairs.

e. Policies and procedures for auditing chemical spray canisters and reliably determining whether the canister has been discharged. Facility supervisory staff and OQA auditors shall routinely conduct such audits. If it appears that a canister has been used without required documentation, OQA shall be notified and shall conduct an investigation.

f. Review of grievances raising significant issues (as defined by the Director of OQA).

g. Requirements that when, through audits, investigations or other quality assurance activities, the OQA finds substantial non-compliance with the requirements of DJJ policies or this Agreement, a plan of correction shall be developed.

XI. MONITORING AND ENFORCEMENT

A. Role of the OPB Monitor

118. The Governor's Office of Planning and Budget shall contract with an independent contractor who shall be responsible for monitoring of the State's compliance with this Agreement by July 1, 1998. The parties shall jointly select the OPB Monitor. The Monitor may be terminated only for good cause, unrelated to the Monitor's findings or recommendations, and only with prior notice to and the approval of both parties. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitor's activities, reports, findings or recommendations.

119. The OPB Monitor shall have education, training or experience in the field of juvenile justice. The Monitor may also have education, training or experience in general or special education, adolescent health and mental

health needs (particularly the needs of institutionalized adolescents), and institutional abuse and incident investigations.

120. The OPB Monitor shall have full and complete access to any DJJ facility and to the records, staff and residents of each facility.

121. The OPB Monitor shall have full and complete access to the Commissioner and his designees and to the staff and records of the Office of Quality Assurance. The Commissioner shall direct all employees to cooperate fully with the Monitor.

122. The Monitor shall be permitted to initiate and receive ex parte communications with all parties.

123. The OPB Monitor shall provide the parties with reports describing the steps taken by the Department to implement this Agreement and evaluating the extent to which the Department has complied with the requirements of the Agreement. Such reports shall be issued every six months, unless the parties agree otherwise.

124. The OPB Monitor shall have a budget and staff sufficient to allow the OPB Monitor to carry out the responsibilities described in this Agreement, and may contract with such experts or consultants as he or she may deem appropriate.

B. Monitoring by the United States

125. To ensure the enforcement of this Agreement, the United States shall have certain access and enforcement rights.

126. The United States shall have full and complete access to any DJJ facility, and to the records, staff and residents of those facilities. The United States shall have the right to conduct unannounced visits to any DJJ facility. The United States shall have the right to conduct confidential interviews with staff, residents, former residents and the parents and care givers of residents and former residents. Any confidential information or documents obtained pursuant to this paragraph shall not be disseminated to any person not a party (or an employee or contractor of a party) to this Agreement, including the media, unless consented to by the parties. Such information may, however, be used in any proceedings to enforce the requirements of this Agreement.

127. The United States shall have the right to communicate ex parte with the staff of the Office of Quality Assurance and the OPB Monitor.

128. The United States shall be provided copies of all audits and periodic reports produced by the Office of Quality Assurance.

129. The United States shall be provided copies of all reports produced by the OPB Monitor.

130. Upon request by the United States, the State shall provide the United States with copies of any reports or other DJJ or facility documents reviewed by the Office of Quality Assurance or the OPB Monitor.

C. Plan Development and Enforcement

131. This Agreement requires the State and DJJ officials to develop certain plans, policies, procedures and protocols (collectively "plans"). These plans shall be developed in accordance with the time table set forth in Appendix A. The plans shall be sufficiently detailed to permit the United States to determine whether the plan is adequate to achieve the requirements of this Agreement. The United States may make reasonable requests for

clarifications or further details.

132. Where indicated in Appendix A, the plan shall be developed in consultation with one or more consultants. The State shall notify the United States of each consultant it plans to retain, and the United States shall have 15 days to object to the consultant. If there is an objection, the parties shall make good faith reasonable efforts to agree upon a consultant for each plan. If no agreement is reached within 15 days of the United States' objection, the State and the United States shall each nominate up to three consultants and the Monitor shall select one or more.

133. Any consultant shall provide advice to the Department as it develops the required plan, and may, at the Department's discretion, draft a proposed plan for State approval or modification. The Department's plan shall be provided to the United States according to the timeline in Appendix A. Within 14 days, the United State may request, and the consultant shall provide, verbal or written comments on the plan.

134. Within 45 days of receiving the plan or the consultant's comments on the plan (whichever is later), the United States shall submit to the State any suggestions, comments or objections. The State and the United States will then conduct discussions in a good faith attempt to resolve any disputes over the content of the plan. If the parties are unable to reach agreement on a final version of the plan, the procedure for resolution of disputes, by first applying mediation prior to any court enforcement in ¶ 138, shall apply. 135. A plan shall become enforceable once it has been approved by the parties.

136. An enforceable plan may be modified at any time under the following conditions:

- a. If the State desires to modify a plan, it shall notify the United States of its intent and the proposed amendment.
- b. If the United States does not object within 30 days of the notification, the plan shall be so modified. Otherwise, the plan shall remain in its present enforceable form until agreed to by the United States.
- c. If the United States does object, the parties shall conduct good-faith discussions to resolve the dispute with the mediation assistance of the Monitor.

D. Resolution of Enforcement Disputes

137. The parties agree to file this Agreement with the United States District Court for the Northern District of Georgia, Atlanta Division, in conjunction with a complaint and a joint motion, pursuant to Fed. R. Civ. P. 41(a)(2), for the conditional dismissal of the case. The dismissal shall be conditioned upon the State's achieving substantial compliance with the terms of this Agreement, and shall attach the Agreement to such motion. The motion shall request that the case be placed on the Court's inactive docket. If the State fails to substantially comply with the terms of this Agreement, and if efforts to resolve and mediate the enforcement dispute pursuant to ¶ 138 are unsuccessful, the United States may take appropriate legal enforcement action, including filing a motion to restore the case to the Court's active docket.

138. If the United States believes that the State has failed to substantially comply with its material obligations under a plan or the terms of this Agreement, it shall so notify the State in writing. The parties shall conduct good-faith discussions to resolve the dispute and may agree in writing to adopt a plan of correction or otherwise modify the plan or Agreement. If the parties are unable to reach agreement within 30 days of the United States' filing of objections, the parties shall submit the dispute to mediation. The Monitor shall select the mediator within 10 days. The parties shall attempt in good faith to mediate the dispute for a minimum of 30 days prior to initiating any court action to resolve the dispute. In the event that the State's non-compliance threatens the

immediate health and safety of youths, or in other exigent circumstances, the United States shall attempt to expeditiously reach agreement with the State regarding the emergency conditions, but shall reserve the right to seek immediate judicial relief.

E. Termination of the Agreement

139. The parties agree that the systemic and comprehensive nature of this Agreement shall require that implementation of the terms of this Agreement take place over a number of years, as provided for in the timelines and terms of this Agreement.

140. The parties agree that the Agreement shall become subject to termination as soon as the State has fully and faithfully implemented all requirements of the Agreement and such full compliance has been maintained for one year.

141. Once the State 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 State 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 State may file a motion with the Court to dismiss the complaint with prejudice. If the State moves for dismissal, the United States will have an adequate time after the receipt of the State's motion to object to the motion. If the United States does not object, the Court may grant the State's motion. If the United States does make an objection, the Court shall hold a hearing on the motion to determine whether the conditions in ¶ 140 have been met.

142. Nothing in ¶¶ 140 and 141 shall preclude the parties from jointly stipulating to the termination of portions of this Agreement at any time.

Agreed to by:

FOR THE STATE OF GEORGIA:

FOR THE UNITED STATES:

ZELL MILLER
Governor
State of Georgia

JANET RENO
Attorney General of the United States

EUGENE P. WALKER
Commissioner
Georgia Department
of Juvenile Justice

BILL LANN LEE
Acting Assistant Attorney General
Civil Rights Division
United States Department of Justice

THURBERT E. BAKER
Attorney General
State of Georgia

STEVEN H. ROSENBAUM
Chief
Special Litigation Section

MELLIE H. NELSON
Deputy Chief
Special Litigation Section

KEVIN K. RUSSELL
JUDY C. PRESTON
SHELLEY JACKSON
Trial Attorneys
Special Litigation Section

Appendix A

Plan Development and Implementation Timelines

| Plan | Agreement Citation | Deadline for Plan | Deadline for Plan Implementation | Consultant required? |
|---------------------------------------|--------------------|-------------------|----------------------------------|----------------------|
| Education | | | | |
| Creation of DJJ curriculum | ¶15 | 10/15/98 | 1/1/99 | |
| Criteria for class exclusion | 20 | 10/15/98 | 1/1/99 | |
| Isolation education requirements | 21 | 10/15/98 | 1/1/99 | |
| Special Education Identification | 25 | 10/15/98 | 1/1/99 | |
| Parent IEP participation system | 32 | 10/15/98 | 1/1/99 | |
| Education staffing plan | 33 | 10/15/98 | See Appendix B | |
| Education staff training requirements | 34 | 10/15/98 | 1/1/99 | Yes |
| Education quality assurance plan | 35 | 1/1/99 | 4/1/99 | Yes |
| Mental Health | | | | |
| | | | | |

| | | | | |
|---|---------------------------|--------------------------|---|-----------------------------|
| Suicide Risk Screening instrument and policies | 38 | 10/15/98 | 1/1/99 | Yes |
| YDC Mental Health Needs Assessment policies | 40 | 10/15/98 | 1/1/99 | Yes |
| Protocols regarding admission of youth on psychotropic medication | 42 | 10/15/98 | 1/1/99 | |
| Mental Health Evaluation referral protocols | 43 | 1/1/99 | 4/1/99 | Yes |
| Alternate mental health placement plan | 46 | 1/1/99 | 7/1/99 | Yes |
| Treatment plan content protocols | 47-48 | 1/1/99 | 4/1/99 | Yes |
| Medication side effects notification protocols | 52 | 10/15/98 | 1/1/99 | |
| Psychotropic medication monitoring protocols | 53 | 10/15/98 | 1/1/99 | Yes |
| Plan | Agreement Citation | Deadline for Plan | Deadline for Plan Implementation | Consultant required? |
| Suicide prevention policies | 55 | 10/15/98 | 1/1/99 | Yes |
| Mental health staffing plan | 56 | 10/15/98 | See Appendix B | |
| Mental health staff training plan | 57 | 1/1/99 | 4/1/99 | |
| State mental health QA plan | 59 | 1/1/99 | 4/1/99 | Yes |
| Facility Mental Health QA policy | 60 | 1/1/99 | 4/1/99 | Yes |
| Medical Care | | | | |
| Uniform protocols for physical examinations | 63 | 10/15/98 | 1/1/99 | |
| Uniform protocols for sick call | 64 | 10/15/98 | 1/1/99 | |
| Medical records transfer system | 69 | 10/15/98 | 1/1/99 | |
| Medical staffing plan | 70 | 10/15/98 | See Appendix B | |
| Medical staff training plan | 71 | 10/15/98 | 1/1/99 | |
| State medical QA plan | 72 | 1/1/99 | 4/1/99 | Yes |
| Facility medical QA policy | 73 | 1/1/99 | 4/1/99 | Yes |
| Physical and Programmatic Capacity | | | | |
| Direct care staffing plan | 76 | 10/15/98 | See Appendix B | |
| Direct care staff training plan | 77 | 10/15/98 | | |

| | | | | |
|---|---------------------------|--------------------------|---|-----------------------------|
| Risk Assessment instrument and policies | 79 | 1/1/99 | 7/1/99 | Yes |
| Detention Alternatives Plan | 81 | 1/1/99 | 7/1/99 | Yes |
| Physical Plant Expansion Plan | 82 | 10/15/98 | | |
| Plan | Agreement Citation | Deadline for Plan | Deadline for Plan Implementation | Consultant required? |
| Juvenile Justice Administration Plans and Policies | | | | |
| Classification policies | 84 | 10/15/98 | 1/1/99 | Yes |
| Morse Watchman installation | 85 | | 3/1/99 | |
| Policies on specific common behavior problems | 88 | 10/15/98 | 1/1/99 | Yes |
| Positive Behavior Management Plan | 103 | 10/15/98 | 1/1/99 | Yes |
| Uniform discipline policies | 104 | 10/15/98 | 1/1/99 | Yes |
| Boot camp accommodations plan | 108 | 10/15/98 | 7/1/99 | Yes |
| Boot camp discipline guidelines | 109 | 10/15/98 | 1/1/99 | |
| Time in cells regulations | 113 | 10/15/98 | 1/1/99 | |
| Quality Assurance | | | | |
| Abuse Reporting System | 92 | 10/15/98 | 1/1/99 | Yes |
| Facility abuse investigator training | 93 | 1/1/99 | 4/1/99 | Yes |
| Abuse investigations training plan and manual | 97 | 10/15/98 | 1/1/99 | Yes |
| OQA Quality Assurance Plan | 117 | 1/1/99 | 4/1/99 | Yes |

Appendix B

Staffing Plans

Pursuant to the requirements of this Agreement, the State must develop certain staffing plans. For the purposes of meeting the requirements of this Agreement, the plans shall provide, at minimum, the staff increases stated below according to the time frames indicated. These staff increases are exclusive of any other staffing enhancements that may be undertaken due to increases in the population of the DJJ system or the opening of new facilities, and are in addition to any enhancements in the Governor's recommendations for the FY 1999 budget.

1. Mental Health Services

During FY 1999 and FY 2000, through contractual arrangement, the Department will add one qualified mental health professional ("QMHP") in each RYDC to perform mental health and suicide risk screenings.

An additional number of psychologists and psychiatrists will be contracted with to perform further necessary evaluation and/or testing, and to provide all required psychological and psychiatric coverage. By the end of FY 2000, this will create an average of eight hours of psychological/psychiatric services per week in RYDCs and an average 20 hours of psychological/psychiatric services per week in YDCs (actual level of services may vary from facility to facility depending upon the facility population level).

2. Education

The Department will hire 35 additional special education teachers by June 1, 1999.

3. Juvenile Corrections Officers

The Department will hire an additional 128 juvenile corrections officers ("JCOs") during fiscal year 1999 in order to increase the staffing of the third shift at RYDCs and YDCs, according to the following schedule: 43 JCOs shall be hired by January 1, 1999; 43 additional JCOs shall be hired by March 1, 1999; and 42 additional JCOs shall be hired by May 1, 1999.

4. Medical

Between FY 1999 and FY 2001, an additional amount of registered nurse services will be provided for each RYDC and YDC by contractual arrangement, to insure the coverage provided for in ¶ 70(a)-(b) of this Agreement.

Between FY 1999 and FY 2001, additional physician assistant services will be provided for in each RYDC and YDC by contractual arrangement, to insure the coverage provided for in ¶ 70(c)-(d) of this Agreement.

Between FY 1999 and FY 2001, contractual arrangements will be provided for the dental services required by ¶ 65(a) of this Agreement. This shall include, at minimum, provision of an average of 20 hours per week of dental services in YDCs and an average of 5 hours of dental services per week in RYDCs (actual level of services may vary from facility to facility depending upon the facility population level).

5. Counselors

An additional 44 counselors will be hired by the Department by January 1, 1999.

Appendix C

Use of Force Policy

Appendix D

Chemical Spray Policy

Appendix E

Due Process Policy

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|---------------------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, |) | CIVIL ACTION NO. |
| |) | |
| Plaintiff, |) | 1:98-CV-836-JEC |
| |) | |
| vs. |) | |
| |) | |
| THE STATE OF GEORGIA, <u>et al.</u> , |) | MODIFIED ORDER OF |
| |) | CONDITIONAL |
| Defendants. |) | DISMISSAL |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | |
| _____ |) | |

Plaintiff, the United States of America, and Defendants, the State of Georgia, et al., have determined that the interests of all concerned Parties can best be served by entering into a modified settlement in regard to the operation of the secure juvenile justice facilities operated by the Georgia Department of Juvenile Justice. In recognition of these interests and to avoid adversarial litigation, the parties have entered into a Modification of the Memorandum of Agreement, attached to their Joint Motion to Amend the Order of Conditional Dismissal, to settle this matter and have moved this Court to amend its Order of Conditional Dismissal.

Having reviewed the joint motion and for good cause shown;

IT IS HEREBY ORDERED that this case shall be placed on this Court's inactive docket; this case shall be dismissed upon the State's substantial compliance with the terms of the Modification of the Memorandum of Agreement; and this Court will retain jurisdiction over the case until an order of final dismissal is entered.

DATED this ____ day of _____, 2008.

JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

Presented by:

DANIEL A. CALDWELL
Assistant U.S. Attorney
Georgia Bar No. 102510

Counsel for Plaintiff
United States of America