

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES OF AMERICA,	)	Civil No.
	)	1:05-cv-01772
Plaintiff,	)	
	)	
vs.	)	
	)	
THE STATE OF MARYLAND, <u>et al.</u> ,	)	JOINT MOTION TO AMEND
	)	THE MODIFIED ORDER OF
	)	CONDITIONAL DISMISSAL
Defendants.	)	
	)	
	)	
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	)	
	)	
	)	

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On May 18, 2007, the United States Department of Justice and the State of Maryland reached a settlement agreement concerning allegations of civil rights violations at the Baltimore City Juvenile Justice Center ("BCJJC"). On May 23, 2007, the United States simultaneously filed the First Amended Complaint underlying the present case as well as a Joint Motion for Conditional Dismissal pursuant to Fed. R. Civ. P. 41(a)(2). The Amended Settlement Agreement, which added remedial measures to be implemented at BCJJC to the existing agreement involving the Charles H. Hickey, Jr. School ("Hickey") and the Cheltenham Youth Facility ("CYF"), was included as an exhibit to the Joint Motion to Amend the Order of Conditional Dismissal. This Honorable Court signed a Modified Order of Conditional Dismissal on May 24, 2007.

The United States Department of Justice and the State of Maryland have agreed that the State had complied with the Amended Settlement Agreement provisions applicable to Hickey and CYF, but also agreed that additional time will be required to fully implement certain agreement provisions at BCJJC. Accordingly, the parties have entered into a Second Amended Settlement Agreement, attached as Exhibit 1, which deletes Hickey and CYF from the Amended Settlement Agreement, and extends the applicability of certain provisions at BCJJC for one year. In addition, the parties agreed to dismiss the superintendents of Hickey and CYF from the lawsuit. The parties intend the Second Amended Settlement Agreement to supercede and replace the June 29, 2005 and the May 17, 2007 settlement agreements.

Accordingly, the United States and the Defendants move this Honorable Court to amend its Modified Order of Conditional Dismissal by adopting the attached Proposed Second Modified Order of Conditional Dismissal.

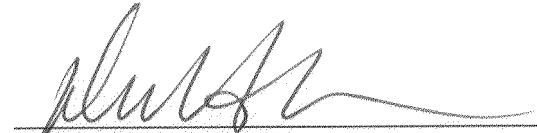
DATED this 23 day of June, 2008.

Respectfully submitted,

FOR THE UNITED STATES:

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General  
Civil Rights Division

SHANETTA Y. CUTLAR  
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FOR THE STATE OF MARYLAND:

A handwritten signature in cursive script, reading "Robert T. Fontaine". The signature is written in dark ink and is positioned above the printed name.

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EXHIBIT 1

Second Amended Settlement Agreement

Between the United States of America

and the State of Maryland

Regarding Conditions at Three  
Juvenile Justice Facilities

Originally Filed in Civil № JFM 05 CV 1772 in the United States  
District Court for the District of Maryland:  
June 30, 2005; As Amended: May 17, 2007 and June 23, 2008

## SECOND AMENDED SETTLEMENT AGREEMENT

### I. INTRODUCTION

A. On August 30, 2002, the United States notified State of Maryland officials of its intent to investigate conditions of confinement at the Cheltenham Youth Facility ("Cheltenham") in Cheltenham, Maryland and the Charles H. Hickey, Jr. School ("Hickey") in Baltimore, Maryland, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"). Following a written invitation on June 28, 2005 from then-Secretary of Juvenile Services Kenneth C. Montague, Jr., to investigate the Baltimore City Juvenile Justice Center ("BCJJC"), the United States similarly notified the State with respect to BCJJC on June 30, 2005.

B. Between April 28 and June 12, 2003, the United States toured Cheltenham and Hickey with consultants in the fields of juvenile justice, medical care, mental health care, education and sanitation. At the time of these tours and until April 1, 2004, Hickey was operated by a for-profit corporation. The United States conducted similar tours at BCJJC in September and October, 2005.

C. On April 9, 2004, the United States issued a findings letter pursuant to 42 U.S.C. § 1997 (a)(1), which concluded that certain conditions at Cheltenham and Hickey violated the constitutional and federal statutory rights of juveniles confined there. The United States recognizes that its letter notifying the State of Maryland of the results of its investigation focused, by virtue of statutory requirements, on conditions the United States believed to violate federal law and, therefore, did not discuss positive aspects of the State's facilities. On August 7, 2006, the United States issued a separate findings letter regarding BCJJC, which the United States recognizes is limited in the same way.

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

## SECOND AMENDED SETTLEMENT AGREEMENT

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

F. At the time of the execution of the original Settlement Agreement, the State of Maryland represented that it had already taken measures to implement many provisions of this Agreement, most notably by dramatically reducing the population at Cheltenham and by assuming control of and investing resources at Hickey and by adding millions of dollars in budgetary resources for these facilities in State Fiscal Year 2006, which began on July 1, 2005. The United States applauded the State's efforts to address proactively the measures outlined in the Agreement, but contended that it had not yet had the opportunity to assess these efforts. With respect to BCJJC, the State had made significant changes at the facility since the time of the United States' tour, which the United States recognized in its Findings Letter.

G. The State cooperated and negotiated in good faith with the United States regarding its investigation of Cheltenham and Hickey, provided the United States and its consultants full access to the toured facilities and documents, and was receptive to the on-site recommendations of the Department of Justice's consultants. At BCJJC, the State similarly cooperated with the United States and in some cases made immediate corrections to address concerns raised on-site by the United States' consultants.

H. Since the date of the original Agreement, the State's performance thereunder has been subject to the monitoring described in Section V. of the original and the Amended Agreement. The State's overall compliance with the Amended Agreement with respect to Cheltenham and Hickey makes it appropriate to cease monitoring, and the Agreement with respect to those facilities is terminated in accordance with the terms of the original Agreement after June 29, 2008.

## SECOND AMENDED SETTLEMENT AGREEMENT

I. The State has not yet demonstrated to the satisfaction of the Independent Monitors compliance in certain areas of the Amended Agreement with respect to BCJJC and, as a consequence, the parties have agreed to extend certain provisions of the Amended Agreement with respect to that facility until June 29, 2009.

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

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

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

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

N. After June 29, 2008, the provisions of this Agreement shall apply only to all youth at BCJJC.



SECOND AMENDED SETTLEMENT AGREEMENT

II. DEFINITIONS

In this Agreement, the following definitions apply:

A. "BCJJC" means the Baltimore City Juvenile Justice Center located at 300 North Gay Street, Baltimore, Maryland, and any facility that may be built to replace or supplement that facility.

A-1. "Cheltenham" means the Cheltenham Youth Facility, located at 11001 Frank Tippet Road, Cheltenham, Maryland.

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

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

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

E. "The facility" means, unless the context otherwise clearly limits, BCJJC.

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

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

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

## SECOND AMENDED SETTLEMENT AGREEMENT

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

I. "OIA" means the Maryland Department of Juvenile Services' Office of Investigations and Audits, or its successor.

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

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

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

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

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

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

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

### III. SUBSTANTIVE REMEDIAL MEASURES

#### A. IN GENERAL

The use of the future tense in this Section should not be construed to indicate that the State has not already put into place many of the measures set out in this Section. Rather, the use of the future tense in this Section indicates that these remedies are forward-looking and that the State intends not only to continue with those measures it has already undertaken, but

## SECOND AMENDED SETTLEMENT AGREEMENT

to work diligently to identify problems and fashion solutions to them at the facility. Compliance with the provisions of this Agreement shall be measured solely by the Monitoring Team as set forth in Section V. A. below.

### B. PROTECTION FROM HARM - CHELTENHAM AND HICKEY - DELETED

#### B-1. PROTECTION FROM HARM - BCJJC

i. Protection from Youth-on-Youth Violence The State shall take all reasonable measures to assure that youth are protected from violence by other youth.

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

iii. Senior Management Review The State shall develop and implement a system for review by senior management of youth-on-youth violence.

iv. Staff Training in Behavior Management, De-Escalation and Crisis Intervention - DELETED

v. Behavior Management Program The State shall develop and implement an effective behavior management program at the facility throughout the day, including during school time and shall continue to implement the behavior management plan. The State shall develop and implement policies, procedures and practices under which mental health staff provide regular consultation regarding behavior management to direct care and other staff involved in the behavior management plans for youth receiving mental health services, and shall develop a mechanism to assess the effectiveness of interventions utilized.

vi. Staffing The State shall employ sufficient numbers of adequately trained direct care and supervisory staff to supervise youth safely, protect youth from harm, and allow

SECOND AMENDED SETTLEMENT AGREEMENT

youth reasonable access to mental health, education services, structured rehabilitative programming, and adequate time spent in out-of-room activities, and that it shall continue to provide sufficient numbers of staff at the facility.

vii. Environmental Security Hazards - **DELETED**

C. **SUICIDE PREVENTION - CHELTENHAM AND HICKEY - DELETED**

C-1. **SUICIDE PREVENTION - BCJJC**

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

ii. Mental Health Response to Suicidal Youth - **DELETED**

iii. Supervision of Youth at Risk of Self-Harm The State shall sufficiently supervise youth in seclusion to maintain their safety.

iv. Housing for Youth at Risk of Self-Harm - **DELETED**

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

- a. the times youth are placed on and removed from precautions;
- b. the levels of precautions on which youth are maintained;
- c. the housing location of youth on precautions;
- d. the conditions of the precautions; and
- e. the times and circumstances of all observations by staff monitoring the youth.

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vi. Suicide and Suicide Attempt Review - DELETED

vii. Environmental Suicide Hazards - DELETED

D. MENTAL HEALTH - CHELTENHAM AND HICKEY - DELETED

D-1. MENTAL HEALTH - BCJJC - DELETED

E. MEDICAL CARE - CHELTENHAM AND HICKEY - DELETED

F. SPECIAL EDUCATION- CHELTENHAM AND HICKEY - DELETED

F-1. SPECIAL EDUCATION - BCJJC

i. Provision of Required Special Education The State shall provide all eligible youth confined at the facility special education services as required by the IDEA, 20 U.S.C. §1400 et seq., and regulations promulgated thereunder.

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

iii. Parent, Guardian and Surrogate Involvement -  
DELETED

iv. Individualized Education Programs The State shall develop and/or implement an adequate IEP, as defined in 34 C.F.R. § 300.320, for each youth who qualifies for an IEP. Consistent with the requirements of 34 C.F.R. § 300.323(c), within 30 days of a determination that a youth is eligible for special education and related services, the State shall conduct an IEP meeting to develop an IEP. As part of satisfying this requirement, the State must conduct required re-evaluations of IEPs, adequately provide and document all required instructional services, conduct appropriate assessments and comply with requirements regarding student and teacher participation in the IEP process. Mental health staff shall be involved in development of IEPs of all youth with identified mental illness.

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Goals and objectives shall be stated in realistic and measurable terms.

v. Staffing - DELETED

G. FIRE SAFETY - CHELTENHAM AND HICKEY - DELETED

IV. COMPLIANCE AND QUALITY ASSURANCE - DELETED

V. MONITORING AND ENFORCEMENT

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

i. Members The State and DOJ have together selected a Monitoring Team. Members of the Monitoring Team shall include experts in the fields of juvenile justice/protection from harm and education. The Monitoring Team shall have full authority to assess, review and report independently on the State's implementation of and compliance with the provisions of this Agreement. The parties have chosen one Monitoring Team Member to be the Monitoring Team Leader, who shall be responsible for coordinating site visits to the facility, arranging for appropriate information-sharing between Monitoring Team Members, and for preparing the reports to the parties as required in this Agreement.

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

iii. Independence of Monitoring Team Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitoring Team's activities, reports, findings, or recommendations. Members of the Monitoring Team may be terminated if both parties agree and upon

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good cause shown. Good cause shall include any violation of State or federal law which reasonably calls into question the Monitoring Team member's fitness to continue serving as a member of the Monitoring Team. In the event the parties do not agree upon the need for termination, the parties agree to submit the resolution of this matter to dispute resolution as described in Section VII N. of this Agreement.

iv. Costs The cost for the Monitoring Team shall be borne by the State. Subject to all necessary State approvals, including if necessary the Board of Public Works, these costs shall be as set forth in the contracts executed with members of the Monitoring Team.

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

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

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

D. Limitations on Public Disclosures by Monitoring Team Members

i. Prohibition on Public Statements; Confidentiality Agreement Unless required by law, or as provided in this Agreement, neither the Monitoring Team members nor any of their staff shall make any public statements or issue findings with regard to any information provided to the Monitoring Team or the Monitoring Team's staff pursuant to this Agreement. Each member of the Monitoring Team shall execute a confidentiality agreement limiting disclosure of information obtained, consistent with law, to protect the privacy of the children served in the facility.

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

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

E. Monitoring Team's Reports The Monitoring Team shall provide the parties with reports describing the extent to which the State has substantially complied with each substantive provision of the Agreement and the steps taken by DJS to implement the Agreement. Such reports shall be issued semi-annually. The first report shall issue six months after the effective date of the original Agreement, unless the parties



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jointly agree otherwise. The reports shall be provided to the parties in draft form for comment at least four weeks prior to their issuance. A draft of the final report shall be provided to the parties on April 30, 2009. Comments/responses of the State and the DOJ shall be included separately in the reports. These reports shall be written with due regard for the privacy interests of individual youth and staff and the interest of the State and DJS in protecting against disclosure of non-public information. Monitoring Team reports shall not include names or personally identifying information of youth. Where Monitoring Team members identify individual events or concerns about this Agreement that involve particular youth, they shall employ alternative means (other than the Monitoring Team reports) to inform the parties of the identities of the involved youth.

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

## VI. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

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

B. State Response to DOJ Questions Within a reasonable time following receipt of written questions from the DOJ concerning the State's compliance with this Agreement, DJS shall provide the DOJ with written answers and any requested documents regarding the State's compliance with the requirements of this

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Agreement. Such inquiries and document requests will be coordinated with the activities of the Monitoring Team.

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

D. Department of Social Services Investigative Files Because child abuse investigation records of the Departments of Social Services in Maryland are confidential under State law and not considered by DJS in conducting its own independent investigation and addressing or remedying allegations of child abuse by staff, neither the Monitoring Team nor the United States shall seek such records. No representative of the State (including the Independent Juvenile Justice Monitor) shall release such records to the United States or the Monitoring Team. The ultimate determination by the Department of Social Services that alleged child abuse is indicated, unsubstantiated or ruled out, if it is received by DJS, may be obtained from DJS by the United States and/or the Monitoring Team.

### VII. IMPLEMENTATION AND TERMINATION

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

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

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

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

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E. Rule 41 Conditional Dismissal Upon execution of this Second Amended Settlement Agreement, the Parties shall file a Joint Motion for Conditional Dismissal of the amended complaint pursuant to Federal Rule of Civil Procedure 41(a)(2) in the United States District Court for the District of Maryland, Northern Division. A copy of this Agreement shall be attached to the Joint Motion for Conditional Dismissal and that motion shall: (1) request that the court dismiss the amended complaint upon the passage of four (4) years from the date of the original complaint's filing or the State's earlier substantial compliance with the terms of this Agreement; (2) request that the court place the case on its inactive docket; and (3) retain jurisdiction over the case until four (4) years have passed since the original filing or an earlier final dismissal is entered. The parties expressly declare that this provision shall not be interpreted to provide for active judicial supervision.

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

G. State's Reservation of Defenses If the United States seeks judicial enforcement of this Agreement, the State reserves the right to raise as a defense exigent circumstances in the State, including, but not limited to: economic recession,

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necessary diversion of resources and personnel in the event of widespread threat to public health, or act of war.

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

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

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

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

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

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

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

### O. Termination

i. Time Frame This Second Amended Settlement Agreement shall terminate definitively and unconditionally no later than June 29, 2009.

ii. Section-by-Section Substantial Compliance The Agreement may end on a section-by-section basis earlier than the termination date if the State has substantially complied with the provisions of that section of the Agreement at the facility for at least six (6) months.

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

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

## SECOND AMENDED SETTLEMENT AGREEMENT

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

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

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

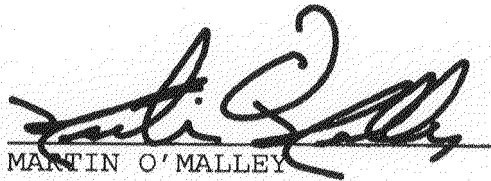
R. Non-Retaliation No person reporting conditions which may constitute a violation of the laws or Constitution of the United States or this Agreement shall be subjected to retaliation in any manner for so reporting. See 42 U.S.C. § 1997d.

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

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

SECOND AMENDED SETTLEMENT AGREEMENT

FOR THE STATE:

  
MARTIN O'MALLEY  
Governor  
State of Maryland

6/23/08  
Date

\_\_\_\_\_  
DONALD W. DEVORE  
Secretary of Juvenile Services

\_\_\_\_\_  
Date

APPROVED FOR LEGAL SUFFICIENCY:

\_\_\_\_\_  
ROBERT T. FONTAINE  
Assistant Attorney General  
State of Maryland

\_\_\_\_\_  
Date

SECOND AMENDED SETTLEMENT AGREEMENT

FOR THE STATE:

MARTIN O'MALLEY  
Governor  
State of Maryland

Date

Donald W. Devore  
DONALD W. DEVORE  
Secretary of Juvenile Services

June 23, 2008  
Date

APPROVED FOR LEGAL SUFFICIENCY:

Robert T. Fontaine  
ROBERT T. FONTAINE  
Assistant Attorney General  
State of Maryland

June 23, 2008  
Date



SECOND AMENDED SETTLEMENT AGREEMENT


FOR THE UNITED STATES:



GRACE CHUNG BECKER  
Acting Assistant  
Attorney General  
Civil Rights Division

Date:

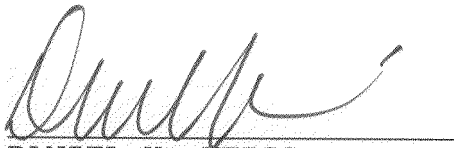
6/20/08



SHANETTA Y. CUTLAR  
Chief  
Special Litigation Section

Date:

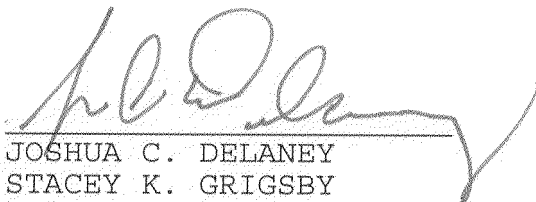
6/20/08



DANIEL H. WEISS  
Deputy Chief  
Special Litigation Section  
Bar Number 08096

Date:

6/18/08



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Date:

6/18/2008

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES OF AMERICA,	)	Civil No.
	)	1:05-cv-01772
Plaintiff,	)	
	)	
vs.	)	
	)	
THE STATE OF MARYLAND, <u>et al.</u> ,	)	SECOND MODIFIED
	)	ORDER OF CONDITIONAL
Defendants.	)	DISMISSAL
	)	
	)	
	)	
	)	
	)	
	)	

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Plaintiff, the United States of America, and Defendants, the State of Maryland, et al., have determined that the interests of all concerned parties can best be served by extending the duration of certain provisions of the Amended Settlement Agreement at the Baltimore City Juvenile Justice Center, a facility operated by the Maryland Department of Juvenile Services, and by eliminating those provisions of the agreement applicable to the Charles H. Hickey, Jr. School ("Hickey") and the Cheltenham Youth Facility ("CYF"). The parties have also determined that because compliance with the Amended Settlement Agreement has been achieved at Hickey and Cheltenham, the facility superintendents of these facilities should be dismissed as parties from the First Amended Complaint. In recognition of these interests and to avoid adversarial litigation, the parties have entered into a Second Amended Settlement Agreement, attached

to their Joint Motion to Amend the Modified Order of Conditional Dismissal, to settle this matter and have moved this Court to amend its Modified 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 on June 29, 2009 or earlier if the State reaches substantial compliance with the terms of the Second Amended Settlement Agreement; this Court will retain jurisdiction over the case until either June 29, 2009 or such earlier time as the State achieves substantial compliance with the terms of the Second Amended Settlement Agreement; and the superintendents of Hickey and CYF shall immediately be dismissed as parties.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2008.

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J. Frederick Motz  
United States District Judge