

MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF JUSTICE
AND THE STATE OF MARYLAND REGARDING THE BALTIMORE CITY
DETENTION CENTER

MEMORANDUM OF AGREEMENT

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I. INTRODUCTION

- A. On October 16, 2000, the United States, through the Department of Justice (“DOJ”), notified the State of Maryland’s then-Governor Parris Glendening of DOJ’s intent to investigate conditions of confinement at the Baltimore City Detention Center (“BCDC”) to determine whether those conditions violated inmates’ constitutional rights. The United States conducted this investigation pursuant to the Civil Rights of Institutionalized Persons Act (“CRIPA”), 42 U.S.C. §§ 1997, and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.
- B. On December 12-15, 2000, January 3-5, 9-12, and April 25-27, 2001, the United States toured BCDC with consultants in the fields of corrections, juvenile justice, medical care, mental health care, education, fire safety, and sanitation.
- C. On August 13, 2002, the United States issued a findings letter pursuant to 42 U.S.C. § 1997(a)(1) which concluded that certain conditions at BCDC violated the constitutional rights of inmates at the facility. Specifically, the DOJ found that BCDC is deliberately indifferent to inmates’ serious medical and mental health needs, persons confined suffer harm or the risk of serious harm from deficiencies in the facility’s fire safety protections and sanitation, and juveniles detained at the facility are not kept safe from potential harm by adult inmates. In addition, pursuant to 42 U.S.C. § 14141, the DOJ found that BCDC violates eligible inmates’ rights to education as required by the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C.A. §§ 1400-1482 (West, Westlaw through July 3, 2006), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794 (“Section 504”).
- D. Following a change in administrations in 2003, the State of Maryland and BCDC voluntarily initiated a commitment to change the environment at the facility. A separate tier with appropriate programming was initiated for juvenile arrestees. A program to improve fire safety and sanitation was initiated under the supervision of a national consultant who performed regular audits. Most notably, a new medical contract for health and mental health services at BCDC was entered into effective July 1, 2005 with elevated staffing at all professional levels and new intake procedures.
- E. On November 21-22, 2005, December 5-9, 2005, December 22-23, 2005, and December 28-29, 2005, the United States again toured BCDC with consultants in the fields of corrections, juvenile justice, medical care, mental health care, education, fire safety, and sanitation.
- F. The State of Maryland and the staff at BCDC cooperated throughout the course of the investigation and indicated a willingness to voluntarily undertake measures to improve conditions at BCDC. Consequently, the parties enter into this

Memorandum of Agreement (“Agreement”) for the purpose of avoiding the risks and burdens of litigation.

- G. This Agreement is not intended to have any preclusive effect except between the parties. Should the issue of the preclusive effect of this Agreement be raised in any proceeding other than this civil action, the parties agree to certify that this Agreement was intended to have no such preclusive effect.
- H. The parties agree that this agreement does not constitute an admission of liability by the defendants.

II. DEFINITIONS

In this Memorandum of Agreement (“Agreement”), the following definitions apply:

- A. “Baltimore City Detention Center” means all buildings of the jail facility located at 401 East Eager Street, Baltimore, MD 21202, as well as any facility that is built to replace or supplement BCDC. The terms of this Agreement shall apply to other locations operated by the State of Maryland such as the Baltimore Central Booking and Intake Center (“BCBIC”) and the Metropolitan Transition Center (“MTC”), to the extent necessary to effectuate the terms of the Agreement for the inmates of BCDC and those who pass through those facilities on their way to becoming inmates of BCDC.
- B. “Clinical staff” means medical professionals, mental health professionals, nursing staff, and certified medical assistants.
- C. “Effective Date” means the date the Agreement is entered by the Court.
- D. “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.
- E. “Include” or “including” means “include, but not be limited to” or “including, but not limited to.”
- F. “Inmates” means individuals sentenced to, incarcerated in, detained at, or otherwise confined at the Baltimore City Detention Center.
- G. “Inmates with special needs” means inmates: who are identified as suicidal, mentally ill, mentally retarded, seriously or chronically ill, or physically disabled, who have trouble performing activities of daily living, or who are a danger to themselves.

- H. “Isolation” means the placement of an inmate alone in a locked room or cell, except that it does not refer to adults single celled in general population.
- I. “Juveniles” means individuals detained at the facility who are under the age of eighteen (18).
- J. “Medical professional” means a licensed physician, licensed physician assistant, or a licensed nurse practitioner who is employed at BCDC and is currently licensed to the extent required by the State of Maryland to deliver those health services he or she has undertaken to provide.
- K. “Mental health professional” means an individual with a minimum of masters-level education and training in psychiatry, psychology, counseling, psychiatric social work, activity therapy, recreational therapy or psychiatric nursing, currently licensed to the extent required by the State of Maryland to deliver those mental health services he or she has undertaken to provide.
- L. “Nursing staff” means registered nurses, licensed practical nurses, and licensed vocational nurses employed at BCDC and currently licensed to the extent required by the State of Maryland to deliver those health services they have undertaken to provide.
- M. “The parties” means the State and the United States.
- N. “Security staff” means all employees, irrespective of job title, whose regular duties include the supervision of inmates at BCDC.
- O. “The State” means officials of the State of Maryland, including officials of the Department of Public Safety and Correctional Services and its Division of Pretrial Detention and Services and the Baltimore City Detention Center, as well as the Maryland State Department of Education, and their successors, contractors and agents.
- P. “Students” means inmates under the age of eighteen (18), and inmates between the ages of eighteen (18) and twenty-one (21) who, in their prior educational placement, had an Individualized Educational Program (IEP).
- Q. “Train,” when the term is used in remedial provisions of this Agreement, means adequately instruct in the skills addressed, including assessment of mastery of instructional material.

III. MEDICAL AND MENTAL HEALTH CARE

(1) Standard The State shall provide adequate services to address the serious medical and mental health needs of all inmates and shall develop and revise policies and procedures including those involving intake, contagious disease screening, sick call, chronic disease management, infection control and infirmary care to take all reasonable measures to assure that staff provide adequate ongoing care to inmates determined to need such care. Medical and mental health policies and procedures shall be readily available to relevant staff.

(2) Record keeping The State shall maintain a unified medical and mental health file for each inmate and all medical records, including laboratory reports, shall be timely filed in the medical file. The medical records unit shall be adequately staffed to prevent significant lags in filing records in an inmate's medical record. The State shall maintain the medical records such that persons providing medical or mental health treatment may gain access to the record as needed. The State shall implement an adequate electronic medical records system.

Staffing and Training

(3) Job Descriptions and Licensure The State shall continue to take all reasonable measures to assure that all persons providing medical or mental health treatment meet applicable state licensure and/or certification requirements, and practice only within the scope of their training and licensure.

(4) Staffing The State shall maintain sufficient staffing levels of qualified clinical staff and mental health professionals to provide adequate treatment for inmates' serious medical and mental health needs.

(5) Medical and Mental Health Staff Management The State shall take all reasonable measures to assure that a full-time medical director is responsible for the management of the medical program at the Division of Pretrial Detention and Services ("DPDS"). The State shall also provide a director of nursing and adequate administrative medical and mental health management. In addition, the State shall take all reasonable measures to assure that a designated clinical director shall supervise inmates' mental health treatment at BCDC.

(6) Medical and Mental Health Staff Training The State shall continue to take all reasonable measures to assure that all clinical staff and mental health professionals are adequately trained to meet the serious medical and mental health needs of BCDC inmates. All such staff shall continue to receive documented orientation and in-service training in accordance with their job classifications, and training topics shall include suicide prevention and the identification and care of inmates with mental disorders.

(7) Security Staff Training The State shall take all reasonable measures to assure that security staff are adequately trained in the identification, timely referral and proper supervision

of inmates with serious medical or mental health needs, and the proper supervision of other inmates with special needs. The State shall take all reasonable measures to assure that security staff assigned to BCDC mental health units receive additional training related to the proper supervision of inmates suffering from mental illness.

Screening and Treatment

(8) **Medical and Mental Health Screening** The State shall take all reasonable measures to assure that all inmates receive an appropriate and timely medical and mental health screening by a clinical staff member upon their arrival at BCDC. The State shall take all reasonable measures to assure that such screening enables staff to identify individuals with serious medical or mental health conditions, including acute medical needs, infectious diseases, chronic conditions, disabilities, ambulatory impairments, mental health conditions, suicidal ideation, and drug/alcohol withdrawal. Qualified mental health professionals and appropriate clinical staff shall be available to provide further referrals and/or care as medically required.

(9) **Privacy** The State shall make reasonable efforts to take all reasonable measures to assure inmate privacy when conducting medical and mental health screening, assessments, and treatment. However, maintaining inmate privacy shall be subject to legitimate security concerns and emergency situations.

(10) **History and Physical** The State shall take all reasonable measures to assure that all inmates receive timely medical and mental health histories and physical examinations. The State shall continue to take all reasonable measures to assure that a Registered Nurse, Physician's Assistant, or a Nurse Practitioner timely identifies those persons who have chronic illness. Those persons with chronic illness receive a history and physical between one (1) and seven (7) days of intake, depending on their physical condition. Persons without chronic illness should receive a history and physical within fourteen (14) days of intake. The State will take all reasonable measures to assure that inmates with chronic illnesses will be tracked in a standardized fashion. A re-admitted inmate or an inmate transferred from another facility who has received a documented full health assessment within the previous three months and whose receiving screening shows no change in the inmate's health status need not receive a new full physical and mental health assessment. For such inmates, clinical staff and mental health professionals shall review prior records and update tests and examinations as needed.

(11) **Referrals for Specialty Care** The State shall take all reasonable measures to assure that: a) inmates whose serious medical or mental health needs go beyond the services available at BCDC shall be referred in a timely manner to appropriate medical or mental health care professionals; b) the findings and recommendations of such professionals are tracked and documented in inmates' medical files; and c) treatment recommendations are followed as clinically indicated.

(12) Treatment Plans The State shall timely develop treatment plans that include appropriate discharge planning for inmates with special needs.

(13) Drug and Alcohol Withdrawal The State shall develop and implement policies, protocols, and practices, consistent with standards of appropriate medical care, to identify, monitor, and treat inmates at risk for or who are experiencing drug or alcohol withdrawal. The State shall implement appropriate withdrawal, detoxification, and methadone maintenance programs.

(14) Pregnant Inmates The State shall develop and implement appropriate written policies and protocols for the treatment of pregnant inmates, including appropriate screening, treatment, and management of high risk pregnancies, and guidance in the use of mechanical restraints on pregnant inmates.

(15) Juvenile Quarantine The State shall utilize medical quarantine for juveniles only as medically necessary.

(16) Contagious and Infectious Disease Management The State shall adequately maintain statistical information regarding contagious disease screening programs and other relevant statistical data necessary for an infection control program.

(17) Clinic Space and Equipment The State shall take all reasonable measures to assure that all face-to-face clinical examinations occur in settings that include privacy and permits a proper clinical evaluation including an adequately-sized examination room that contains an examination table, an operable sink for hand-washing, adequate lighting, adequate equipment including an examination table with stirrups for gynecological exams and a microscope with which discharge specimens may be adequately evaluated.

Access to Care

(18) Access to Medical and Mental Health Services The State shall take all reasonable measures to assure that all inmates have adequate opportunity to request and receive medical and mental health care. Appropriate medical staff shall triage all written requests for medical and/or mental health care within twenty-four (24) hours of submission, and the State shall maintain sufficient security staff to take all reasonable measures to assure that inmates requiring treatment are escorted in a timely manner to treatment areas. The State shall develop and implement a sick call policy and procedure which includes an explanation of the order in which to schedule patients, a procedure for scheduling patients, where patients should be treated, the requirements for clinical evaluations, and the maintenance of a sick call log. Treatment of inmates in response to a sick call slip should occur in a clinical setting.

(19) Segregation Rounds The State shall take all reasonable measures to assure that clinical staff make daily sick call rounds in the segregation area. The State shall also take all reasonable

measures to assure that inmates in segregation have adequate opportunities to contact and discuss health and mental health concerns with clinical staff in a setting that affords as much privacy as security will allow.

(20) Grievances The State shall develop and implement a system to take all reasonable measures to assure that medical grievances are processed and addressed in a timely manner. The State shall take all reasonable measures to assure that medical grievances and written responses thereto are included in inmates' files, and that grievances and their outcomes are logged and reviewed on a regular basis to identify systemic issues in need of redress. The State shall develop and implement a procedure for discovering and addressing all systemic problems raised through the grievance system.

Chronic Disease Care

(21) Chronic Disease Management Program The State shall develop and implement a written chronic care disease management program, consistent with generally accepted professional standards, which provides inmates suffering from chronic illnesses with appropriate diagnosis, treatment, monitoring, and continuity of care. As part of this program, the State shall maintain an updated chronic disease registry of inmates suffering from chronic illnesses.

(22) Immunization The State shall make reasonable efforts to obtain immunization records for all juveniles who are detained at BCDC for more than one (1) month. The State shall take all reasonable measures to assure that clinical staff update immunizations for such juveniles in accordance with nationally recognized guidelines and state school admission requirements. BCDC physicians who determine that the vaccination of a juvenile or adult inmate is medically inappropriate shall properly record such determination in the inmate's medical record.

Medication

(23) Medication Administration The State shall take all reasonable measures to assure that all medications, including psychotropic medications, are prescribed appropriately and administered in a timely manner to adequately address the serious medical and mental health needs of inmates at BCDC. The State shall take all reasonable measures to assure that inmates who are prescribed medications for chronic illnesses that are not used on a routine schedule, including inhalers for the treatment of asthma, have access to those medications as medically appropriate. The State shall develop and implement adequate policies and procedures for medication administration and non-compliance. The State shall review its Medication Administration policies and procedures and make any appropriate revisions. The State shall take all reasonable measures to assure that Medication Administration Records are completed and maintained in each inmate's medical record.

(24) Continuity of Medication The State shall take all reasonable measures to assure that arriving inmates who report they have been prescribed medications shall receive the same or

comparable medication as soon as is reasonably possible, unless a BCDC medical professional determines such medication is inconsistent with generally accepted medical practice. If the inmate's reported medication is ordered discontinued or changed by a medical professional, a medical professional shall conduct a face-to-face evaluation of the inmate as medically appropriate.

(25) Medication Management The State shall develop and implement guidelines and controls regarding the access to and storage of medication as well as the safe and appropriate disposal of medication and medical waste.

Emergency Care

(26) Access to Emergency Care The State shall continue to train medical, mental health and security staff to recognize and respond appropriately to medical and mental health emergencies. Furthermore, the State shall take all reasonable measures to assure that inmates with emergency medical or mental health needs receive timely and appropriate care within the facility, and are promptly referred and transported for outside care when medically necessary.

(27) First Responder Assistance The State shall train all security staff to provide first responder assistance (including cardiopulmonary resuscitation ("CPR") and addressing serious bleeding) in an emergency situation. The State shall provide all security staff with the necessary protective gear, including masks and gloves, to provide first line emergency response.

(28) Automatic External Defibrillators ("AEDs") AEDs shall be regularly maintained and available throughout BCDC for use by clinical staff, who shall be trained in the use of AEDs.

(29) Quality Improvement and Monitoring of Medical Care The State shall develop a contract and facility-specific auditing instrument. The State shall also develop and implement meaningful utilization monitoring of hospital and emergency room events. The State shall track staff vacancies on a quarterly basis including a report from the medical care vendor comparing the number of required staff by position and shift relative to that which is actually provided.

Mental Health Care

(30) Treatment The State shall take all reasonable measures to assure that qualified mental health professionals provide timely, adequate, and appropriate screening, assessment, evaluation, treatment and structured therapeutic activities to inmates requesting mental health services, inmates who become suicidal, and inmates who enter with serious mental health needs or develop serious mental health needs while incarcerated.

(31) Suicide Prevention The State shall maintain and implement an effective suicide prevention program. The policies and procedures of this program shall, at a minimum, address:

a) the appropriate housing, monitoring and treatment of individuals identified as suicide risks; b) the removal of suicide hazards; and c) the provision of suicide smocks, when deemed appropriate by mental health professionals.

(32) Monitoring of Suicidal Inmates The State's suicide prevention program shall include policies and procedures specifying the level of supervision for inmates identified as suicidal, identifying factors and tools to be used to determine the level of monitoring necessary for such inmates, and requiring an adequate periodic assessment of suicidal inmates by qualified mental health professionals. Inmates shall only be removed from suicide watch after approval by mental health professionals after a suicide risk assessment indicates it is safe to do so.

(33) Mental Health Restraints and Seclusion The State shall develop and implement restraint and seclusion policies, procedures, and practices that are consistent with generally accepted professional standards and that guide staff in the appropriate use of restraints in the mental health context. The State shall also take all reasonable measures to assure that appropriate cells are used for crisis management purposes, that such cells are used only to the extent necessary to manage crisis situations, and that the restraint and seclusion policies apply to the use of such cells. Inmates placed in such cells shall receive timely mental health assessments and appropriate interventions as needed.

(34) IMHU The State shall take all reasonable measures to assure that inmates in the Inpatient Mental Health Unit ("IMHU") have reasonable access to functioning toilets in a timely manner as needed.

Mortality Reviews

(35) Autopsies The Division of Pretrial Detention and Services shall continue to cooperate with the State Medical Examiner to develop and implement a policy governing the performance of inmate autopsies.

(36) Mortality Reviews The State shall continue to conduct a mortality review for each inmate death, involving appropriate medical and BCDC personnel. Mortality review staff shall seek to identify any problems in care or access to care, and the State shall take appropriate steps to remedy problems that are identified during such reviews.

IV. SECURITY

(37) Staffing The State shall maintain a sufficient number of staff to maintain security in the housing units, supervise inmates, and take all reasonable measures to assure the safety and security of the inmates and staff.

(38) Contraband The State shall maintain and implement adequate policies, procedures and practices to reduce the levels of dangerous contraband at the facility. The State shall maintain

and implement policies, procedures, and practices to take all reasonable measures to assure that security staff perform periodic, irregularly timed and documented cell searches as well as facility-wide mass cell searches.

(39) Use of Force The State shall take all reasonable measures to assure that incidents involving staff's use of hard impact head-strikes are automatically and promptly investigated. The results of each investigation shall be documented in an investigative report.

(40) Maximum Facility Capacity The State shall determine a safe operating capacity..

(41) Classification System The State shall develop and implement an appropriate classification system to protect inmates from unreasonable risk of harm. The State shall develop and implement a classification system, as soon as reasonably possible, that takes into account the relevant institutional behavior of inmates who were previously held at, or committed to, the facility. Inmates shall be timely classified and placed in housing appropriate for security and safety. The State shall identify certain serious disciplinary behaviors that, where appropriate, automatically result in immediate reclassification.

V. JUVENILES

(42) Protection from Harm The State shall continue to assure, to the extent reasonably possible, that juveniles are housed under conditions maintaining sight and sound separation from adults. The State shall continue to stage and transport juveniles separately from adults. The State shall continue to maintain a classification system that places youth appropriately and safely within the facility, and provides for reclassification in appropriate circumstances.

(43) Segregation The State shall continue to maintain consistent and appropriate policies, procedures, and practices for segregation to be used only when appropriate and in an appropriate manner, and to fully document its use. The State shall continue to provide youth assigned to the disciplinary segregation tier of the juvenile unit for more than 24 hours with due process, including a timely hearing by an impartial official. The State shall continue to utilize a dedicated on-site hearing officer, and an auxiliary on-site hearing officer.

(44) Grievances and Help Requests The State shall maintain an effective grievance and help request system, and take all reasonable measures to assure that grievances and help request forms may be filed confidentially. The State shall also take all reasonable measures to assure that grievances and help requests receive appropriate follow-up, including informing the juvenile of its outcome and tracking implementation of resolutions.

(45) Discipline The State shall continue to maintain policies, procedures, and practices for disciplining juveniles that are appropriate to the juveniles' ages and development.

(46) Out-of-Cell Time The State shall continue to provide sufficient staff to afford juveniles

reasonable opportunities to spend time out of their cells. The State shall continue to provide juveniles with at least one hour of large-muscle exercise per day, as consistent with reasonable security considerations.

(47) Staffing of Juvenile Units The State shall continue to take all reasonable measures to assure that security staff in both male and female juvenile units are properly trained in youth development, behavior management and juvenile correctional supervision, suicide prevention, de-escalation procedures, and issues concerning victims of physical and sexual abuse. The State shall provide sufficient numbers of adequately-trained direct care and supervisory staff to supervise youth safely and to protect youth from harm.

(48) Responsibility for Juvenile Services Programs The State shall continue to take all reasonable measures to assure that an individual is designated as responsible for improving and monitoring services provided to juvenile inmates. The State shall provide the designated individual with sufficient tools to monitor the conditions of confinement of the juvenile population including, but not limited to, incident report summaries and statistics, reports of investigation, hearing summaries, and statistical and/or summary reports of grievances and requests for assistance. The State shall continue to take all reasonable measures to assure that the designated individual has access to a unified institutional file for each juvenile including a copy of all relevant juvenile corrections documents. The State shall involve the designated individual in the facility's quality assurance and continuous quality improvement processes.

(49) Additional Policy Development and Implementation The State shall develop and implement a program to address the following: (a) delivery of treatment services, (b) specialized training regarding the use of force for juveniles, (c) revision of all relevant BCDC policies in the juvenile context, and (d) orientation of juveniles to the facility.

VI. EDUCATION

Special Education

(50) Provision of Required Special Education The State shall continue to provide juveniles confined at BCDC with special education services as required by the IDEA and regulations promulgated thereunder, and Section 504 and regulations promulgated thereunder.

(51) Special Education Identification The State shall continue to maintain a system to identify accurately those juveniles who are eligible for special education and related services. The State shall implement a screening procedure to identify inmates between the ages of eighteen (18) and twenty-one (21) years who received special education services through an Individualized Education Program ("IEP") prior to their detention at BCDC. The screening procedure shall include a system to obtain educational records from the inmate's prior school or placement.

(52) Assessment Pursuant to the IDEA and regulations promulgated thereunder, the State

shall gather sufficient and relevant functional, cognitive, and behavioral information to enable IEP teams to determine whether an inmate is a student with a disability and, if applicable, develop an appropriate educational program for the student.

(53) Students with Disabilities Students with disabilities between the ages of eighteen (18) and twenty-one (21) years shall receive special education and related services consistent with their IEPs. The State shall provide students with access to the general curriculum, and educational services shall be directly linked to the students' IEPs. Students will be instructed in a manner consistent with their grade and skill levels. Supplementary services shall be provided to the extent necessary to provide a Free and Appropriate Public Education (“FAPE”).

(54) Space and Materials The State shall continue to take all reasonable measures to assure that the BCDC school is provided sufficient and appropriate space, instructional materials, and other educational tools necessary to implement the IEPs and/or Section 504 plans of students with disabilities and to comply with the provisions of the Memorandum of Agreement.

(55) Enrollment The State shall continue to enroll juveniles in school as soon as is reasonably possible upon their arrival at BCDC.

(56) IEP Meetings The State shall comply with federal regulations governing the assessment of students and the development and revision of IEPs, and it shall properly document and monitor student progress toward IEP goals and objectives. The State shall continue to convene regular IEP meetings to develop, review and revise, as appropriate, the IEP of each student with a disability placed at BCDC and IEP team decisions regarding appropriate levels of service shall not be based on unavailability of services at BCDC. The State shall take all reasonable measures to assure that appropriate mental health professionals and related service providers contribute to the IEP meetings of students on mental health treatment plans.

(57) Special Education Integration The State shall continue to take all reasonable measures to assure that all teachers are trained to: a) properly modify and adapt curricula for students with disabilities; b) identify students in need of special education and/or related services; and c) employ effective behavior management techniques. Special education teachers shall monitor special education student progress in general education classrooms and provide special education support to general education teachers.

(58) Access to Instruction The State shall take all reasonable measures to assure that students with disabilities placed in disciplinary confinement shall receive a FAPE and adequate services consistent with the goals of the students’ IEPs.

(59) Transition Planning The State shall reasonably take all reasonable measures to assure that adequate transition planning and services are provided to all eligible youth with disabilities in accordance with the IDEA and Section 504.

Staffing

(60) **Permanent Staff** The State shall employ adequate numbers of qualified staff to fulfill the provisions of this Agreement. The State shall take all reasonable measures to assure that staffing is sufficient to: a) conduct adequate screening and evaluation of students for eligibility for special education services; b) take all reasonable measures to assure that instruction, transition services and related services are provided to all eligible students in accordance with the IDEA and its implementing regulations; and c) provide related services required by students' IEPs.

(61) **Substitute Teachers** The State shall continue to take all reasonable measures to assure that it employs sufficient numbers of substitute teachers to provide adequate staff coverage when permanent staff members are absent from work.

Female Students

(62) **Equal Opportunity** Female students at BCDC shall receive general and/or special education comparable to male students, based on their individual needs.

VII. FIRE SAFETY AND EMERGENCY PREPAREDNESS

(63) **Fire Safety and Evacuations** The State shall continue to maintain BCDC in a manner that provides adequate fire safety. The State shall take all reasonable measures to assure that: (a) inmates may be evacuated in a safe and timely manner in the event of a fire emergency; (b) emergency exit routes and stairwells are free of obstacles, maintained in a safe manner, and available for use; and (c) keys may be accurately identified during emergency situations.

(64) **Equipment** In all buildings at BCDC, the State shall: (a) repair and maintain an operational, effective and secure sprinkler system; and (b) repair and maintain an operational and effective smoke detection and audible alarm system. With regard to the Jail Industries Building, the State represents that it has decided to seek funding for the installation of an appropriate smoke detection and audible alarm system for the residential areas of that building. The State shall conduct regular inspections of its systems and take all reasonable measures to assure their effectiveness and operability.

(65) **Fire Hazards** The State shall take all reasonable measures to assure that: (a) stairwells designated as emergency exits are enclosed to prevent the passage of smoke and other products of combustion; b) open spaces around penetrating items in existing enclosed stairwells are properly sealed; (c) all hazardous or flammable materials shall be appropriately stored; and (d) floor separations are maintained to provide a barrier to resist the passage of smoke (existing pipe chases used for ventilation need not be modified).

VIII. ENVIRONMENTAL HEALTH AND SAFETY

(66) Sanitation The State shall continue to take all reasonable measures to assure that BCDC is maintained in a clean and sanitary manner, and it shall implement a written sanitation plan requiring routine cleaning and inspections of the facility.

(67) Food Service The State shall continue to take all reasonable measures to assure that food service at BCDC is operated in a safe and hygienic manner. To reduce the risks of food-borne illnesses, the State shall develop and implement a food service plan to take all reasonable measures to assure: a) safe food preparation, handling, and storage; b) proper sanitation of food preparation areas and equipment; and c) appropriate training and supervision of persons responsible for food service.

(68) Pest Control The State shall develop and implement a reasonable integrated pest management program at BCDC facilities.

(69) Maintenance The State shall take all reasonable measures to assure that maintenance requests are responded to in a timely manner, and it shall develop and implement a program for: a) the accurate and timely documentation of all maintenance requests and responses; and b) the routine inspection of facility equipment and systems for safety and operability. The State shall repair and maintain all broken or malfunctioning or insufficient lighting, plumbing, toilets, sinks, showers, floors, and windows. Within 12 months of the date of this agreement the State shall, to the extent reasonably possible, make all said repairs. However, repairs to the physical condition of the showers, including, but not limited to, inadequate flooring shall be completed within 18 months from the date of this agreement. The State shall continue to take all reasonable measures to continue to address appropriate shower maintenance, including peeling paint and mold. The State shall develop a reasonable written preventative maintenance plan. At a minimum, the plan shall specify a protocol for accurate and timely documentation of all maintenance requests and responses.

(70) Electrical The State shall repair and maintain electrical systems, equipment, and outlets to eliminate electrical hazards.

(71) Ventilation and temperatures The State shall provide and maintain safe ventilation and temperatures throughout the facility.

(72) Laundry The State shall take all reasonable measures to assure that inmates are provided with adequate clean clothing and underclothing. The State shall develop and implement an adequate system for laundering all inmates' clothing and linens in a manner that prevents the spread of infectious disease and is consistent with CDC guidelines.

(73) Bedding The State shall continue to take all reasonable measures to assure that inmates are provided with adequate and clean bedding.

(74) Hot Water The State shall take all reasonable measures to assure that water in all inmate-occupied areas is maintained at a temperate below scalding.

IX. QUALITY ASSURANCE

(75) Plan The State shall develop and implement written quality assurance policies and procedures to regularly assess and take all reasonable measures to assure compliance with the terms of this Agreement.

(76) Corrective Action Plans The State shall develop and implement policies and procedures to address problems that are uncovered during the course of quality assurance activities.

X. IMPLEMENTATION

(77) Revision of Activities and Documents The State shall revise and/or develop as necessary its current policies, procedures, protocols, training, staffing and practices to take all reasonable measures to assure that they are consistent with, incorporate, address and implement all provisions of this Agreement. The State shall revise and/or develop as necessary other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement.

(78) Dissemination of Agreement Within thirty (30) days of the effective date of this Agreement, the State shall distribute copies of the Agreement to all appropriate BCDC staff and explain it as appropriate.

XI. MONITORING, ENFORCEMENT AND TERMINATION

(79) Termination This Agreement shall terminate four (4) years after the date the Agreement is executed.

(80) Satisfaction of the Agreement and Early Termination “Substantial Compliance” with each and every term of this Agreement for a period of one (1) year shall fully satisfy the Agreement. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance. The parties agree that the standards against which substantial compliance will be monitored are those that are constitutionally required or mandated by federal statute. This Agreement may be terminated prior to the conclusion of the four (4) year period described in paragraph eighty (80) if the State reaches

substantial compliance with all provisions of this Agreement and sustains it for one (1) year.

(81) Review and Comment All policies, procedures, plans and protocols required by or referenced in this Agreement shall be consistent with the substantive terms of this Agreement. A list of all policies, procedures, plans and protocols required by or referenced in this Agreement shall be submitted to the United States within thirty (30) calendar days of the effective date of this Agreement. Any of these policies procedures, plans and protocols that the United States requests to review shall be provided to the United States within thirty (30) days of the request. Other written documents described in paragraph seventy-seven (77) of this Agreement shall be developed and submitted within one hundred eighty (180) days of the effective date of this Agreement.

(82) State Response to DOJ Questions Within sixty (60) days of receipt of written questions from the DOJ concerning the State's compliance with this Agreement, the State shall provide the DOJ with written answers and any requested documents regarding the State's compliance with the requirements of this Agreement.

(83) 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.

(84) Implementation The State shall implement policies, procedures, plans, and protocols consistent with the Action Plan referred to in paragraph eighty-six (86).

(85) Action Plan and Compliance Reporting Within 120 days after the effective date of this Agreement, the State shall prepare and submit to the United States a comprehensive action plan ("Action Plan") specifying measures the State intends to take in order to bring the facility into compliance with each paragraph containing substantive requirements in Sections III through VIII of this Agreement ("Substantive Provisions"), including a timeline for completion of each of the measures. The State shall also prepare and submit to the United States reports regarding compliance ("Compliance Reports") with each of the Substantive Provisions of this Agreement. The State shall submit its first Compliance Report within ninety (90) days after submitting the Action Plan and then every six (6) months thereafter until substantial compliance is reached. The Compliance Reports shall identify the State's progress in implementing the Action Plan, any revisions to the Action Plan, and shall include a summary of steps taken to implement this Agreement, along with supporting documentation and certifications. Upon achieving substantial compliance as determined by DOJ with any substantive paragraph(s) of this Agreement for one (1) year, no further reporting shall be required on that paragraph.

(86) Compliance Monitoring DOJ representatives of the United States, including its experts, may conduct periodic on-site compliance monitoring tours. The dates and duration of each on-site compliance monitoring visit shall be determined by DOJ representatives in consultation with the State. The State shall provide DOJ representatives with reasonable access to inmates and

staff, documents not subject to attorney-client privilege, and information relating to implementation of this Agreement. DOJ shall have the right to conduct confidential interviews with inmates, and to conduct interviews with facility staff outside the presence of other staff or supervisors.

(87) Noncompliance If, after reasonable notice to the State, and a reasonable opportunity to cure any deficiencies identified in writing, the United States determines that the State has not substantially complied with this Agreement, the United States may pursue litigation against the State. Notwithstanding the foregoing, the United States reserves the right to file an action under CRIPA alleging a pattern or practice of unconstitutional conditions at the facility at any time if it believes the State is not making a good faith effort to substantially comply with this Agreement. The United States shall give the State thirty (30) calendar days' written notice before the filing of such action. In the event that the allegations in such an action are litigated (i.e. through a trial or dispositive motions), this Agreement shall not be introduced or used as evidence.

(88) 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 consider employing, when necessary, the services of a neutral party and, in that eventuality, to engage in good faith negotiations with such a mediator to resolve such differences promptly and effectively. If pursued, 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.

(89) Request for Early Termination The State may submit a written request for early termination of the Agreement based upon an assertion of one (1) year of substantial compliance with all substantive paragraphs set forth in Sections III through VIII of this Agreement. The United States, in its good faith discretion, will determine whether the State has maintained substantial compliance for the one (1) year period.

(90) Successors This Agreement shall be binding on all successors, assignees, employees, and all those working for or on behalf of the State.

(91) 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, the parties shall seek to remove the matter to a federal court.

(92) Enforcement 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.

(93) Non-Retaliation The State agrees that it shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement.

(94) 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.

(95) Notice “Notice” under this Agreement shall be provided via overnight delivery and shall be provided to the Governor of the State of Maryland and to the Attorney General of the State of Maryland.

(96) 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.

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