

APPENDIX A

PLAN OF ACTION CONCERNING SERVICES AND PROCEDURES FOR NEW MEXICO YOUTH ADJUDICATED JUVENILE DELINQUENT

I. THE TIMELY TRANSITION OF THE NEW MEXICO BOYS' SCHOOL FACILITY AT SPRINGER TO ANOTHER USE IF THE NEW MEXICO LEGISLATURE APPROVES OF THE TRANSFER OF THE FACILITY TO THE DEPARTMENT OF CORRECTIONS

A. If the New Mexico Legislature approves the transfer of the Springer facility to the Department of Corrections, CYFD shall produce and provide to the ACLU team for review and comment by April 1, 2006 a plan for the timely transition of the New Mexico Boys' School facility at Springer from a delinquency facility to another use. Removal from NMBS of all youth committed to the custody of CYFD shall be accomplished no later than the date of any transfer of the facility to the Department of Corrections. The plan shall include the following provisions:

1. Closing of Springer as a delinquency facility and removal of all youth committed to the custody of CYFD from the facility no later than the date of any transfer of the facility to the Department of Corrections.
2. Closing of admissions of youth to Springer no later than 75 days before the date of any transfer of the facility to the Department of Corrections.
3. No later than 60 days before the date of any transfer of the facility to the Department of Corrections, identification of an alternative placement for each youth who remains in Springer on that date and who has not been released or moved to another placement. The alternative placement shall be consistent with the youth's individual plan of care and may include placement in a non-secure facility or release to the community.
4. No later than 45 days before the date of any transfer of the facility to the Department of Corrections, development of a transition plan for each youth who was still at Springer 60 days before transfer of the facility and who has not been released or moved to another placement. The transition plan shall be designed to ensure continuity of education, programming, and health and mental health care.
5. The identification of alternative placements and development of the transition plans shall be accomplished through the Team Decision Making process that includes the youth, his family, and other individuals who are important to the youth. Placement shall be in the least restrictive available setting consistent with

the youth's needs, in close proximity to the youth's home, and services shall be provided in accordance with a plan of care that meets the youth's individual needs.

6. A plan for redeployment of FTEs, contracts and other resources from Springer that:

a. ensures that sufficient personnel and resources are available to serve the needs of youth at Springer until such time as youth are relocated,

b. identifies all resources available to CYFD as a result of the closing of Springer and specifies how those resources will be redeployed to benefit youth served by Juvenile Justice Services,

c. identifies where and how staff positions and resources will be redeployed from Springer to other Juvenile Justice Services uses.

II. ACTIONS TO ENSURE THAT YOUTH ARE SAFE IN CYFD FACILITIES

A. CYFD shall protect all youth in its custody from harm and eliminate unreasonable threats to the safety of youth in their delinquency facilities.

B. CYFD shall immediately provide sufficient, properly trained, direct care staff in their delinquency facilities to keep youth safe from harm and to allow rehabilitative programs to occur successfully.

C. By April 1, 2006 CYFD shall present to the ACLU team for review and comment and implement as soon as possible but no later than September 1, 2006 a safety plan to provide reasonable safety from youth on youth assault and to eliminate the use of excessive force by staff. The plan shall include, but not be limited to, the following:

1. Increasing staff in all living units so that the actual working staff-to-youth ratio for staff providing direct supervision on duty in each living unit is at least 1:8 during the day (but at Springer this ratio may be 1:10 until CYFD ceases using the facility at Springer) and 1:12 at night, unless CYFD determines that a lower staff-to-youth ratio is warranted on a particular unit based on the type of program and security level needed and the ACLU team agrees. Notwithstanding the first sentence of this paragraph, however, all living units shall have at least two staff members providing direct supervision on duty and awake at all times, except that in units other than dormitories with less than 13 youth, if during night times an arrangement acceptable to the ACLU team has been made for backup support services that allows for immediate response to emergencies, a minimum of at least one staff member providing direct supervision shall be on duty and awake.

2. Installing security cameras in all areas of general congregation, such as common areas in every living unit, cafeterias, auditoriums, school buildings, and other locations where youth congregate. If the Springer facility is transferred to the Department of Corrections on or before January 1, 2007, this requirement shall not apply to the Springer facility.
3. Developing a centralized investigation and review system for all critical safety incidents that is computerized and enables staff to evaluate trends and patterns.
4. Developing a system for reporting to senior CYFD management youth-on-youth violence, uses of force by staff on youth, emergency room visits, investigations by police officials and other critical safety related incidents.
5. Eliminating the use of isolation of youth for their protection. However this provision shall not prohibit CYFD from using special housing arrangements for up to 24 hours when necessary to protect youth from harm. Use of special housing for this purpose may be extended beyond 24 hours only upon approval by the JJS Deputy Secretary or Deputy Director for Facilities, and shall in no event exceed 72 hours. Appropriate safeguards for youth requiring special housing arrangements to protect them from harm shall include, but not be limited to:
 - a. procedures to ensure that special housing is used only when necessary to protect a youth from harm or to protect a youth during an investigation. When temporary special housing is necessary to protect a youth during an investigation, youth shall be placed in special housing no longer than necessary to allow an investigation into relevant incidents and the determination of appropriate long term housing;
 - b. whenever possible the youth shall remain housed in his or her own room, however, if that cannot be done, the youth's special housing arrangements shall be substantially similar to the youth's original housing arrangements and special housing for this purpose at Springer shall only be located in Oak Lodge;
 - c. whenever possible the youth continues to participate fully in regular programming with sufficient safeguards to ensure the youth's safety and the safety of JJS clients and staff; and
 - d. the decision to place a youth in special housing shall be approved at a supervisory level, involving behavioral health, education and other relevant professional staff, such as medical staff, and shall be fully explained and documented in a log maintained for this purpose.
6. Developing a rational classification system for housing within institutions and among institutions and programs operated by CYFD.

7. Implementation of Eric Trupin's recommendations regarding:

- a. staff training in behavior management, de-escalation and crisis intervention, and
- b. the development of a positive based Behavior Management Program.

D. By April 1, 2006 CYFD shall present to the ACLU team for review and comment and implement by July 1, 2006 comprehensive policies and/or procedures governing use of force, which will ensure that the least amount of force necessary for the safety of youth, staff, and visitors is used on youth. Throughout Appendix A the term "policies and/or procedures" includes CYFD and JJS directives and other appropriate administrative orders.

E. By September 1, 2006 CYFD shall ensure that all JJS staff are adequately trained on appropriate use of force and physical restraint of youth under the policies and procedures referred to in Section II(D), above.

F. As set forth in Section IX and XI, below, CYFD shall develop and implement a system for timely, thorough, and independent investigation of alleged mistreatment of youth in CYFD JJS facilities.

G. The Office of Quality Assurance (see Section XI, below) shall address safety problems that are uncovered during the course of quality assurance activities. The Office of Quality Assurance shall report to the JJS Deputy Secretary and to the CYFD Secretary. When appropriate the JJS Deputy Director or Deputy Secretary shall propose any corrective action plans deemed necessary to address safety and use of force issues in a manner so as to prevent them from occurring again in the future. As long as the Agreement with the ACLU-NM is in effect any proposed Corrective Action Plans shall be provided to the ACLU team for discussion with CYFD.

H. By February 15, 2006 CYFD shall issue a policy and/or procedure which requires all employees, contractors and other agents of CYFD to immediately report to the facility superintendent any allegation by a youth that the youth has been abused, injured or otherwise mistreated in a CYFD facility. The policy and/or procedure shall provide that any violation of the policy or procedure by a CYFD employee may result in termination of the employee.

III. ACTIONS TO ENSURE APPROPRIATE BEHAVIORAL HEALTH SERVICES ARE PROVIDED IN THE LEAST RESTRICTIVE SETTINGS IN CYFD FACILITIES

A. CYFD shall provide adequate mental health care and rehabilitative services appropriate to the needs of all youth in CYFD's facilities.

B. By April 1, 2006 CYFD shall have fully and adequately implemented all the recommendations made by Eric Trupin, PH.D. in his report to CYFD, Review of Mental Health and Substance Abuse Services (December 2003). If there are alternative recommendations made by the expert referred to in Section III(Y), below, they shall be implemented by November 1, 2006, after consultation with the ACLU team.

C. CYFD shall develop and implement policies, procedures, protocols, and/or practices to ensure that adequate mental health and substance abuse care and treatment services (including timely emergency services) are provided by qualified mental health professionals utilizing generally accepted treatment approaches.

D. CYFD shall immediately create the position of Director of Facility-Based Behavioral Health Services and staff this position with a highly qualified and experienced person to oversee the mental health care and rehabilitative treatment of youth at the facilities. The person selected for this position shall not also hold the position of Director of Community-Based Behavioral Health Services (described in Section IV, below). The Director shall:

1. Develop and implement policies and/or procedures to ensure that adequate mental health care and rehabilitative services are provided to facility-based youth; and
2. Develop and implement an adequate quality assurance program for behavioral health services for facility-based youth which shall include, but not be limited to, staff training and oversight of mental health care and rehabilitative services provided to these youth.

E. CYFD shall ensure that youth who urgently and/or acutely need treatment for mental illness will be able to obtain the level of care and intensity of services that they need, even if that requires transportation to more appropriate settings that meet their needs. CYFD shall ensure that qualified mental health professionals are readily available for timely consultations regarding admissions, placement and transfer decisions. Youth who need immediate mental health services but do not need to be transported out of the facilities shall receive such services by qualified mental health professionals.

F. CYFD shall develop and implement screening procedures to ensure that all youth admitted to JJS facilities are screened by qualified personnel in a timely manner utilizing reliable and valid measures. At any time, staff may request an initial or additional mental health screening of a youth, and such screening will be done on such request. If the mental health screen identifies an issue that places the youth's safety at risk, the youth shall be referred, by the staff administering the screening, to a qualified mental health professional in a timely manner for assessment, treatment, and any other appropriate action.

G. After placement and screening CYFD shall ensure that youth whose mental health screens indicate the possible need for mental health services then receive timely, comprehensive and appropriate assessments and, where indicated, treatment by qualified mental health professionals. Assessments shall be updated as new diagnostic and treatment information become available.

H. CYFD shall develop and implement adequate policies and/or procedures for referral of youth by staff to a qualified mental health professional for a timely mental health assessment and, where indicated, evaluation and/or treatment, even in the absence of a prior mental health screen.

I. CYFD shall develop and implement adequate policies and/or procedures for referral of youth by staff to a psychiatrist for a timely psychiatric assessment and, where indicated, evaluation and/or treatment.

J. CYFD shall ensure that each youth in need of psychiatric services, including psychiatric assessment and the prescription or monitoring of the use of psychotropic medications, is under the care of a licensed psychiatrist. CYFD shall employ or contract for sufficient psychiatric services to permit psychiatrists to fulfill the following functions for all adjudicated youth in CYFD care:

1. Conduct needed psychiatric evaluations prior to placing a youth on psychotropic medications;
2. Monitor, as appropriate but at least monthly, the efficacy and the side effects of psychotropic medications, including consultation with the facility medical, counseling, and security staff;
3. Participate in treatment team meetings for youth under the psychiatrist's care;
4. Provide individual counseling and psychotherapy when needed, in coordination with facility psychologists;
5. Evaluate in a timely manner and promptly provide needed treatment to all youths referred by any staff as possibly in need of psychiatric services; and
6. Provide adequate documentation of treatment in the facility medical records.

K. CYFD shall ensure that psychiatrists, psychologists, and counselors are promptly made aware of all serious incidents and lockdowns of youth under their care, and that they are promptly provided with serious incident reports and lockdown reports on youth under their care. CYFD shall ensure that qualified mental health professionals thoroughly review a youth's facility files (clinical, medical, and master files) for documentation of any prior suicidal behavior.

L. CYFD shall ensure that each youth in need of mental health and/or substance

abuse treatment shall have an appropriate treatment plan, including an appropriate behavior management plan, developed in accordance with generally accepted professional standards of practice, and that such plans are appropriately implemented. CYFD shall ensure that all youth in and discharged from suicide precaution receive mental health treatment in accordance with a treatment plan developed by a qualified mental health professional. CYFD shall make documented good-faith efforts to include parents or guardians in the creation and revision of the treatment plan or change in placement, unless their participation would be inappropriate for a valid reason (e.g., a court has restricted parental involvement or decision-making).

M. CYFD shall develop and implement appropriate policies and/or procedures for the required content of treatment plans, which shall include:

1. That the treatment plan be individualized;
2. An identification of the mental and/or behavioral health issues to be addressed;
3. A description of any medication or medical course of action to be pursued, including the initiation of psychotropic medication;
4. A description of planned activities to monitor the efficacy of any medication or the possibility of any side effects;
5. A description of any behavioral management plan or strategies to be undertaken;
6. A description of any counseling or psychotherapy to be provided;
7. A determination of whether the type or level of treatment needed can be provided in the youth's current placement; and
8. A plan for monitoring the course of treatment, and if necessary, for revising the treatment plan.

N. CYFD shall promulgate and implement a policy and/or procedure requiring that all qualified mental health professionals be required to create and utilize progress notes to document each interaction and/or assessment of youth with serious mental illnesses.

O. CYFD shall develop and implement adequate policies and/or procedures to ensure that youth who seek access to a qualified mental health professional are provided appropriate access in a timely manner.

P. CYFD shall develop and implement an adequate system for ensuring that

mental health issues are considered and professionals are adequately consulted in making housing decisions, and for ensuring that youth with mental disorders receive appropriate housing, including that the youth are not placed into a facility that will exacerbate their condition.

Q. CYFD shall ensure that all facilities are fully staffed, by contract or otherwise, with adequate numbers of child and adolescent psychiatrists and other qualified mental health professionals to provide all services, including but not limited to those necessary for safety and rehabilitation programming, constitutionally required to meet the mental health needs of all youth. Psychiatric care shall be integrated with other medical and mental health services and shall comport with generally accepted practices. CYFD shall ensure that there are sufficient numbers of adequately trained direct care and supervisory staff to allow youth reasonable access to structured behavioral health programming, for example, individual psychotherapy, psychiatric treatment and group therapy, as provided in the treatment plan.

R. CYFD shall ensure that all youth are provided with information, verbally and in writing, regarding the goals, risks, benefits and potential side effects of psychotropic medications offered for their treatment, as well as an explanation of what the consequences of not taking the medication might be. CYFD shall make documented good-faith efforts to provide parents and guardians of minors with similar information before starting, renewing, modifying or discontinuing a prescription, so that the parent or guardian can provide informed consent in accordance with state law. After documented good-faith efforts to involve parents or guardians have been made, however, treatment shall not be delayed.

S. CYFD shall develop and implement adequate policies, procedures, and/or practices to ensure that psychotropic medications are prescribed, distributed, and monitored properly, safely, and consistent with generally accepted practices. CYFD shall provide regular up-to-date training to all health and mental health staff pertaining to psychopharmacological treatment, including information necessary to monitor for side effects and efficacy. CYFD shall issue and implement policies and/or procedures for the administration of appropriate tests (including, for example, blood tests, EKGs, and Abnormal Involuntary Movement Scale tests) to monitor the efficacy and any side effects of psychotropic medications in accordance with generally accepted professional standards.

T. CYFD shall develop and implement adequate strategies for providing direct care and other appropriate staff with training on mental health and developmental disabilities sufficient for staff to understand the behaviors and needs of youth in order to supervise them appropriately.

U. CYFD shall ensure that staff create adequate transition plans for youth with mental health treatment plans prior to leaving the facilities. Plans 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; making initial appointments with community service providers; and supplying appropriate psychiatric medications upon release from the facilities. Transition planning shall include enabling the youth and/or staff to apply sufficiently in advance of their release for all public benefits to which they may be entitled.

V. CYFD shall develop and implement at each facility daily, including weekends and non-school days, adequate structured programming which begins when the youth wake up and continues until they go to bed. The programming shall include an appropriate mix of educational, rehabilitative, recreational and leisure activities, including outdoor activities, weather permitting, as defined in the youth's plan of care. Structured programming shall be designed to ensure that youth are not confined in locked cells or unable to participate in programming except: (a) from the conclusion of a day's structured programming until wake-up, (b) for such time as is determined by behavioral health staff to be necessary to allow youth to calm down immediately after a violent incident, (c) following an adequate disciplinary hearing, pursuant to an appropriate disciplinary sanction, or d) when the youth's behavior poses an actual threat to the safety of the youth, the staff or other youth. The structured programming shall be designed to modify behaviors and provide rehabilitation appropriate to the needs of the youth committed to each facility, as determined in the youth's plan of care. CYFD shall utilize behavioral health staff, teachers, school administrators, direct care staff, caseworkers, school counselors, and any other qualified assistance to develop and implement the structured programming.

W. CYFD shall explain to all youth during an orientation session that is part of the intake process the behavior management program and the positive incentives for good behavior, as well as disciplinary measures for misbehavior. The rules for all behavioral programs shall be in writing and posted conspicuously in facility living units.

X. CYFD shall develop and implement adequate policies and/or procedures to make reasonable accommodations in its disciplinary processes for youth who are covered by the Americans with Disabilities Act. Whenever a youth with a mental disability is engaged in the disciplinary process, a qualified mental health professional shall be consulted to ensure that the accommodation is reasonable for that youth.

Y. CYFD shall contract immediately with Dr. Eric Trupin or a similarly qualified expert acceptable to the ACLU team to monitor whether staffing and resources are sufficient to provide adequate mental health care and rehabilitative services to the facilities' youth and to monitor compliance with Section III of this Agreement. The expert shall issue a comprehensive report regarding compliance with Section III of this Agreement, which shall include, but not be limited to, any perceived barriers to compliance and remedial recommendations, by January 1, 2007 and every six months thereafter until the expert has determined that compliance with Section III is achieved. Copies of these reports shall be provided to the ACLU team when they are provided to CYFD.

IV. ACTIONS TO DEVELOP ADEQUATE COMMUNITY-BASED BEHAVIORAL HEALTH SERVICES TO SERVE YOUTH ON PROBATION OR PAROLE IN APPROPRIATE COMMUNITY SETTINGS

A. CYFD shall use its best efforts to improve the mental health services provided to youth on probation or parole, including but not limited to, increasing the quantity and quality of community based mental health services provided directly by CYFD or through the Behavioral Health Purchasing Collaborative; improving its oversight of behavioral health service providers under contract to CYFD; and using its position on the Behavioral Health Purchasing Collaborative to improve the performance of the Single Entity with respect to its services to youth on probation or parole.

B. CYFD shall immediately create the full time position of Director of Community-Based Behavioral Health Services and staff this position with a highly qualified and experienced person to oversee the mental health care and rehabilitative treatment of youth on probation or parole who need to receive any mental health services operated or funded by CYFD outside its secure delinquency facilities. The person selected for this position shall not also hold the position of Director of Facility-Based Behavioral Health Services (described in Section III, above). The Director shall:

1. Develop and implement policies and/or procedures to ensure that where mental health care and rehabilitative services are operated or funded by CYFD such services are at least adequate for youth;
2. Develop and implement an adequate quality assurance program for community-based behavioral health services operated or funded by CYFD, which shall include, but not be limited to, staff training and oversight of mental health care and rehabilitative services provided by CYFD to these youth in the community.
3. Within 90 days of the hiring of the Director of Community-Based Behavioral Health Services, develop and present to the ACLU team for review and comment a comprehensive plan that includes specific implementation time lines and describes in detail what CYFD will do to improve the mental health services provided to youth on probation or parole, to enable those youth to receive adequate behavioral health services in the least restrictive setting appropriate to their needs, and to reduce unnecessary incarceration and other forms of segregation experienced by youth on probation or parole. CYFD shall begin to implement all aspects of this plan no later than 90 days after its approval by the ACLU.

C. CYFD shall provide or contract for sufficient case management services to provide these youth with competent behavioral health case management services utilizing evidence-based, generally accepted treatment approaches.

D. As appropriate, CYFD shall provide or contract for Functional Family Therapy and Multi-Systemic Therapy. JJS and Protective Services shall work together to provide appropriate care to youth committed to JJ custody who also qualify for protective services, including, but not limited to, family preservation and other voluntary services.

E. CYFD shall work closely with the Purchasing Collaborative and the Single Entity to improve access to needed psychiatric hospitalization, residential mental health care and intensive in-home treatment for youth on probation or parole who need those services whenever they require them.

F. CYFD shall contract immediately with Dr. Eric Trupin or a similarly qualified expert acceptable to the ACLU team to monitor whether the services CYFD operates or funds are sufficient to provide adequate mental health care and rehabilitative services to these youth in the community and to monitor compliance with Section IV of this Agreement. The expert shall issue a comprehensive report regarding compliance with Section IV of this Agreement, which shall include, but not be limited to, any perceived barriers to compliance and remedial recommendations, by January 1, 2007 and every six months thereafter until the expert has determined that compliance with Section IV is achieved. Copies of these reports shall be provided to the ACLU team when they are provided to CYFD.

V. ACTIONS TO PROVIDE APPROPRIATE HEALTH CARE SERVICES IN FACILITIES

A. CYFD shall provide adequate medical care to youth in its facilities and ensure that these youth receive appropriate health care services and that the management and oversight of health care services and the administration of medication are carried out only by qualified health care staff.

B. CYFD has filled the position of Director of Facility Medical Services, and will continue to fill this position to the best of its ability with a similarly qualified individual. The function of this position is to oversee the medical care of youth at the facilities. The person occupying this position shall not also hold the position of Director of Community-Based Behavioral Health Services (described in Section IV, above) or Director of Facility-Based Behavioral Health Services (described in Section III above).

C. CYFD shall:

1. Develop and implement policies and/or procedures that shall ensure adequate medical care to youth in facilities, and
2. Develop and implement an adequate quality assurance program concerning health care in CYFD's youth facilities, which shall include, but not be limited to, staff training and monitoring of the performance of all medical professionals.

D. CYFD shall immediately contract with a highly qualified medical expert acceptable to the ACLU team to monitor and evaluate whether services, policies and procedures provided by CYFD are sufficient to provide adequate health care services (including, but not limited to, dental care) to youth in JJS facilities and, if not, to assist the CYFD Director of Facility Medical Services to draft a medical care plan to correct deficiencies. The areas to be monitored and evaluated by the medical expert shall include, but is not limited to:

1. Policies, procedures, protocols, and/or practices necessary to ensure that adequate medical care and treatment services (including timely emergency services) are provided by qualified medical professionals utilizing generally accepted treatment approaches;
2. Policies, procedures, and/or practices necessary to ensure that all youth admitted to the facilities are screened by qualified medical professionals in a timely manner utilizing EPSDT screening standards. Screening shall include screening for hepatitis, sexually transmitted diseases and pregnancy;
3. Policies and/or procedures necessary for referral of youth to a qualified medical professional for a timely medical evaluation if indicated by screening or other information;
4. Provision of all health care, diagnostic, treatment or other services necessary to correct or ameliorate any acute physical illness or medical condition identified;
5. Provision of all medically indicated chronic care, convalescent care and medical preventive maintenance as determined by the youth's CYFD physician;
6. Provision of each such service in sufficient amount, duration and scope to reasonably achieve its purpose, as determined by a CYFD physician; and
7. Provision of interperiodic EPSDT screens at appropriate intervals as determined by a CYFD physician.

The medical expert shall also monitor compliance with Section V of this Agreement. The expert shall issue a comprehensive report regarding compliance with Section V of this Agreement, which shall include, but not be limited to, any perceived barriers to compliance and remedial recommendations, by January 1, 2007 and every six months thereafter until compliance with Section V is achieved. Copies of these reports shall be provided to the ACLU team when they are provided to CYFD.

E. The Director of Facility Medical Services shall be responsible for implementing immediately all remedial recommendations specified by the medical expert.

VI. ACTIONS TO PROVIDE FEMALE YOUTH COMPARABLE ACCESS TO SERVICES AND PROGRAMS AS PROVIDED FOR MALE YOUTH.

A. CYFD shall provide an array of gender appropriate services and placements for female youth that are comparable to those provided for male youth.

B. By April 1, 2006 CYFD shall establish a sufficient array and proportionate number of adequate gender appropriate community based services to avoid incarceration for female youth that is comparable to that provided for male youth by CYFD.

C. CYFD shall maintain an adequate step down program and/or reintegration center for female youth.

D. By July 1, 2006, CYFD shall establish a treatment program for female youth that is proportionate in numbers served and otherwise comparable to the Sequoyah program for male youth.

E. CYFD shall ensure in developing and implementing youth classification and placement criteria pursuant to Section VII below, that it utilizes criteria for female youth comparable to those used for male youth, sufficient to ensure that female youth are not denied, based on their gender, placements or services necessary to meet their mental health, behavioral, or emotional needs.

F. In implementing Section IV, above, CYFD shall ensure that it fully takes into account the needs of female youth, including, but not limited to, conducting any needs assessment and creating and/or contracting for an array of adequate gender-appropriate community based services for female youth to avoid incarceration or re-incarceration that is comparable to that provided to male youth.

G. Nothing in this section shall prohibit CYFD from implementing limited gender-specific pilot projects for the purpose of evaluating new programs or promising practices, provided that any pilot project is time limited, lasting no more than one year, and has an evaluation component which will be completed within six months. The ACLU shall be provided with a written description of any such pilot program at least 30 days prior to the implementation of that program.

VII. CLASSIFICATION AND PLACEMENT PROCEDURES TO PLACE YOUTH IN THE MOST APPROPRIATE SETTING IN CYFD FACILITIES

A. When youth are recommended for a 15-day evaluation by the court, CYFD shall refer that evaluation to a local detention center behavioral health clinic wherever possible. Whether the youth is evaluated at the detention center clinic or at YDDC, staff shall consider in recommendations all options for community services when appropriate as an alternative to commitment to CYFD.

B. For youth committed to CYFD facilities, CYFD will use the Team Decision Making model from the Annie Casey Foundation. In this model, attendees at the team decision making (TDM) meeting held to determine client placement include: behavioral health staff assigned to the client during Central Intake, education staff assigned to the client during Central Intake, caseworker (previously called classification officer), juvenile probation officer assigned to client, client's family or guardian (in person or by telephone), client, and safety staff who have been working with the client in Central Intake. Other participants, including juvenile parole board administrative staff and outside providers who may assist the client in transition back into the community, should also be invited when appropriate.

C. At the TDM meeting in Central Intake, the team will consider the youth's programming and service needs, level of risk, geographic location of family, and other appropriate factors in making the client's initial assignment. At other TDM meetings (to be held every 60 days after the initial TDM, or more frequently if needed), staff and others representative of those individuals listed above will be at the TDM and the same considerations will be taken into account.

D. During the initial TDM meeting in Central Intake, a Plan of Care will be developed with the client and family. Plans of Care may be modified at subsequent TDM meetings if the team determines this is appropriate. Any time there is a recommendation to move a client from one facility to another or from one program to another, there must be a full TDM. The Plan of Care will be developed using the Academy model to identify all services and opportunities to be provided for the client.

System-Wide Needs Assessment

E. By April 1, 2006 CYFD will provide assessment data to the ACLU that gives information about services available for youth in the community, by county. Included in this assessment data will be services that generally meet the needs of youth on probation and parole, and information about residential services available to youth in CYFD JJS custody, and youth who live with their families. CYFD shall also identify for the ACLU the home county, listed by county, of all youth on probation, parole or committed to JJS custody.

F. After the ACLU Team has reviewed the data, CYFD shall promptly meet with the ACLU Team to discuss how resources available to CYFD (under CYFD control and otherwise) can be distributed in the future to better serve youth involved with JJS and to serve them nearer their families. CYFD shall then make its best efforts to provide services for JJS youth which are nearer their families and home communities.

Plan for New Services and Placements

G. CYFD shall provide updates for the ACLU Team every six months on new services available for youth on probation, on parole or in CYFD custody that are

implemented either directly through CYFD, or through the behavioral health collaborative efforts.

Plan for New Services and Placements

H. CYFD will work as a member of the Behavioral Health Purchasing Collaborative to use appropriate funding to expand services for children and families with behavioral health needs in all areas of the state. CYFD shall make its best efforts as a member of the Collaborative to address gaps in services.

Admissions and Classification Policy

I. By July 1, 2006 CYFD shall provide a written description of the security level of each facility and programs and services provided by each facility. It is the policy of CYFD that youth shall be placed in a facility that best meets their needs as determined by the TDM. When the decision is made about placement for a client at the TDM meeting during the Central Intake process, the placement decision shall be based on the individual needs of each youth as determined by the team at that time. If there is no vacancy at the primary facility determined as the best placement (considering security, programs and services) by the team, the team shall determine an appropriate next choice. The TDM will determine what client needs can be met at both facilities and so designate in the Plan of Care. The TDM group will determine whether the client should be transferred at a future date to the facility of first choice, if any, and include that determination in the Plan of Care. Plans of Care may be modified as additional information becomes available at future TDM meetings.

Classification Policy

J. Policies and /or procedures shall ensure that each youth needing out of home placement is placed in the least restrictive setting appropriate to his/her needs considering the geographic location of the family. Procedures will direct the TDM group to consider all issues and needs of the youth, including special needs, chronic illness, special health needs, limited English proficiency and the geographic location of the youth's family.

K. The initial TDM meeting will be held within 21 to 28 days of the arrival of the youth at Central Intake. The Procedure shall define extraordinary circumstances when this period is extended and will require the written approval of the Deputy Secretary of Juvenile Justice Services or the Director of Facility Behavioral Health to extend the classification period.

Placement Management

L. The TDM group at Central Intake will develop a Plan of Care that becomes the full transition plan for the youth. Members of the TDM will follow the guidelines of the Casey model. The team will determine (by consensus based on the needs of the

youth) the placement of the youth. The Central Intake Unit reports through the Behavioral Health Management Team.

M. Objections to the Plan of Care that are not resolved through consensus shall be reviewed and decided by the Deputy Director for Facilities (or designate when unavailable) for final decision. If there is an objection to the Deputy Director's decision, CYFD shall follow the process for objection set forth in the Casey TDM model.

N. TDM meetings are held every 60 days after the initial TDM or more frequently if needed, and must consider the issue of placement in the least restrictive environment, based on the needs of the youth at that time. On alternate months, a Treatment Team Review Meeting (TTRM) is held that reviews progress toward client goals and objectives during that month. The TTRM is managed by the caseworker, attended by appropriate education staff, behavioral health staff, safety staff, medical staff (if appropriate), the case and the youth. After every TTRM or TDM, the youth will receive a written statement of progress (or lack thereof).

O. At the TDM scheduled four months prior to the end of commitment for the youth (30 days prior to parole), the team will discuss the progress of the youth. Failure to progress to safe transfer to parole status may be determined by the team, at which point, CYFD will petition the court for extension of commitment, following the applicable statute.

P. Transfer of a youth without prior notice and opportunity for a TDM shall occur only with the express written approval of the Deputy Secretary of Juvenile Justice Services or the Cabinet Secretary. The approval shall specify the reasons for the transfer without prior notice and shall be recorded in the youth's file. A TDM shall occur within 48 hours after the transfer. In no case shall a youth be transferred to a placement that is unable to adequately meet his/her individual needs.

Juvenile Parole Board

Q. By April 1, 2006 CYFD shall draft and submit to the ACLU for review and comment a plan to:

1. Inform the Parole Board about the programs and services that are available to youth in CYFD facilities and in the community;
2. Ensure that CYFD actually provides to youth all CYFD facility programs and services required for CYFD to recommend release on parole;
3. Ensure that CYFD makes its best effort to secure for youth all programs and services available in the community that are recommended by CYFD staff and required for release, and, if a recommended service or program is not available, to make its best efforts to secure equivalent alternative programs and services;

4. Ensure that all CYFD recommendations to the Parole Board are consistent with the services and programs offered; and

5. Maintain appropriate communication with the Parole Board about the needs of youth served by CYFD and the effects of Parole Board decisions.

R. Except as specifically provided elsewhere in this Section, CYFD shall implement the provisions of this Section VII by August 1, 2006.

VIII. SAFEGUARDS CONCERNING PAROLE REVOCATION PROCEEDINGS

A. CYFD shall ensure that its personnel do not initiate parole revocation proceedings for youth with mental disabilities, whose violation of a condition of parole is a manifestation of symptoms of their mental disorder, without first utilizing and finding to be ineffective those services in the community available and appropriate to deal with those symptoms.

B. By May 1, 2006 CYFD shall present to the ACLU team for review and comment policies and/or procedures which direct JPPOs to consider and utilize appropriate mental health services that may be available for any youth on parole who has a mental disability and to make a written finding that those services in the community available and appropriate to deal with those symptoms were ineffective prior to initiating parole revocation proceedings based upon alleged violations of parole conditions which are a manifestation of the Youth's disability. CYFD shall implement these procedures by July 1, 2006.

C. By May 1, 2006, CYFD shall adopt procedures to provide youth an opportunity for a review on the issue of the need for detention for an alleged violation of any condition of their parole, pending a preliminary parole revocation hearing or hearing before the Juvenile Parole Board. The review as to the need for such detention shall be conducted by an official of CYFD or a hearing officer designated by CYFD, who is not a JPPO or a supervisor of the JPPO who made the decision to detain, and shall be completed within 72 hours of the request for review. Youth shall be informed of their right to request such a review during the intake process when picked up for a parole violation. Such review will not require a formal hearing, but shall involve personal communication between the reviewing official and the youth to gather facts about the incident and to determine whether detention is necessary and appropriate, taking into account whether appropriate mental health services that may be available for any youth on parole who has a mental disability and whose alleged violations of parole are a manifestation of the youth's disability were considered, utilized and determined to be ineffective. The reviewing official shall apply the criteria used in the Juvenile Detention Alternatives Initiative, as modified in order to be appropriate in the parole revocation context, and issue a written decision concerning the need for and appropriateness of detention. The youth may appeal the reviewing official's decision to the Deputy

Secretary of CYFD for Juvenile Justice Services (if he or she is not available, this responsibility may be delegated to the Deputy Director for Facilities) who may, in his/her sole discretion, depart from the modified JDAI criteria to order the release of the youth pending a preliminary parole revocation hearing or pending a hearing before the Juvenile Parole Board. Nothing herein creates a property right to a hearing prior to incarceration pending a parole revocation hearing.

D. CYFD shall implement these policies and procedures by July 1, 2006.

E. CYFD shall provide to JPPOs, to the extent feasible, the additional resource of consultations by qualified professionals to recommend alternatives to parole revocation.

IX. IMPLEMENTATION OF AN EFFECTIVE SYSTEM FOR INVESTIGATING GRIEVANCES AND SERIOUS INCIDENTS

A. CYFD shall implement an effective grievance system.

B. By July 1, 2006 CYFD shall present to the ACLU team for review and comment policies and/or procedures that provide for the confidential filing, investigation and resolution of grievances and uses of force that shall include, but not be limited to:

1. A method for easily and confidentially obtaining and filing grievance forms.
2. The notation of filing time and date on all grievances.
3. Providing the grievant with a copy of the grievance filed, with the time and date of receipt and the name of the person who received the grievance noted on the copy.
4. Providing the grievant within 24 hours a written acknowledgment of the filed grievance, specifying the name of the person responsible for investigating the grievance.
5. The completion of the investigation and providing the grievant a written response to every grievance within 5 business days after the grievance is filed, unless additional time is required for good cause, as determined in writing by the JJS Deputy Director for Facilities or OQA, with a copy provided to the grievant. All grievances will be responded to within 10 business days.
6. Routine grievances are hereby defined as any grievance that is not a serious grievance (as defined in subsection 7, below). Routine grievances shall be investigated and decided by an assigned Grievance Officer in each facility. The Grievance Officer shall not be the facility disciplinary officer, an individual who is involved in the matter that is the subject of the grievance, nor the supervisor of

an individual who is involved in the matter that is the subject of the grievance. An appeal of the Grievance Officer's decision shall be to the CYFD Deputy Director for Facilities. The decision of the person who reviews the appeal is final.

7. Serious grievances are defined as those which allege misconduct by CYFD staff or raise programming, health or safety issues. Personnel responsible for reviewing, investigating and responding to serious grievances, as defined herein, shall provide a written report with recommendations for action directly to the office of the JJS Deputy Director for Facilities for decision. Prior to creation of the Office of Quality Assurance, CYFD may contract with an independent contractor to provide for investigation of serious grievances. After creation of an Office for Quality Assurance, the functions described herein shall be performed by the OQA. A copy of every serious grievance shall be provided to the JJS Deputy Director and the Deputy Secretary for Juvenile Justice.

8. All uses of force resulting in injury, all uses of mechanical restraint (including, but limited to, soft restraints), and all uses of isolation in excess of 12 hours shall be reviewed, investigated and responded to by personnel who shall provide a written report with recommendations for action directly to the office of the Deputy Director for Facilities for decision. Prior to creation of the Office of Quality Assurance, CYFD may contract with an independent contractor to provide for investigation of these uses of force. After creation of an Office for Quality Assurance, the functions described herein shall be performed by the OQA. A copy of every Use of Force report shall be provided to the JJS Deputy Director and the Deputy Secretary for Juvenile Justice.

9. The Deputy Secretary for Juvenile Justice shall ensure that prompt and appropriate remedial action is taken whenever a routine or a serious grievance is upheld in whole or in part and whenever it is determined that a use of force was not authorized or appropriate.

10. Timely notice to the grieving youth of the outcome of all grievances.

11. A timely and fair appeal process, which shall be to the Deputy Secretary for Juvenile Justice Services (or, if he or she is not available, to his/her designee) in the case of serious grievances, and to the Deputy Director of Facilities in the case of routine grievances, who shall provide timely decisions on all appeals.

C. CYFD shall create an effective tracking system of all grievances including date of filing, date and the name of the person investigating the grievance, nature of grievance, date of response, name of responding person, status of disposition at all levels, appeal notification, and the name(s) of person responding to the appeal(s). The tracking system shall also provide for a reasonable method for reviewing grievances.

D. Each facility Superintendent shall provide a report at least every two weeks to

the Deputy Director of JJ facilities on the nature of non-serious grievances received and the resolution of such grievances acted on during that time period.

E. By August 1, 2006 CYFD shall implement the policies and procedures described in this Section.

F. By August 1, 2006 CYFD shall provide information about the grievance process, how to file a grievance, and the rights of youth with respect to the grievance process, orally and in writing, to all youth currently residing in a CYFD facility and to every youth entering a facility as part of orientation.

G. By July 1, 2006 CYFD shall develop and implement policies and/or procedures sufficient to ensure that staff do not discourage the filing of grievances or retaliate against youth who file grievances, including, but not limited to, disciplinary actions in response to any finding of staff discouragement of filing or staff retaliation against youth who file grievances.

X. ACTIONS LIMITING MONITORING AND CENSORING OF COMMUNICATIONS BETWEEN YOUTH IN CYFD FACILITIES AND OTHERS

CYFD shall implement the policies and procedures concerning monitoring and censoring of communications by youth that are set forth in CYFD Juvenile Justice Services Procedure 8.14.16, JUVENILE JUSTICE DIVISION CLIENTS' ACCESS TO COMMUNICATION, as amended January 2006.

XI. ESTABLISHMENT OF AN OFFICE OF QUALITY ASSURANCE THAT REPORTS TO THE CENTRAL OFFICE

A. By September 1, 2006 CYFD shall create an Office of Quality Assurance ("OQA") and appoint a Quality Assurance Officer who is qualified, who is independent from JJS staff and who reports directly to the CYFD Secretary.

B. The Office of Quality Assurance shall:

1. Monitor compliance with CYFD policies and procedures in all facilities, with emphasis on policies and procedures relating to issues of safety, medical and mental health services.
2. Conduct audits and other quality assurance activities
3. Review, investigate and respond to all serious grievances as specified in Section IX, above. The Office of Quality Assurance may contract for such investigations.

4. Review, investigate and respond to all credible allegations of staff causing or permitting abuse of clients, or use of excessive force by staff.
5. Evaluate each facility and program operated by CYFD or contractors and recommend corrective action by the CYFD Secretary, when appropriate, including corrective action plans when deemed necessary.
6. Report on the implementation and adequacy of the safety, medical and mental health programs required by this Agreement to enable the CYFD Secretary to take necessary actions to remedy deficiencies.
7. Coordinate quality assurance activities performed by various JJS offices to prevent unnecessary duplication of efforts.
8. After being fully staffed, the Office of Quality Assurance will provide aggregate data to the CYFD Secretary on grievances, uses of force, personnel actions, youth safety, characteristics of youth at each facility, youth progress while in custody in basic skills such as reading, math, social skills, acquisition of job skills, and, for youth discharged, recidivism. The goal over time is to enable the Secretary to judge the cost effectiveness of programs and to make appropriate program changes to best accomplish the goals of JJS.
9. Investigate significant incidents as defined in Section IX above and all incidents of use of force as defined in Section IX above. The investigation shall result in a written report to the Secretary and shall include findings and recommendations. The Director of OQA shall issue CYFD protocols for coordination of such investigations by CYFD with other law enforcement, administrative disciplinary, or other quality assurance investigations.

C. Quality Assurance staff will be assigned to each facility as deemed appropriate by the Secretary and as funded by the legislature to receive, investigate and respond to serious grievances as provided in Section IX, above, and in this Section, and to allegations of staff causing or permitting abuse of clients, or use of excessive force by staff. QA staff will include at least 2 FTE at NMBS (unless program changes at NMBS change the need for such positions, after discussion with the ACLU), 2 FTE at YDDC, and one FTE at the JPTC and one FTE at the CSB with these two FTEs working as a team at these two facilities as long as each of these facilities has a population of less than 50 youth.

D. By December 1, 2006 the Director of OQA shall develop and present to the ACLU team and the Secretary for comment a written quality assurance program plan which includes implementation dates and which addresses the following elements:

1. Inspection, as necessary, 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. All such reports and staff will be accessible to OQA personnel as needed.

2. Interviews with staff, administrators and youth at each facility.
3. Where appropriate, interviews with the parents and other care givers of youth confined in JJS facilities, and attorneys and other individuals with relevant information.
4. Where appropriate, inspection of the physical plant.
5. Where appropriate, interviews with juvenile court judges, public defenders and other officials having regular contact with the facility or its youth.
6. Regular communication with UNM Law school ombudsman personnel.
7. Regular communication with the ACLU team.
8. Determination of compliance with CYFD policies and/or procedures, including but not limited to adequacy of documentation, relating to: suicide prevention, use of force, serious grievance procedures, serious incident procedures, use of mechanical restraints, youth-on-youth violence and conditions in security units.
9. Determination by using statistically valid sampling techniques of compliance with CYFD policies and/or procedures, including but not limited to adequacy of documentation, relating to: youth disciplinary practices, routine grievance procedures, implementation of classification criteria, and implementation of Plans of Care, including but not limited to, implementation of classification criteria and counseling and rehabilitative services.
10. Unannounced, periodic site visits conducted by OQA staff at each JJS facility. OQA staff shall have complete and unfettered access to all JJS facilities, records, staff and youth. All JJS staff shall be informed of their obligation to cooperate in all OQA operations.
11. Investigation by OQA of significant incidents as set forth above.
12. Review by OQA of all incidents of use of force, mechanical restraints, and the use of isolation in excess of 12 hours as set forth above.
13. Review, investigation and response by OQA to all serious grievances.
14. Tracking by OQA of implementation of all activities required by this Agreement.

E. The Secretary shall adopt a plan of correction whenever, through audits, investigations or other quality assurance activities, the OQA finds substantial non-compliance with the requirements of JJS policies, procedures and/or this Agreement. The plans of correction shall be developed and implemented in such a manner as to address the problems uncovered in the course of the quality assurance activities and as to prevent the type of problem from occurring again in the future.

XII. ESTABLISHMENT OF A SYSTEM FOR ON-GOING COMMUNICATION AND INFORMATION SHARING BETWEEN THE ACLU'S TEAM AND CYFD AND YOUTH IN CUSTODY

A. The CYFD Secretary recognizes that the ACLU team, as legal counsel for some youth and parents and as counsel experienced in juvenile justice issues in New Mexico and other states, can provide valuable input, ideas, and comment on CYFD's efforts to improve JJS facilities and programs.

B. The ACLU team recognizes that it is the CYFD Secretary's responsibility to work within the framework of the administration and with the resources provided by the Legislature of the State of New Mexico, and that the Secretary cannot bind the State to provide programs or services which are not funded nor can the Secretary commit the Legislature to future funding. Notwithstanding these restraints, the Constitutional and statutory rights of youth are entitled to protection

C. Both the Secretary and ACLU team recognize that it is in the best interest of all parties to maintain effective communication and exchange of ideas as CYFD endeavors to remedy deficiencies in the Juvenile Justice system and to improve programs to best serve the people of New Mexico and youth. In order to accomplish this goal the Secretary of CYFD, Deputy Secretary of JJS, the Quality Assurance Officer (when and if that position is funded and created), and such other staff as the Secretary deems appropriate shall meet regularly (at least quarterly) with the ACLU team to review progress in implementing the reforms described herein and to discuss other relevant matters. The purpose of these meetings is to find means to accomplish the goals set forth herein and, when appropriate, to discuss modifications to this Agreement that reflect the realities of implementation. The ACLU may request that particular staff be included in the discussions on issues that may arise.

D. In order to make the collaborative meetings effective the parties will provide each other with data, reports and information as appropriate.

E. Members of the ACLU team are authorized to interview any youth. Members of the ACLU team may also review any documents pertaining to the needs of adjudicated youth (in either redacted form or with a youth's consent as to documents in which youth are personally identified), including but not limited to documents concerning programs and services, written policies and procedures; cumulative records of youths;

adjustment unit logs; disciplinary reports; isolation logs; grievance reports and corresponding investigatory reports; use of force reports and corresponding investigatory reports; significant incident reports and corresponding investigatory reports; quality assurance audits, investigations and plans of correction; contracts; medical logs; mental health case load documents and any other kind of document the disclosure of which is not prohibited by law. The ACLU team may also review, without a release from the youth, all documents regarding individual youths which are not confidential pursuant to the New Mexico Mental Health and Developmental Disabilities Code, or other applicable state or federal law. Members of the ACLU team may also, upon request, obtain a copy of a reasonable number of documents.

F. CYFD's primary liaisons with the ACLU team are the Deputy Secretary of JJS, CYFD's General Counsel, and/or the CYFD Secretary.

G. Within 30 days of the date Appendix A is signed by CYFD, the CYFD Secretary shall issue a memorandum to CYFD staff accurately describing this Agreement, as well as the role and responsibilities of members of the ACLU team. CYFD shall provide members of the ACLU team with an opportunity to comment upon the memorandum prior to its dissemination. CYFD shall also disseminate an accurate notice describing the role and responsibilities of members of the ACLU team, which will also be posted in all units of JJD facilities.

H. Members of the ACLU team shall have access to the facilities operated by JJS equivalent to the access currently available to UNM Law School Ombudsman personnel. In requesting approval to have access to JJS facilities, members of the ACLU team will specify the intended scope of the visit, including time, sites, and youth to be visited. Members of the ACLU team will be permitted to speak privately with youths at the facilities. Members of the ACLU team will not interrupt therapy or counseling sessions or in any other way disrupt the orderly operation of the facility. Should a member of the ACLU team observe circumstances of immediate concern, s/he will immediately contact the JJS Deputy Secretary or his designee. At the discretion of the Deputy Secretary, members of the ACLU team may be accompanied by an employee escort, but the escort shall not listen in on any private discussions with youth, Ombudsman or OQA personnel and shall not interfere with members of the ACLU team in the performance of their activities.

I. CYFD shall authorize all UNM law school ombudsman personnel and all Office of Quality Assurance personnel (or their equivalents) to openly communicate with members of the ACLU team regarding any issues pertinent to JJS, provided however that neither ombudsman, OQA personnel nor ACLU Team members may transmit any youth-identifiable protected health information or other legally protected confidential information to the other without authorization by the youth. Provided further that the OQA may not pass along information it has obtained from CYFD staff. The information provided to the ACLU may not be used for any purpose other than implementation or enforcement of Appendix A or discussions with and/or reporting to CYFD.

AGREED:

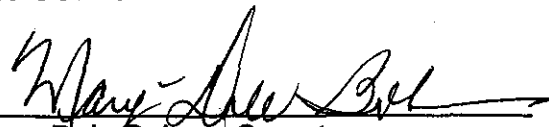
For the ACLU-NM:



Daniel Yohalem
Philip B. Davis
Peter M. Cubra
Alice Bussiere

Date: 2/15/06

For CYFD:



Mary-Dale Bolson, Secretary

Date: 2/15/06



Daniel J. Pearlman, General Counsel

Date: 2/15/06