

**AMENDED AGREEMENT BETWEEN CYFD AND THE ACLU-NM  
CONCERNING SERVICES AND PROCEDURES  
FOR NEW MEXICO YOUTH ADJUDICATED JUVENILE DELINQUENT**

Whereas in 2005 and early 2006 the ACLU of New Mexico (hereinafter, "ACLU-NM"), in conjunction with its cooperating attorneys and the Youth Law Center of San Francisco, prepared for filing a class action lawsuit against the New Mexico Children, Youth and Families Department (hereinafter, "CYFD") to address what it perceived as the most pressing systemic safety, programmatic and procedural deficiencies in New Mexico's treatment of youth who are adjudicated juvenile delinquent,

Whereas on February 15, 2006, the parties entered into an Agreement Between CYFD and the ACLU-NM Concerning Services and Procedures for New Mexico Youth Adjudicated Juvenile Delinquent (hereinafter, the "2006 Agreement"),

Whereas on November 20, 2007, the ACLU-NM filed suit against CYFD alleging that CYFD was in violation of certain provisions of the 2006 Agreement, which allegations CYFD denies,

Whereas CYFD believes that it continues to improve its Juvenile Justice services and procedures in a way that is in the best interests of these New Mexico youth,

Whereas the parties have met numerous times, have reached an agreement on the steps CYFD will take to address the issues that are the subject of the ACLU-NM's pending lawsuit, and desire to work together in the future by sharing expertise about solutions to problems; and

Whereas the parties desire to resolve the issues between them at this time without the necessity of further litigation,

Now, therefore, the ACLU-NM and CYFD hereby agree as follows:

1. The effective date of this amended Agreement and all appendices thereto (hereinafter, "this Agreement") is the date on which the first signature on this Agreement by a CYFD official occurs. This Agreement shall terminate on December 31, 2010, unless extended by mutual agreement of the parties. All rights and obligations established by this Agreement shall terminate when this Agreement terminates. A court may not enforce this Agreement after the expiration of the term of this Agreement, whether or not the action was filed prior to the termination date of this Agreement, nor may a court reform this Agreement nor provide relief of any kind or nature extending beyond December 31, 2010 under any circumstances whatsoever. This Agreement supersedes and otherwise replaces the 2006 Agreement between the parties, and all obligations established by the 2006 Agreement are hereby extinguished upon the effective date of this Agreement.

2. This Agreement and all agreed upon amendments or appendices are a fully enforceable contract, the terms of which may be enforced like any other contract through an action by the ACLU-NM for damages, specific performance and/or declaratory and injunctive relief, subject to the enforcement deadline limitation set forth in paragraph 1, above. However, nothing in this Agreement shall create in any individual any right to sue for damages or for specific performance as a third party beneficiary of this Agreement. The right of the ACLU to sue for damages under this Agreement shall be limited to attorneys' fees and costs as set forth hereinafter. The parties expressly agree there may be no punitive damages for violation of this contract.

3. The ACLU-NM agrees to dismiss its pending lawsuit (*The American Civil Liberties Union of New Mexico v. The New Mexico Children, Youth and Families Department, et al.*, NM Dist. Ct., 1<sup>st</sup> Jud. Dist. No. D-0101-CV-2007-02921) and further agrees that it will not file any suit as to any CYFD juvenile justice services or policies addressed in this Agreement (including any amendments or appendices thereto) so long as this Agreement is in effect and the ACLU-NM believes CYFD is implementing the terms of this Agreement in a timely and appropriate manner.

4. Definitions. Throughout this Agreement (including any amendments or appendices thereto) the terms "youth" means anyone adjudicated in New Mexico to be a juvenile delinquent and held in a CYFD facility, unless a different meaning is specifically indicated, and "ACLU" or "ACLU team" means the ACLU-NM cooperating attorneys, the attorneys from the Youth Law Center of San Francisco, and their support staff who are working on this project, as listed in Appendix B to this Agreement. Appendix B may be modified from time to time by the ACLU, which shall notify CYFD in writing of any modifications. The term "TAC" means the Technical Advisory Committee established pursuant to Appendix A of this Agreement.

5. For good and valuable consideration which CYFD hereby acknowledges receiving, CYFD agrees to implement fully all the actions set forth in this Agreement (and any amendments or appendices thereto) in accordance with all timelines, except for the limited circumstance provided in paragraph 7, below, and subject to paragraph 11, below. All plans, policies and procedures required by this Agreement which are approved in whole or in part shall automatically become a part of this Agreement. The parts which are approved shall be added as addenda to this Agreement when they are approved in whole or in part through the process set forth in paragraph 6, below.

6. Whenever CYFD proposes to adopt a new plan, policy, procedure or other document that will have a substantial impact on this Agreement or its appendices, the following process shall be followed by the parties to this Agreement:

(a) CYFD shall mail or deliver a copy of the document to be reviewed simultaneously to all members of the TAC team and Daniel Yohalem, Philip B. Davis, Peter Cubra and Alice Bussiere at the addresses set forth in Appendix B;

(b) the ACLU team shall provide one set of comments and recommended changes or a statement that there are no comments or changes to the TAC team and CYFD's General Counsel (currently Frank Weissbarth) within 20 days of receipt of the document;

(c) the version of the document adopted by the TAC shall be implemented by CYFD.

7. The ACLU-NM acknowledges that CYFD's ability to comply with certain provisions of this Agreement is dependent in part on the New Mexico Legislature making available sufficient resources for such compliance. CYFD shall make its best efforts to obtain sufficient funding to fully effectuate this Agreement. In the event that despite these best efforts the Legislature does not provide CYFD with the funds and other resources (e.g., FTE) necessary for implementation of this Agreement the TAC team will work with ACLU-NM and CYFD to negotiate in good faith to tailor the actions to be taken with the funds and resources available to support such actions. CYFD may raise insufficiency of funds and resources as a defense to any action brought by the ACLU-NM to enforce this Agreement, but this shall not prevent the ACLU from rebutting that defense and/or seeking a remedy under other laws.

8. If at any time during the term of this Agreement the ACLU-NM believes that CYFD is not implementing or otherwise complying with the terms of this Agreement, it shall give notice to CYFD and the parties shall meet in good faith to attempt to resolve the issue with the TAC team's assistance. If the parties and the TAC team are unable to resolve the issue, the parties may engage Paul Bardacke as a mediator to attempt to assist in such resolution. If there is no resolution, the ACLU-NM may bring suit to enforce those terms of the Agreement with which it believes CYFD is not in substantial compliance and/or to seek a remedy under other laws if it believes in good faith that CYFD is not implementing or otherwise complying with any term of this Agreement in a timely and appropriate manner. Under no conditions shall CYFD be liable for the actions or inactions of the TAC in its performance of any duty under this Agreement or the appendices attached hereto.

9. The TAC shall meet with the ACLU-NM every three months for the duration of this Agreement and every six months during 2011 and prior to those meetings shall provide the ACLU and CYFD with information in writing on CYFD's progress and compliance with the terms of this Agreement. CYFD shall provide the ACLU-NM a copy of all documents it provides to the TAC for purposes of the TAC's quarterly meetings, including but not limited to status reports, TAC meeting agendas and TAC meeting minutes. The Secretary of CYFD may have his or her general counsel present at the TAC meetings with the ACLU.

#### 10. Fees and Costs

(a) CYFD shall pay the ACLU-NM team attorneys' fees, expenses and costs in the total amount of \$500,000 (in addition to the \$10,000 remaining to be paid

under the parties' prior Agreement) and ACLU and its counsel shall make no further claim for fees and costs for the litigation entitled *The American Civil Liberties Union of New Mexico v. The New Mexico Children, Youth and Families Department, et al.*, NM Dist. Ct., 1st Jud. Dist. No. D-0101-CV-2007-02921, or for past monitoring or for future monitoring under the Agreement.

(b) Except as provided in subparagraph 10(a), above, this provision shall not be evidence that a claim for fees is or would be applicable to any lawsuit that could have been, or may in the future be, brought by the ACLU-NM.

(c) Except as provided in subparagraph 10(a), above, in the event that the ACLU-NM brings a court action to enforce this Agreement, as provided for in paragraphs 2 and 3 of this Agreement, and the ACLU-NM prevails in such litigation, the ACLU-NM's attorneys fees and costs for such action shall be determined by the Court, applying the standards of the Prison Litigation Reform Act, 42 U.S.C. Section 1997 e(d)(3), unless another federal statute is also applicable to the lawsuit.

11. Unforeseen Circumstances. If any unforeseen circumstance occurs which might cause a failure to timely carry out any requirements of this Agreement, CYFD shall notify the TAC team and the ACLU in writing within 20 calendar days of the time that CYFD becomes aware of the unforeseen circumstance and its impact on CYFD's ability to timely perform under this Agreement. The notice shall describe the cause of the failure to timely perform and the measures taken to prevent or minimize the failure. CYFD shall implement all reasonable measures to avoid or minimize any such failure

12. This Agreement includes and incorporates Appendices A ("The Plan") and B (ACLU team addresses), attached hereto.

13. ACLU Contract with Paul DeMuro. ACLU shall enter into a contract with Paul DeMuro to perform all his duties as a permanent member of the TAC and the parties agree that payment to DeMuro on that contract shall be paid out of the \$500,000 payable in fees and costs to the ACLU and its counsel as set forth in subparagraph 10(a) above. The ACLU shall allocate at least \$110,000 of the \$500,000 to payment of the contract with DeMuro, or any successor in the event that DeMuro leaves the TAC prior to the expiration of this Agreement. In the event that the ACLU files suit to enforce this Agreement, any unexpended portion of the \$110,000 shall be refunded to CYFD. In the event that no suit is filed, at the expiration of this Agreement, any unexpended portion of the \$110,000 allocated to the DeMuro contract shall be retained by the ACLU to cover claims for uncompensated fees.

Notwithstanding his employment as an independent contractor for ACLU, DeMuro retains absolute and total independence to act as he determines necessary in regard to the services he performs pursuant to his contract.

(a) Nothing in his contract shall be construed to empower ACLU to exercise control over DeMuro's independence in regard to his investigations, observations,

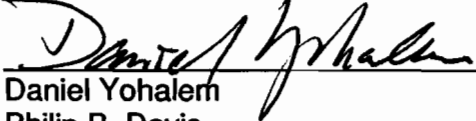
statements, conclusions or recommendations, whether written or oral, and without limitation, in the course of his work undertaken pursuant to the terms of his contract.

(b) Nothing in this contract shall be construed to prevent DeMuro from having unlimited and unfettered communication with representatives of the ACLU-NM team or with anyone else of his choosing who has information regarding youth involved in New Mexico's delinquency system or expertise deemed useful to him in fulfilling his duties as a TAC member.

(c) Nothing in this contract shall be construed to prohibit or limit DeMuro from serving as an expert consultant and/or expert witness for ACLU-NM at ACLU's and DeMuro's sole discretion in the event of any litigation contemplated or brought by the ACLU-NM concerning conditions or rights of youth incarcerated in CYFD facilities at the sole cost of ACLU-NM. If at any time the ACLU reasonably believes that they will pursue litigation and DeMuro agrees to become the ACLU's expert consultant or witness, the ACLU shall notify CYFD and DeMuro shall immediately resign from the TAC. If DeMuro resigns from the TAC, another person mutually selected by the parties shall take his place; if the parties are unable to agree on a replacement, the TAC, including DeMuro, shall select the replacement TAC member.

**AGREED:**

**For the ACLU-NM:**



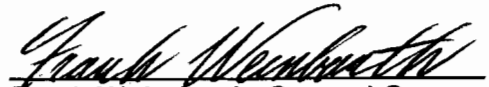
Daniel Yohalem  
Philip B. Davis  
Peter M. Cubra  
Alice Bussiere

Date: Sept. 3, 2009

**For CYFD:**

  
\_\_\_\_\_  
Dorian Dodson, Secretary

Date: 9/3/09

  
\_\_\_\_\_  
Frank Weissbarth, General Counsel

Date: 9/3/2009

## APPENDIX A

### THE WAY FORWARD

#### Preliminary Note:

This document (hereinafter referred to as “Plan”) addresses the principal objectives originally covered by Appendix A of the February 15, 2006 Agreement (the 2006 Agreement) between CYFD and the ACLU; and provides a method to identify and develop specific measurable outcomes and data points that are necessary to track CYFD’s progress in implementing the specific requirements of this rewritten agreement. The outcomes in this Plan will be tracked by an enhanced quality assurance and continuous quality improvement process that is described in this document. This Plan also establishes timelines for each outcome contained herein. This Plan is designed to supersede and replace Appendix A of the 2006 Agreement and this Plan is hereby incorporated in the 2009 Agreement.

This Plan also establishes the Technical Advisory Committee (hereinafter referred to as the TAC) that will routinely review CYFD’s progress implementing this Plan by monitoring specific outcomes and data points generated by CYFD’s Quality Assurance staff. Furthermore, on an ongoing basis, the TAC will help establish target dates and quantifiable outcomes for the major provisions of this Plan, review progress and help resolve problems.

It is important to note that this Plan is a goals-based, evolving document, detailing what the Department believes is the best possible way to meet the needs of the youth in the Department’s care while recognizing that a perfect system may not be truly achievable and that circumstances change over time. As the Department moves forward, this Plan will be updated as appropriate by the TAC to reflect both improved understanding and changing realities, and then approved by the Secretary of CYFD and Paul DeMuro. This Plan is an evolving document, and CYFD has used its best efforts to include reasonable dates for achieving the various objectives contained in this Plan. In the event that CYFD anticipates that it will be more than two weeks late in achieving an objective with a stated completion date, for reasons including but not limited to all consequences related to budgetary limitations or shortfalls, foreseen or unforeseen, it will provide written notice to the TAC stating the reasons why the objective will not be achieved by the date set forth in the Plan and the date on which CYFD believes it will achieve the objective. The TAC will decide the date that is appropriate.

CYFD’s most important role is to ensure the safety and security of the community, department staff, and the youth in CYFD’s care. Fulfilling this role requires the Department to establish a culture of child- and family-centered teamwork at all levels, from line workers to senior administration; and to establish accountability at all levels through a rigorous quality assurance and continuous quality improvement process. CYFD is actively working to achieve both these goals, and to embed them within the Departmental infrastructure as a permanent, sustained effort.

As part of the effort to achieve these goals and embed these efforts, , CYFD is in the process of adapting the innovative Missouri model to meet the needs of the Department, its staff, and the youth in its care, and implement this adapted model – Cambiar New Mexico – in its facilities. Both safety/security and behavioral health play significant roles in the Cambiar rollout.

This Plan details the Department's Quality Assurance process and the manner by which the Quality Assurance process will report on the progress of implementing the specific provisions contained in this Plan. This Plan also addresses issues of safety and security; finally, this Plan addresses issues regarding the role of behavioral health staff in four specific areas:

1. As an integral part of the intake, assessment, and treatment planning processes
2. As an integral part of daily programming and service delivery
3. As an integral part of immediate and appropriate response to critical incidents
4. As an integral part of daily unit and behavioral management

This Plan describes the role of the TAC in implementation and sustainability. This Plan will, for the topics discussed, identify the issue being addressed; what the Department has done and will do to address the issue; and anticipated outcomes, target dates, and related quality assurance measures designed to track the anticipated outcomes.

## **I. Quality Assurance**

As provided in Section II, below, CYFD's Quality Office of Quality Assurance (OQA) will no longer investigate grievances, including grievances involving alleged neglect or abuse of youth in CYFD JJS facilities. Instead, OQA will devote its full resources to quality assurance (QA) and continuous quality improvement (CQI) activities. Following the separation of grievance and abuse processes from OQA, an initial draft of the inspection processes in this area contained within this Plan can be developed within 60 days, with a complete report on the targets established in this Plan 60 days later.

In addition to the measures identified in this Plan for OQA tracking, it is the Department's intention to continue efforts to ensure that quality assurance measures and outcomes become an integral and vital part of the total management culture and programming within the Department's JJS facilities and programs. Quality Assurance activities will include the following:

- Monitoring compliance with CYFD policies and procedures in all facilities, with emphasis on those policies and procedures that relate to issues of safety, healthcare, and behavioral health services. This shall include a schedule of inspections conducted by the appropriate means, including staff interviews, client interviews, case sampling, and other best practices methods for determining compliance.
- Producing an annual audit plan identifying risks within the facilities and using statistically valid sampling techniques to determine policy and/or procedure compliance. This audit plan will include, but is not limited to, adequacy of youth disciplinary practices including documentation, incidents, injuries, seclusion and restraint, use of force, grievance procedures, and implementation of classification criteria, plans of care, and counseling and rehabilitative services.
- Conducting quality assurance reviews of facilities. These reviews will be provided to management for use in evaluating, achieving, and maintaining high-quality programs in the facilities. Management, in turn, will establish and implement any necessary corrective action plans and plans of improvement within 30 days.

To support these and other quality assurance activities, an inspection process will be developed by the OQA for presentation to the TAC by November 30, 2009 for each of the key areas listed below:

**A. *Corrective actions***

Monitoring the timeliness and adequacy of corrective actions taken by the Department in response to substantiated grievances, substantiated abuse allegations and other issues requiring corrective action identified through OQA's auditing activities

**B. *Management Accountability***

Background Screening of Employees  
Risk Management  
Provision of an Abuse-Free Environment  
Certification Training  
In-Service Training Requirements  
Case Reviews  
Special Diets

**C. *Youth Management and Disciplinary Treatment***

Personal Property (where staff takes possession of youth's personal property during admission and safeguards it until return)  
Classification and Orientation  
Grievance Process  
Abuse Investigations (numbers, type and results of investigations), which depending on the nature of the investigation break out as a sub-category of the Grievance Process, Incident Reporting, or Provision of an Abuse-Free Environment  
Behavior Management System  
Confinement, Use of Force, and Restraint Incidents  
Youth Disciplinary Practices Including Documentation  
Separation/Segregation Practices  
Classification and Placement

**D. *Mental Health and Substance Abuse Treatment***

Screening/Initial Assessment  
Specialized Mental Health Assessment  
Treatment Planning  
Case Management  
Mental Health Counseling  
Management of Psychotropic Medications  
Crisis Services  
Youth Development Programs

**E. *Healthcare Services***



Designated Health Authority  
Healthcare Admission Screening  
Health Related History/Comprehensive Assess.  
Screening, Evaluation, Treatment for STD  
Sick Call  
Medication Administration  
Pharmaceuticals: Storage, Security, Access,  
Inventories and Disposal  
Infection Control  
Chronic Illness Treatment Process  
Episodic/Emergency Care  
Authority for Evaluation and Treatment and Notification of Care  
Pregnant Girls and their Neonates

*F. Safety and Security*

Key Control  
Room Checks  
Fire Prevention  
Toxic, Caustic, Flammable, Poisonous Items  
Vehicle Inspections  
Tool Control  
Supervision of Youth  
Escapes

*G. Programming*

Recreation and Activities  
Academic and Vocational Education  
Religious Activities  
Gang Management  
Transition  
Community Facility Programs  
Behavior Management  
Work Programs

*H. ADA Compliance*

Procedure for the identification of youth with disabilities as defined by ADA  
Procedure for monitoring and reporting reasonable accommodations in the  
following areas:

Grievance Procedures  
Physical Plant Access  
Medical Issues  
Program Access

**II. Safety and Security**

CYFD shall provide reasonable safety to youth in its custody and eliminate unreasonable threats to the safety of youth in their facilities.

- **Grievance System**

CYFD shall implement an effective system for abuse investigations and grievances and ensure timely and appropriate corrective action is taken in response to abuse allegations or grievances that are substantiated in whole or in part, as necessary.

Currently, routine grievances, defined as complaints about or issues regarding the quality of life for youth within the facilities (food, clothing, visits, telephone calls, etc.), are handled by the facility grievance officers. Serious and/or non-routine grievances are handled by the quality assurance team, including abuse and neglect reports. This use of the quality assurance staff is problematic on two levels – first, it compromises the QA staff's ability to objectively collect, analyze, and report data; second, it typically takes priority over data collection, analysis, and reporting, resulting in a failure to take full advantage of the otherwise rich data produced. To correct this, new grievance officer positions (one at YDDC, one at Camino, and a half-time at JPTC) will be identified and staff retrained to fill these positions to address and resolve all grievance issues by December 31, 2009. After a three month period, JJS will evaluate the need and adjust positions accordingly. These staff will report directly to the Deputy Director of JJS Facilities. The Department will develop and promulgate a new Grievance Policy and Procedure practice guide which will be reviewed and approved by the TAC and will train the staff in these new positions to carry out the grievance function by December 31, 2009. In addition to resolving all grievances, by December 31, 2009 the Grievance Resolution staff will develop an ongoing brief monthly report, identifying the number of grievances per month, the outcome of those grievances as well as other pertinent information. OQA will assist with the development of this report and monitor its use.

In addition to providing report development assistance, OQA will monitor the grievance process, tracking number and nature, findings, and resolution, and trends or spikes. Analysis will be based on statistical data as well as the review of an appropriate sample of grievances and interviewing a number of youth and staff involved in the filing and resolution of grievances in the month prior to analysis. These changes will be implemented by December 31, 2009. Over time, it is anticipated that there should be an overall drop in grievances as the result of implementing a fair system, and providing guidance to staff to handle grievances in a reasonable time frame.

- **Youth Safety System**

As with non-routine and/or serious grievances (discussed above), allegations of staff abuse are also currently handled by the quality assurance team, with the same counterproductive effect on their ability to focus on their core responsibility: producing objective, quantifiable data and analyses that can be used for management and CQI. This undercuts the efficient and reliability of the abuse reporting system. To resolve this issue, the Department will make best and highest use of other staff and resources. First, the Medical staff, already trained in the detection and reporting of abuse, will be the primary referral source of allegations of abuse. Second, at least two Protective Services (PS) investigators will be assigned, depending on analysis of actual abuse complaints, to investigate allegations of abuse originating from the facilities. The total number

and location of assignment will be made following establishment of a baseline determined in consultation with the TAC, by examining the existing grievance data by facility, including the number of substantiated allegations of abuse. The PS investigators will continue to operate under the Protective Services chain of command, thereby ensuring their objectivity and independence in these investigations. As medical staff members see all injuries, it is anticipated that they will do the bulk of the reporting; training on staff expectations concerning reporting will be conducted to ensure all staff, from line to administration, are clear on their responsibilities. Reporting will be done using the existing Statewide Central Intake system established to screen all cases of abuse and neglect in New Mexico. Appropriate adjustments to the juvenile justice databases and tracking systems will be made to ensure adequate and appropriate monitoring of cases, case progression, and outcomes. Medical staff has previously received, and will continue to receive, training on recognizing and identifying abuse. However, the Department will ensure that by end of September 2009 all staff (particularly the behavior health staff) are made aware of their legal responsibilities as mandated reporters to report all allegations of abuse, and are provided with the Statewide Central Intake number.

OQA will monitor the new abuse and neglect allegations process, tracking number and nature, findings, and resolutions, and reporting on trends or spikes, including the frequency of unsubstantiated allegations. Medical conducts their own CQI process; the OQA reports will track their process and its outcomes as well. This system change will be implemented by December 31, 2009. CYFD anticipates improved reporting and improved capacity among staff for identifying and addressing abuse and neglect issues, compared to a baseline developed from the existing grievance data. In addition, the Department will work with the Employee Relations Bureau to identify appropriate actions to take with staff that has substantiated allegations of abuse. Staff with multiple allegations of abuse, defined as at least three allegations within a nine-month period, will be identified to senior management for appropriate actions.

- **Restraints, Isolation, Hands-on Crisis Management**

A complete policy governing the use of restraints and hands-on crisis management, isolation, and lockdowns has been completed as part of the 2006 Agreement; these policies and procedures have been resubmitted to the plaintiffs' attorneys for review. All use of restraints and hands-on crisis management is documented and submitted to the OQA team, as is use of disciplinary isolation.

Until the staffing and unit size issues are resolved on all units, in the event of under-staffing on units with more than 12 youth, alternative sequence programming/schedule may be proposed by unit staff and used with written permission from the facility superintendent or the Deputy Director of Facilities, provided that all youth are out of their rooms every two hours (except for normal sleeping hours) on a rotating basis and receive an equal amount of time outside of room confinement in any given 24 hour period. This alternative sequence schedule will only be approved for 24 hours; if the program is proposed to be repeated for more than 24hours, written approval for each additional 12 hours must be obtained in advance from the facility superintendent or the deputy director, and signed off on by the Secretary.

Every effort will be made to address the short staffing problem. Barring extenuating circumstances such as an unexpected surge in committed youth, by January 2010, it is

anticipated that all units will have 12 or fewer youth, and alternative sequence programming will be completely phased out.

OQA staff within each facility will monitor daily use of restraints and use of force, reporting aggregate data with notable incidents called out to the OQA supervisor, Unit Supervisor, Facility Superintendent, JJS Director, and JJS Deputy Director for Facilities; and also monitor and track hands-on crisis management, disciplinary lockdowns, and alternative sequence programming (until their use is abolished), tracking number and nature, time and resolution of situation. Using this data and a Quality Assurance approach, the Department anticipates a decrease in all these events.

Current restraint training is designed for youth under age 18. As 64% of facility residents are 18 or over, restraint training options are currently being reviewed to identify and select a more appropriate package for dealing with the reality of the facility population. A new restraint program will be selected and implementation will begin by January 2010, following review by the TAC (the current system must remain in place until all staff are trained in the new system). Parallel with new restraint training will be a change in procedure designed to phase out the use of handheld cameras except as authorized with specific youth either identified by the Department or the Plaintiffs, with approval of the TAC, and in specific situations – i.e., use of restraint chair. Handheld cameras, in addition to adding a layer of complexity, carry a high risk of escalating a crisis situation rather than de-escalating. Their removal, combined with changing procedures to clear an area of all non-staff witnesses when a crisis management issue arises, is anticipated to result in improved de-escalation and decreased use of restraints. OQA will track the use of handheld cameras and the amount of time and number of staff required to de-escalate a crisis situation against incidents where no camera is present. CYFD anticipates being able to resolve incidents in a fairer and more timely fashion with these changes.

- Unit Reduction

As part of the Cambiar rollout, and to support the development of a positive, therapeutic milieu by encouraging the ready interaction/engagement of staff with youth, all units will be reduced to 12 youth or fewer by January 2010, barring extenuating circumstances. Supporting this shift will be an analysis of resource/staff deployment versus needs within juvenile justice facilities, and a consequent redeployment of staff resources in order to ensure their most efficient use. Among other things, this redeployment will support the Department's efforts to limit the number of youth in every unit to 12, and to decrease the use of overtime, resulting in a more balanced workload for all staff and a correspondent reduction in stress, tension, and turnover. OQA will track the redeployment of staff and size of each unit and the use of overtime, and work with Human Resources to track EEOC and other staff complaints and grievances, and the turnover rate across the facilities. CYFD anticipates a reduction in these measures, as well as a reduction in incidents.

- Cambiar Implementation and Training

Preparation for Cambiar training in the Albuquerque facilities will begin in July 2009, with all training and complete implementation in all units by December 2010 (sooner if resources allow), barring extenuating circumstances. Specific training for mid and upper level facility managers will begin first to facilitate understanding of the model by managers prior to line staff training, and will be completed by September 30 2009. As part of this implementation, the

structured daily programming will continue and be improved, as will all disciplinary proceedings. This will include familiarization of all staff and youth with the Cambiar program and integration of the Cambiar program with all activities at YDDC, Camino Nuevo, and JPTC on a 24/7 basis. Beginning in September 2009, OQA will use data generated by the existing incident reporting system to monitor and analyze negative behavior and the efficacy of the Cambiar program in addressing such behavior.

- **Unit Based Management**

Implemented as part of the Cambiar rollout is unit-based management, including security and safety elements, behavioral health and behavioral management, and cross-training. By reducing unit sizes, implementing daily schedules and routines, clarifying and communicating exactly what is expected of staff and youth, integrating behavioral health staff into the units, and ensuring a consistent team composition for every unit, the Department intends to implement current and new policies and practices that make youth and their safety, well being and rehabilitation the central focus for everything that happens. Unit based management will be fully implemented by July 2010, barring extenuating circumstances. OQA will use the inspection process to monitor compliance with related policies and procedures as they are documented and implemented.

### **III. Behavioral Health**

CYFD shall provide adequate mental health care and rehabilitative services appropriate to the needs of all youth within their facilities in the least restrictive setting in its facilities that is appropriate to their needs. Behavioral health staff members will be integrated into the unit teams and play significant roles within the new model as members of the team.

#### **The Behavioral Health Role in Intake, Assessment, and Treatment Planning**

- **Intake and Assessment: General**

Trained diagnostic staff members administer a timely comprehensive assessment of every youth to identify previously diagnosed or potential behavioral health or substance abuse issues. This process also seeks to identify physical and learning disabilities in order to determine how best to treat each youth. Youth with a mental health diagnosis and/or a resulting functional impairment that is secondary to the diagnosis are identified as members of the target population who will receive individualized behavioral health services. Those youth not having a behavioral health diagnosis will receive appropriate group therapy interventions, i.e., generalized substance abuse counseling, life skills training, etc. by staff outside of behavioral health. Youth Information Sheets are being compiled for each youth with special needs and sent to the unit so that staff working with that youth will have specific information and understand how to best work with that youth.

- **Intake and Assessment: Classification System**

The Classification Procedure has been completely rewritten to include detailed descriptions of how each youth will be assessed and classified. The procedure was reviewed by Dr. McPherson and minor changes have been made to comply with her comments. All of the processes described in the new procedure are currently being followed, which has already resulted in improvements. Youth are getting to their placements much sooner, their placements are appropriate and they are being moved far fewer times.

- **Intake and Assessment: Critical Needs**

Intake staff conducts an immediate critical needs assessment upon the arrival of a client at the facility. If behavioral health critical needs are present, behavioral health staff is immediately notified and address the issues appropriately. Following the critical needs assessment, behavioral health staff, along with medical staff and education staff, reviews all available data and conducts appropriate diagnostic screening. Following diagnostic screening, a preliminary plan of care and, where appropriate, behavioral health treatment plan is drafted; these plans are then reviewed and finalized during the multi-disciplinary team meeting, including the client and the client's parents and/or guardians if appropriate (e.g., child is under 18, court has not ruled otherwise, etc.). These plans determine what access to services and treatment are best for the child's needs and strengths, and this access is matched against available placements. Regardless of placement, services and treatment are laid out in the plan(s) and are provided. OQA will track and report upon the development of these plans, placement, access to and delivery of services, outcomes and changes in needs, and actions taken to achieve goals contained within the plans. These activities are on-going within the facility.

- **Assessment and Planning: High Needs Youth**

Judges continue to commit high needs youth to juvenile justice facilities so that they will receive services that the judges determine are unavailable in the community. These youth are those whose safety and physical and/or mental health needs require an unusually high concentration of staff and programming resources. The Department will take all reasonable steps to identify these youth as early as possible and develop a treatment plan which makes every reasonable effort to safely and effectively treat those behavioral health disorders which are amenable to evidence-based interventions. In the cases of suicidal or self injuring youth, the Department will take measures to ensure their safety in the facility and develop long term plans for their placement and aftercare including inter-agency agreements to support these long term plans. Because each high needs child is unique, there is no timeline for this, except that development of placement plans will begin the day the child is admitted to the facility. Where possible, the Department will identify these youth before they reach the point of commitment, and work to connect these youth with available resources as appropriate to strive for an environment that balances meeting their treatment needs and providing for public and staff safety. OQA will monitor and report upon behavioral health treatment plans and fulfillment. These activities are on-going within the facility.

- **Assessment and Planning: Services**

Based on individualized clinical assessment and assigned target population level, youth will receive adequate behavioral health services under the care of appropriate professionals. These services will include, but not be limited to:

- Necessary psychiatric evaluation prior to medication;
- Regular medication management and monitoring of medication efficacy and side effects as laid out in department policy and procedure;
- Participating in treatment team meetings;
- Providing counseling and therapy when needed;
- Timely assessments, evaluations and prompt treatment;
- Adequate documentation of treatment;
- Maintaining accurate information in the youth's treatment plan concerning medication, including monitoring schedule, medication or medical action description, counseling or therapy to be provided, ability to provide necessary treatment, treatment monitoring and review where appropriate, current diagnosis;
- Full disclosure to youth on any medication proposed, including risks, benefits, side effects, and goals; and disclosure of same to parents/guardians when appropriate and indicated by law; and,
- Adherence to CYFD policy/procedure/practice on prescription, distribution, and monitoring of psychotropic medications.

OQA will track and report upon evaluations, prescribed medications, dosage and delivery, subsequent re-evaluation, and treatment documentation. These activities are on-going within the facility.

#### The Behavioral Health Role in Daily Programming and Unit Management

Each unit has a behavioral staff member assigned to the unit. This staff will function as an active member of the unit teams. The Behavioral Health staff will model the positive peer interaction with other staff that is the foundation of unit management and Cambiar NM. Specifically, the Behavioral Health staff will:

- model appropriate care;
- provide guidance and information to unit staff on working with mental health and developmental disabilities;
- provide information and direction on recognizing and responding appropriately to normal versus abnormal behavior and development;
- help create plans of care needed for each youth to ensure that they can benefit from the program provided and help ensure plans of care or treatment plans and interventions take into account any disability the youth may have, particularly for youth who have frequent discipline or behavior management problems;
- in the event of critical incidents follow up with the client and staff where necessary;
- participate fully in the Cambiar training and play an active role in the implementation of the positive peer culture created by Cambiar; and
- participate in unit staff meetings.

## The Behavioral Health Role in Critical Incidents

As active members of the unit team, behavioral health unit staff will support security staff in, or, at the request of security staff, take lead responsibility for, de-escalation and management of crisis situations and critical incidents (i.e., suicidal gestures/attempts, self-harming behaviors, physical restraints, and/or isolation in excess of four hours).

The Department policy of notification in the event of critical incidents is to notify behavioral health and medical staff first. In the event of behavioral health unit staff not being present, on-call behavioral health clinical staff will assist in de-escalation and management as appropriate. Regardless of the presence of behavioral health unit staff, on-call behavioral health staff will respond according to Department policy for identifying level of severity within an appropriate response time. This policy will be developed and implemented by December 2009; QA will track and report upon reports, severity levels, and response times.

### **IV. Medical**

CYFD shall continue to contract with Dr. Greifinger as provided for in Section V(D) of Appendix A to the 2006 Agreement to fulfill the monitoring and reporting requirements of that section. Since the last review by the medical expert indicated that the Department's medical services had been significantly improved and that no major medical issue needed to be addressed, the medical expert will conduct one more review of the medical services during 2009. Unless new and significant medical issues are identified in this review, no further external reviews of the medical program will be conducted.

### **V. Other Issues**

#### Transition Plans

CYFD recognizes the importance of the need for a plan of care for each youth and is committed to having a plan implemented as soon as possible after admission. The services that each client receives will be based on that plan. The plan of care will include provisions for each youth's successful reintegration into the community and started on July 1, 2009. Once full staffing levels are achieved, each facility will have a full-time Facility Transition Coordinator (FTC) who meets with each youth during the Central Intake Process. For those youth who fall within the highest need level of two or three of the Behavioral Health Target Population, a Regional Transitional Coordinator (RTC) will also be assigned. Transition planning will begin on the day of entry into the facility. Following the full diagnostic screening, the initial multi-disciplinary team, including the youth and, where appropriate, the youth's parents or guardians, will develop a plan of care including a tentative release date and, where appropriate, behavioral health or medical treatment plan. These plans identify the youth's strengths and needs; and the youth's involvement in programming, education, and services is as a result of these plans. These plans are regularly updated and reviewed by the MDT, and form the basis for the transition plan that will support the youth's return to the community. For those youth who are on medication or require specialized medical services, the Medical Transition Coordinator will ensure that the youth has an



appropriate supply of medications and follow-up appointments in the community to which he or she is returning, in accordance with CYFD policy.

OQA will track and report upon the development of these plans, placement, access to and delivery of services, outcomes and changes in needs, and actions taken to achieve goals contained within the plans.

### TAC Responsibilities

The TAC consists of both Department decision makers and outside experts on juvenile justice corrections and rehabilitation as both permanent and pro tem members. All decisions of the TAC shall be by consensus of its core members. The Secretary of CYFD, Dorian Dodson, and Plaintiffs' experts, Paul DeMuro and Pamela McPherson, M.D., will serve as the core members of the TAC. CYFD will contract with Dr McPherson to assess behavioral services, to fulfill the monitoring and reporting requirements herein concerning behavioral health, and to serve on the TAC. Paul DeMuro will also serve on the TAC to assist CYFD to fulfill the monitoring and reporting requirements herein. The TAC will report to both CYFD and to the ACLU. The TAC will identify the other permanent and pro tem members as needed. The TAC will support the research, identification, and adoption of new policies and procedures necessary to carry out the purpose of this Plan; will investigate allegations concerning violations of this Plan and report back as part of the mediation and review process; and will be receive timely notification from CYFD in the event of extenuating circumstances that may cause CYFD to alter deadlines or make other changes to any item contained within this Plan. Through 2010, the TAC will conduct quarterly meetings in person, with ad hoc meetings and conversations via electronic means whenever necessary, to assess data, trouble-shoot issues, update and adjust responsibilities, goals and expectations, and mediate disagreements. The TAC will review and agree on major outcomes and data that need to be collected and analyzed to monitor the implementation of this Plan. On an on-going basis, the TAC will review outcomes and timelines and will, when necessary, modify timelines and/or data collection strategies. Although the TAC will stay in existence to the end of 2011, its role during 2011 will be limited to review of the Department's sustained activities relative to this Plan. During 2010 the TAC will meet at least quarterly; in 2011 it is anticipated that the TAC will meet twice. In the event that any of the three core members of the TAC resign from or are otherwise unable to continue to serve on the TAC, the parties shall agree on a replacement.

### Communications; Monitoring; ACLU Access to Clients and Information; Records Requests

CYFD shall continue to abide by the procedure concerning monitoring and censoring of communications by youth that are set forth in CYFD Juvenile Justice Services Procedure 8.14.5.31 (amended July 2009 to renumber consistent with NMAC policy; originally numbered 8.14.5.18), COMMUNICATIONS, as originally amended January 2006.

Members of the ACLU team are authorized to interview any youth for purposes of monitoring the implementation of this Plan. Members of the ACLU team may also review any information 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). This information includes, but not limited to, documents concerning programs and services, written policies and procedures; cumulative records of youths; 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; and mental health case load documents 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. The information provided to the ACLU shall be requested pursuant to the procedure in this Plan ("see below; Records Requests") and may not be used for any purpose other than monitoring the implementation of this Plan or discussions with and/or reporting to CYFD or the TAC.

### ACLU Monitoring Role

Once the changes outlined under 'Youth Safety System' above have been made and the TAC has so certified, and no later than that date, the ACLU's role will be to monitor CYFD's implementation of this Plan rather than to act as an advocate for individual youth's needs, except as they relate to the implementation of this Plan. As such, any concerns for an individual youth's needs should be raised with the CYFD liaisons as outlined below. If an ACLU monitor wishes to personally advocate for or intervene on behalf of a youth, the monitor may become that client's attorney/legal representative. As an attorney/legal representative for an individual youth, an ACLU team member shall have the same access to the youth and the youth's records as any other attorney representing the youth, but shall not have access as a monitor under this Plan. In addition, if, after or during a facility monitoring visit, a youth interview or document review concerning youth, the ACLU identifies specific issues of concern related to youth care or needs under this Plan, the following procedure shall be followed:

1. If the concern can be addressed through a client grievance, the ACLU shall encourage the youth to file a grievance or assist the youth with completing and filing a grievance. CYFD shall treat such grievances in the same manner as all other grievances. The ACLU may not file a grievance on behalf of a youth or on its own behalf, but it may assist a youth in preparing a grievance to be filed by the youth.
2. If the concern cannot be addressed through the grievance process for reasons such as it being obviously systemic in nature, the client refusing to file a grievance for good reason, the grievance being more easily addressed informally, or the grievance being urgent enough to require immediate resolution, the ACLU will bring the concern to the attention of the JJS Director/Deputy Director, CYFD Office of General Counsel, and/or the CYFD Secretary within 72 hours. CYFD shall promptly investigate the concern, and report the results to the TAC and the ACLU. If necessary, CYFD and the ACLU shall work cooperatively to remedy any issues. At any time after CYFD completes its investigation, either party may ask the TAC to intervene to assist with resolution. Once the TAC has intervened, only the TAC may make further records requests pursuant to the concern.

Similarly, once the changes outlined under 'Youth Safety System' above have been made and the TAC has so certified, and no later than that date, at any time after a records request has been made by the ACLU, CYFD may reasonably inquire as to the purpose of the request to ensure that the request relates to monitoring of the implementation of this Plan rather than representation. If CYFD believes that the request is not reasonably related to implementation of this Plan, CYFD may refuse the request. The TAC may be requested by either party to mediate a dispute related to the validity or reasonableness of a records request.

### Access

In requesting approval to have access to JJS facilities for monitoring purposes, members of the ACLU team will specify the intended scope of the visit, including date, 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, educational programming, other programming, or in any other way disrupt the orderly operation of the facility. At the discretion of the Director, 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 and shall not interfere with members of the ACLU team in the performance of their activities.

CYFD's primary liaisons with the ACLU team are the Division Director of JJS, CYFD's General Counsel, and the CYFD Secretary, or their designees. As such, all inquiries concerning implementation of this Plan shall be directed through these CYFD employees and no others.

### Oral communication

1. All CYFD personnel who are not within CYFD's central office management team and all personnel contracted to provide services to JJS clients on behalf of CYFD are permitted but not required to speak to ACLU-NM personnel regarding any matter that is not confidential or privileged. CYFD and contract personnel shall be notified in writing by CYFD that: a) CYFD is placing no limitation on their communicating with ACLU-NM personnel, and b) no youth "release of information" form is required for CYFD personnel to discuss youth-specific information that is not confidential or privileged.

2. CYFD personnel within CYFD's central office management team may but are not required to discuss with ACLU-NM personnel any matter that is not confidential or privileged. However, communication with the JJS Director for Facilities (currently Debra Pritchard), the ACLU Project Manager (currently Christine Tessmann), and the Director of the Office of Quality Assurance (currently Raymond Sedillo) regarding either access to information or regarding individual youth grievances is permitted without limitation except as to information that is confidential or privileged.

## Records Requests

Records requests by the ACLU shall be made for the sole purpose of monitoring the implementation of this Plan. A records request shall be made in writing to the ACLU Project Manager (currently Christine Tessmann) with a copy to the CYFD General Counsel (currently Frank Weissbarth). The ACLU shall make each request with sufficient specificity to enable CYFD to determine what records the ACLU is requesting, and shall transmit each request to CYFD in a separate writing. The ACLU shall transmit all applicable releases to CYFD together with the request. Any follow-up request made by the ACLU concerning a specific request shall be made in writing and refer to the original request.

CYFD shall provide the ACLU with copies of documents that are not confidential or privileged pursuant to the Children's Code, including but not limited to the Delinquency Act and the Children's Mental Health and Developmental Disability Act, HIPAA, FERPA, or any other legally recognized basis of confidentiality or privilege, in accordance with the following procedure and without a release. CYFD shall provide the ACLU with copies of documents that are confidential or privileged in accordance with the following procedure if the ACLU provides CYFD with a current release from the youth to whom the documents pertain, permitting CYFD to provide copies of the requested documents to the ACLU for the purpose of monitoring or enforcement of this Agreement:

Following receipt of a request, CYFD shall either:

1. respond to the request within five business days of receipt of the request and any applicable releases, if required, by providing the ACLU with copies of the requested records or an opportunity to inspect the records in the case of a request to inspect records in a medium other than print; or
2. notify the ACLU in writing within three business days of receipt of the request that it is (i) unable to respond to the request within five business days, (ii) the reason why a response cannot be provided within five business days, and (iii) the date on which CYFD will provide the ACLU with copies of the records or with access to the records, in the case of a request to inspect records in a medium other than print. In the event of a dispute arising under this section, the TAC shall work with the parties to achieve a mutually acceptable resolution.

As used herein, the term "record" means a single, identifiable document in any medium. A JJS client's "file" typically contains numerous records and a request for a copy of a JJS client's file shall be construed as a request for copies of the number of individually identifiable records in the file.

Within 30 days of the date this Plan is signed by CYFD, the CYFD Secretary shall issue a memorandum to CYFD staff accurately describing this Plan, 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 JJS facilities.

Additional Topics

This Plan will be revised and expanded to include:

(1) Gender-specific (girls') issues; [NOTE: Issues to include both institutional and community based interventions for girls. The drafters of this Plan intend to begin working on this issue immediately. Their intention is to incorporate the section on girls in this Plan as soon as possible.]

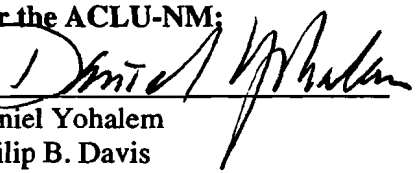
The following issues will be addressed in September, or as soon as reasonably feasible thereafter, as determined by the TAC:

- (2) Community-based Behavioral Health Issues over which CYFD has control;
- (3) Supervised Release Issues;
- (4) Appropriate Interventions for older youth (ages 18 to 21) both in the facilities and the community.
- (5) Interventions for severely high-risk youth.
- (6) Classification [Section VII of Appendix A]

Draft language for the additional topics listed as (1) through (6), above, will be completed by the TAC and presented to the parties for review by December 31, 2009. The parties shall have 20 days to submit comments on the draft language to the TAC. After reviewing the parties' comments, the TAC will decide upon the content of each new section to be added to this Appendix A, without the necessity for agreement by the parties.

**AGREED:**

**For the ACLU-NM:**

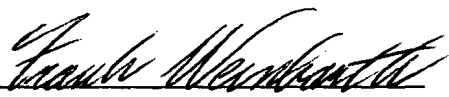
  
\_\_\_\_\_  
Daniel Yohalem  
Philip B. Davis  
Peter M. Cubra  
Alice Bussiere

Date: Sept. 3, 2009

**For CYFD:**

  
\_\_\_\_\_  
Dorian Dodson, Secretary

Date: 9/3/09

  
\_\_\_\_\_  
Frank Weissbarth, General Counsel

Date: 9/3/2009