

**Memorandum of Agreement**  
**Between**  
**the United States**  
**and**  
**the State of Mississippi**

**TABLE OF CONTENTS**

- I. [INTRODUCTION](#)
- II. [DEFINITIONS](#)
- III. [CARE REQUIRED BY THE CONSTITUTION AND FEDERAL STATUTES](#)
- IV. [SUBSTANTIVE REMEDIAL MEASURES](#)
  - A. [MENTAL HEALTH CARE AND REHABILITATIVE SERVICES](#)
  - B. [SPECIAL EDUCATION](#)
- V. [COMPLIANCE AND QUALITY ASSURANCE](#)
- VI. [MONITORING AND ENFORCEMENT](#)
- VII. [REPORTING REQUIREMENTS AND RIGHT OF ACCESS](#)
- VIII. [IMPLEMENTATION AND TERMINATION](#)

**I. INTRODUCTION**

(A) This Memorandum of Agreement("MOA") resolves litigation concerning the mental health, rehabilitation, education, and special education claims in United States v. Mississippi, Civ. 3:03-cv-1354WSu (S.D. Miss.). A separate settlement agreement between the parties, that the parties will seek to have the Court enter as a Consent Decree, addresses the protection from harm and medical care claims in that same case. This litigation concerns conditions of confinement at the Oakley Training School ("Oakley") in Raymond, Mississippi and the Columbia Training School ("Columbia") in Columbia, Mississippi, and was brought pursuant to the Violent Crime Control and Law

Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141").

(B) In order to resolve the mental health, rehabilitation, education, and special education claims in this litigation, the parties have entered into this MOA, which, if complied with by the State within the time frames specified below, will result in the dismissal of these claims from this lawsuit.

(C) The terms of this MOA shall apply to Oakley and Columbia and to any other residential secure care facility operated by or under contract with the Division of Youth Services to which the State may transfer youth from Oakley or Columbia during the life of this MOA.

(D) The State of Mississippi enters into this MOA because it is firmly committed to providing legally adequate conditions at Oakley and Columbia, by instituting the remedial measures required by this MOA.

(E) This MOA does not constitute an admission of liability by the State.

(F) The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 14141. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b).

(G) Defendants in this action are the State of Mississippi, and the Mississippi Department of Human Services, and their successors, contractors and agents. The State of Mississippi shall ensure that all State agencies take any actions necessary to comply with the provisions of this MOA.

(H) This MOA is not intended to have any preclusive effect except between the parties. Should the issue of the preclusive effect of this MOA be raised in any proceeding other than this civil action, the parties agree to certify that this MOA was intended to have no such preclusive effect.

(I) This MOA and the Consent Decree shall not be used against the State in any proceeding other than a proceeding between the United States and the State of Mississippi.

(J) Nothing in this MOA or the Consent Decree shall prevent the State from modifying or closing Oakley or Columbia, or developing alternative community placements for the youth currently in the facilities.

(K) No person or entity is intended to be a third-party beneficiary of the provisions of this MOA or the Consent Decree for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under these agreements. These agreements are not intended to impair or expand the right of any person or organization to seek relief against the State, Division or its officials, employees, or agents for their conduct or the conduct of Division employees; accordingly, they do not alter legal standards governing any such claims, including those under Mississippi law.

## II. DEFINITIONS

In this MOA, the following definitions apply:

(L) "Columbia" means the Columbia Training School located at 1730 Highway 44, Columbia, Mississippi, and any facility that is built to replace or supplement Columbia.

(M) "Division" means the Division of Youth Services within the Mississippi Department of Human Services that oversees the safety, treatment, and rehabilitation of juveniles residing at Oakley and Columbia.

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

(O) The term "IEP" shall mean an Individual Education Plan as defined by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., and the regulations promulgated thereunder.

(P) "Effective Date" means the date the MOA is filed with the Court.

(Q) "Implement" means to give practical effect and ensure that the provision is working as intended and actually fulfilled by concrete measures, including appropriate training of relevant staff.

(R) "Include" or "including" means "include, but not be limited to" or "including, but not limited to."

(S) "Oakley" means the Oakley Training School, which is also known as the Mississippi Youth Correctional Complex, and is located at 2375 Oakley Road, Raymond, Mississippi, and any facility that is built to replace or supplement Oakley.

(T) "Qualified medical professional" means a physician, nurse or other medical provider licensed in Mississippi and sufficiently trained to provide the services he or she undertakes to provide.

(U) "Qualified mental health professional" means a mental health care provider licensed in Mississippi and sufficiently trained to provide the services he or she undertakes to provide.

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

(W) "Rehabilitative Services" means programming and treatment provided to all youth in the facilities. For each youth, programming and treatment shall be suitable to the youth's particular needs and shall address the underlying causes for the youth's confinement in the facility.

(X) "Restraints" means any chemical or mechanical device, including OC spray, used to control the behavior of a youth.

(Y) "Serious mental illness" means youth who, if properly diagnosed, would be diagnosed with the following disorders: psychoses, schizophrenia, bipolar with psychotic features, depression with psychotic features, severe post-traumatic stress disorder, and schizoaffective disorders.

(Z) "SIU" means the Special Intervention Units at Oakley and the Cleveland and McGehee cottages at Columbia, designed for youth with behavioral and disciplinary problems and youth who are suicidal.

(AA) "State" means the Defendants as described in paragraph G above.

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

(CC) "The facilities" means Oakley and Columbia, collectively, and any residential secure facilities operated by or under contract with the Division of Youth Services.

(DD) "Train," means sufficiently instruct in the skills addressed, including ongoing assessment or mastery of instructional material.

(EE) "Youth" means any juvenile or juveniles committed by a court to and residing at the facilities during the operation of this MOA.

### **III. CARE REQUIRED BY THE CONSTITUTION AND FEDERAL STATUTES**

The purpose of this MOA is to protect some of the constitutional and federal statutory rights of juveniles committed to Oakley and Columbia. The terms and requirements of this MOA shall be interpreted to be consistent with the remedial measures necessary to protect these rights of the juveniles.

### **IV. SUBSTANTIVE REMEDIAL MEASURES**

#### **A. MENTAL HEALTH CARE AND REHABILITATIVE SERVICES**

(1) Appropriate Care The State shall provide adequate mental health care and adequate rehabilitative services to youth in the facilities.

(2) Adequate Treatment The State shall develop and implement policies, procedures, protocols, and 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 evidence-based, generally accepted treatment approaches.

(3) Establishment of Director of Program Services The State shall designate a Director of Program Services to oversee the mental health care and rehabilitative treatment of youth at the facilities. The State shall provide the

Director with sufficient staff and resources to perform the tasks required by this MOA, including:

- a. Develop and implement policies and procedures that will ensure adequate mental health care and rehabilitative services;
- b. Develop and implement an adequate training program to ensure the adequate implementation of mental health care and rehabilitative services;
- c. Ensure that youth receive the care they need by developing and implementing an adequate quality assurance program;
- d. Oversee the mental health care and rehabilitative services including monitoring the performance of psychologists, counselors, and psychiatrists; and
- e. Monitor whether staffing and resources are sufficient to provide adequate mental health care and rehabilitative services to the facilities' youth and to ensure compliance with this MOA.

(4) Admissions Consultation and Referral The State shall transfer promptly youth with serious mental illness to appropriate settings that meet their needs. The State shall ensure that qualified mental health professionals are readily available for timely consultations regarding admissions 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.

(5) Mental Health Screening The State shall develop and implement policies, procedures, and practices to ensure that all youth admitted to the facilities are comprehensively screened by qualified mental health professionals in a timely manner utilizing reliable and valid measures. When no such professional is on-site to conduct the screening, it shall be conducted by another staff member who has received specific training in conducting such assessments. In such a case, the staff member shall, as soon as is practicable, then contact the mental health professional and confer.

(6) Immediate Referral to a Qualified Mental Health Professional If the mental health screen identifies an issue that places the youth's safety at immediate risk, the youth shall be immediately referred to a qualified mental health treatment professional for assessment, treatment, and any other appropriate action, such as transfer to another, more appropriate setting.

(7) Mental Health Assessment The State shall ensure that youth whose mental health screens indicate the possible need for mental health services receive timely, comprehensive and appropriate assessments by qualified mental health professionals. Assessments shall be updated as new diagnostic and treatment information becomes available.

(8) Referral to a Qualified Mental Health Provider The State shall develop and implement policies and procedures for referral of youth to a qualified mental health provider for a timely mental health evaluation.

(9) Referral to a Psychiatrist The State shall develop and implement policies and procedures for referral of youth to a psychiatrist for a timely mental health evaluation.

(10) Duties of the Psychiatrist Each youth in need of psychiatric services, including monitoring of the use of psychotropic medications, shall be under the care of a licensed psychiatrist. The State shall employ or contract for sufficient psychiatric services to permit a psychiatrist to fulfill the following functions:

- a. Conduct needed psychiatric evaluations prior to placing a youth on psychotropic medications;
- b. 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;
- c. Participate in treatment team meetings for youth under the psychiatrist's care;
- d. Provide individual counseling and psychotherapy when needed, in coordination with facility psychologists;
- e. Evaluate and treat in a timely manner all youths referred as possibly in need of psychiatric services; and
- f. Provide adequate documentation of treatment in the facility medical records.

(11) Review of Facility Records by Psychiatrists, Psychologists and Counselors The psychiatrist, psychologists, and counselors shall review incident reports, disciplinary tickets, suicide watch logs, and lockdown logs of youth under their care to determine whether their treatment is working and, if not, how it should be modified.

(12) Treatment Plans The State 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. The State 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 while in the facilities. The State shall make documented good-faith efforts to include parents or guardians in the creation and revision of the treatment plan, unless their participation would be inappropriate for some reason (*e.g.*, the child has been removed from the parent's custody).

(13) Content of Treatment Plans The State shall develop and implement policies and procedures for the required content of treatment plans, which shall include:

- a. That the treatment plan be individualized;
- b. An identification of the mental and/or behavioral health issues to be addressed;
- c. A description of any medication or medical course of action to be pursued, including the initiation of psychotropic medication;
- d. A description of planned activities to monitor the efficacy of any medication or the possibility of any side effects;
- e. A description of any behavioral management plan or strategies to be undertaken;
- f. A description of any counseling or psychotherapy to be provided;
- g. A determination of whether the type or level of treatment needed can be provided in the youth's current placement; and
- h. A plan for monitoring the course of treatment, and if necessary, for revising the treatment plan.

(14) Progress Notes The State shall promulgate and implement a policy 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. The State shall ensure that qualified mental health professionals thoroughly review a youth's clinical, medical, and master files for documentation of any prior suicidal behavior.

(15) Access to a Qualified Mental Health Professional The State shall develop and implement a policy and procedure to ensure that youth who seek access to a qualified mental health professional are provided appropriate access in a timely manner.

(16) Mental Health Involvement in Housing Decisions The State shall develop and implement a system for ensuring that mental health issues are adequately considered in making housing decisions, and shall ensure that mentally ill youth receive appropriate housing.

(17) Staffing The State shall staff, by contract or otherwise, the facilities with adequate numbers of child and adolescent psychiatrists and other qualified mental health professionals to meet the mental health needs of youth residents. Psychiatric care shall be integrated with other medical and mental health services and shall comport with generally accepted practices. The State shall ensure that there are sufficient numbers of adequately trained direct care and

supervisory staff to allow youth reasonable access to structured programming.

(18) Informed Consent The State shall ensure that all youth are provided with information 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 treating with the medication might be, so that they can provide informed consent. The State shall make documented good-faith efforts to provide parents and guardians with similar information before renewing a prescription from a community provider or starting, modifying, or discontinuing a prescription, so that they can provide informed consent. However, following documented good-faith efforts, treatment need not be delayed.

(19) Mental Health Medications The State shall develop and implement policies, procedures, and practices to ensure that psychotropic medications are prescribed, distributed, and monitored properly and safely, and consistent with generally accepted practices. The State shall provide regular training to all health and mental health staff on current issues in psychopharmacological treatment, including information necessary to monitor for side effects and efficacy. The State shall issue and implement policies and 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.

(20) Mental Health and Developmental Disability Training for Direct Care Staff The State shall develop and implement 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 residents in order to supervise them appropriately.

(21) Transition Planning The State shall ensure that staff create transition plans for youth 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. Beyond these requirements, nothing in this MOA shall make the Defendants responsible for providing mental health services to youth no longer residing at the facilities.

(22) Structured Programming The State shall provide adequate structured programming, including an appropriate mix of rehabilitative, recreational or leisure activities, during non-school hours and days. The State shall develop and implement structured programming at each facility from the end of the school day until the youth go to bed, and on weekends. For youth housed in closed-cell environments, structured programming shall be designed to ensure that youth are not confined in locked cells except: (a) from after structured programming to wake-up, (b) as necessary to allow youth to calm down immediately after a violent incident, or (c) following an adequate disciplinary hearing, pursuant to an appropriate disciplinary sanction. The structured



programming will be designed to modify behaviors and provide rehabilitation to the types of youth committed to each facility. The State shall utilize teachers, school administrators, correctional officers, caseworkers, school counselors, cottage staff, and any other qualified assistance to develop and implement the structured programming.

(23) Placements in the Paramilitary Program The State shall cease the placement of youths into paramilitary programs when, by reason of mental or physical disability or maturity level, the youth cannot reasonably be expected to obtain any benefit or the placement will likely result in physical or psychological harm to the youths. This includes, but is not limited to, youth who are seriously mentally ill or who have mental retardation, and youth who are younger than 13 years of age.

(24) Alternative Rehabilitative Programs The State shall develop alternative rehabilitative programs for those youth who should not or cannot participate in the paramilitary program, as determined by qualified mental health professionals.

(25) On-the-Spot Corrections in the Paramilitary Program The State shall adopt and implement a policy, and provide specific training, for sanctions or "on-the-spot corrections" that will be permitted in paramilitary programs at the facilities and shall prohibit the use of any disciplinary measure not included in the policy. The policy shall also designate the maximum permissible extent or duration of the sanction.

(26) Notice to Youth of Facility Rules and Incentives/Consequences for Compliance The State shall explain the paramilitary program or alternative rehabilitative program to all youth during an orientation session, which shall set forth facility rules and the positive incentives for compliance as well as the sanctions for violating those rules. The State shall also explain to all youth during an orientation session the behavior management program and the positive incentives for good behavior, as well as disciplinary measures for misbehavior. The rules for all programs should be posted conspicuously in facility living units.

(27) Disciplinary Process and Accommodations for Youth with Disabilities The State shall develop and implement policies and procedures to make reasonable accommodations in its disciplinary processes for youth with mental disabilities. 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.

## **B. SPECIAL EDUCATION**

(28) Provision of Special Education The State shall, at all times, provide all youth confined at the facilities with adequate special education in compliance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., and regulations promulgated thereunder, and this MOA.

(29) Director The State shall designate a Director of Education to oversee the facilities. The Director shall meet minimum standards as specified by the State. The State shall provide the Director with sufficient staff and resources to perform the tasks required by this MOA, including:

- a. Overseeing the special education programming in the facilities, including the development and implementation of policies, procedural manuals, and training programs.
- b. Monitoring whether special education staffing and resources are sufficient to provide adequate special education services to youth at both facilities and to ensure compliance with this MOA.
- c. Developing and implementing a quality assurance program for special education services.
- d. Developing and implementing an adequate vocational education program for youth with disabilities.
- e. Developing and implementing a curriculum for special education instruction at the facilities.
- f. Ensuring that special education teachers are appropriately licensed to teach assigned courses.

(30) Special Education upon Intake The State shall ensure that all students who qualify for special education services receive such services within a reasonable time following intake at the facilities.

(31) Parent, Guardian and Surrogate Involvement The State shall develop and implement policies, procedures and practices to ensure appropriate parent, guardian or surrogate parent notice and involvement in evaluations, eligibility determinations, IEPs, placement and provision of special education services. This shall include holding IEP development and review meetings through telecommunications technology or during times reasonably calculated to accommodate the schedules of parents, guardians, or surrogate parents. The State shall post notices in each facility stating the rights of students, parents or guardians regarding education services, including special education services.

(32) Staffing The Superintendent(s) shall develop and implement an education staffing plan to ensure adequate staff to comply with the terms of this MOA. This plan shall provide for:

- a. Sufficient numbers of certified special education teachers and staff to provide all youth with the opportunity to attend school full-time and to obtain adequate educational services, and to provide teachers with sufficient time to plan lessons, grade assignments, and participate in special education meetings; and
- b. Sufficient psychologist services to provide psychologist

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

c. Sufficient services of speech and language professionals, audiologists, and other specialized professionals to meet the related services needs specified in IEPs.

(33) Screening for Special Education Needs Consistent with federal regulations, the State shall provide prompt and adequate screening of youth for special education needs and shall identify youth who are receiving special education in their home school districts or who may be eligible to receive special education services but have not been so identified in the past. Such screenings shall include:

a. Guidelines for interviewing youth upon admission to determine past receipt of special education services;

b. Protocols developed in conjunction with local school districts and the State Department of Education for expedited reporting of special education status of students entering the facilities, conducting adequate testing of youths' substantive educational knowledge, and performing necessary vision and hearing tests;

c. Policies describing the required activities of Teacher Support Team pre-referral functions, including criteria under which staff or teachers must refer a student for review, frequency at which interventions must be reviewed, and procedures for referral for Child Study evaluation if interventions are unsuccessful;

d. Policies describing the requirements for Child Study and comprehensive evaluation procedures to determine eligibility for special education services;

e. Policies describing the criteria for multi-disciplinary team decision-making regarding eligibility for special education; and

f. Protocols for re-evaluations to update eligibility certifications that have become outdated.

(34) Individual Education Plans

a. The State shall, in a reasonable time period, create and/or implement an Individual Education Plan ("IEP"), as defined in 34 C.F.R. § 300.340, for each youth who qualifies for an IEP. As part of satisfying this requirement, the State shall conduct required annual reviews of IEPs, adequately document the provision of special education services, and comply with requirements regarding parent, surrogate, and student participation in the IEP process. The State shall hold team meetings once per week or more

often, if necessary, to develop or review IEPs for qualified special education students in accordance with federal regulations.

b. In developing or modifying the IEP, the State shall ensure that the IEP reflects the individualized educational needs of the youth and that services are provided accordingly. When the nature or severity of a youth's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, the State shall provide an appropriate alternate educational setting in the least restrictive environment.

c. The State shall ensure that each developed or modified IEP include documentation of the team's consideration of the youth's need for related services and transition planning, and identifies the party responsible for providing all transition services. Nothing in this MOA shall require the State to provide services to the youth after discharge from the facilities.

d. The State shall assess each child for necessary related services, address these needs in the IEP, and provide these services as often as determined necessary by the IEP team.

(35) Vocational Education The State shall develop and implement adequate vocational education services for youth with disabilities.

(36) Forwarding Screening and Assessment Information upon Transfer The State shall ensure that if a youth is discharged from the facilities before the completion of the teacher support team intervention or educational evaluation required above is complete, the facilities shall forward to the superintendent of the youth's receiving school district all information regarding screening and evaluations completed to date, noting what evaluations are yet to be performed.

(37) Training and Quality Assurance

a. The Director shall design and implement annual in-service training requirements for special education staff of not less than four days per year, to enhance their ability to implement their duties under the provisions of this MOA.

b. The Director shall be charged with quality assurance of all special education services at all of the facilities. The State shall develop and implement a written quality assurance program. This program shall include a system of on-going review of at least a representative sample of IEPs developed or modified in the facilities to monitor quality and assure compliance with the requirements of facilities' policies and the IDEA.

c. The Director shall ensure that all special education teachers take the required steps to keep their educator licenses current and appropriate to the courses they are required to teach.

## V. COMPLIANCE AND QUALITY ASSURANCE

(38) Document Development and Revision The State shall revise and/or develop policies, procedures, protocols, training curricula, and practices to ensure that they are consistent with, incorporate, address, and implement all provisions of this MOA. The State shall revise and/or develop as necessary other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this MOA.

(39) Document Review Within 30 days after the filing of this MOA with the Court, the State shall submit a master plan to DOJ that establishes a time line of up to one year to revise and/or develop written policies, procedures, protocols, training materials, and screening and assessment tools to effectuate the provisions of this MOA. The master plan and the policies, procedures, protocols, training materials, and screening and assessment tools shall be submitted to the DOJ for review and approval. The DOJ shall provide prompt guidance to the State, including specific explanations as to how the provisions, policies, or procedures, if any, are inconsistent with the terms of the MOA, and shall suggest revisions. In the event that the DOJ asserts that policies, procedures, and other written documents are not in compliance with the terms of this MOA, the parties will agree to a schedule for the parties' experts to communicate. The State shall revise policies as necessary to conform with the terms of this MOA. If, after the policies, procedures, and practices affected by this MOA are implemented, either of the parties determines that a policy, procedure, or practice, as implemented, fails to effectuate the terms of this MOA, the parties shall consult and the policy, procedure, or practice shall be revised as necessary to conform to the terms of this MOA. If the parties are unable to agree on revisions to the policies, etc., the parties shall submit the issue to the Monitor. If either party is unsatisfied with the Monitor's resolution, then either party may invoke mediation. If neither party requests mediation, or at the conclusion of mediation, the dispute may be submitted to the Court.

(40) Quality Assurance Programs The State shall develop and implement Quality Assurance programs consistent with generally accepted professional practices for each discipline addressed in this MOA.

(41) Corrective Action Plans For each discipline addressed in this MOA, the State shall develop and implement policies and procedures to address problems that are uncovered during the course of quality assurance activities. The State shall develop and implement corrective action plans to address these problems in such a manner as to prevent them from occurring again in the future.

(42) Technical Assistance DOJ will provide the State with technical assistance in the development of policies and procedures required to effectuate the terms of this MOA. DOJ will assist the State in identifying additional financial resources to supplement those resources currently allocated to the facilities.

## VI. MONITORING AND ENFORCEMENT

(43) Monitor Selection The parties have jointly selected Joyce Burrell to serve

as the Monitor. Should the position become vacant and the parties cannot agree on a replacement, the parties shall recommend candidates to the Court pursuant to the terms of the Consent Decree, and the Court will select the Monitor. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitor's activities, reports, findings, or recommendations. The cost for the Monitor's fees and expenses shall be borne by the State. The selection of the Monitor shall be conducted solely pursuant to the procedures set forth in this MOA, and will not be governed by any formal or legal procurement requirements. The Monitor may be terminated only for good cause, unrelated to the Monitor's findings or recommendations, and only with prior notice to and approval of both parties or by Court order.

(44) Monitor Qualifications The Monitor shall have experience and education, or training in the field of juvenile justice. The Monitor may also have education, training, or experience in general or special education, adolescent health and mental health needs (particularly the needs of institutionalized adolescents), and institutional abuse and incident investigations.

(45) Monitor Access The Monitor shall have full and complete access to the facilities, all facility and Division records, staff, and residents. The State shall direct all employees to cooperate fully with the Monitor. All non-public information obtained by the Monitor shall be maintained in a confidential manner, except that the Monitor's reports shall be filed with the Court and shall be public documents. Other than as expressly provided in this MOA, this MOA shall not be deemed a waiver of any privilege or right the State may assert, including those recognized at common law and created by statute, rule or regulation against any other person or entity with respect to the disclosure of any information.

(46) Monitor Ex Parte Communications The Monitor shall be permitted to initiate and receive *ex parte* communications with all parties.

(47) Limitations on Public Disclosures by Monitor Except as required or authorized by the terms of this MOA or the parties acting together, neither the Monitor nor any member of the Monitor's staff shall: make any public statements (at a conference or otherwise) or issue findings with regard to any act or omission of the State or its agents, representatives or employees, or disclose non-public information provided to the Monitor or the Monitor's staff pursuant to this MOA. Any press statement made by the Monitor or any member of the Monitor's staff regarding their employment must first be approved by the parties. Neither the Monitor nor any member of the Monitor's staff shall testify in any other litigation or proceeding with regard to any act or omission of the State, Division or any of their agents, representatives, or employees related to this MOA, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this MOA. Reports issued by the Monitor shall not be admissible against the State in any proceeding other than a proceeding related to the enforcement of the State's agreements with DOJ. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this MOA, including being retained (on a paid or unpaid basis) by any current or

future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the State or its departments, officers, agents or employees. The Monitor is not a state or local agency or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. Neither the Monitor nor any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this MOA shall be liable for any claim, lawsuit or demand arising out of the Monitor's performance pursuant to this MOA. This paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this MOA.

(48) Monitor Reports The Monitor shall provide the Court and the parties with reports describing the steps taken by the State to implement this MOA and evaluate the extent to which the State has complied with each substantive provision of the MOA. Such reports shall be issued every four months, unless the parties agree otherwise. The reports shall be provided to the parties in draft form for comment at least two weeks prior to their issuance. These reports shall be written with due regard for the privacy interests of individual youth and staff and the interest of the State in protecting against disclosure of non-public information.

(49) Monitor Budget The Monitor shall have a budget sufficient to allow the Monitor to carry out the responsibilities described in this MOA and the Consent Decree. The Monitor may consult experts or consultants retained by either party. The Monitor may initiate and receive ex parte communications with the parties and with the parties' consultants.

## **VII. REPORTING REQUIREMENTS AND RIGHT OF ACCESS**

(50) DOJ Access The DOJ shall have full and complete access to the facilities, and to youth records, staff records, staff and residents of those facilities regarding the topics addressed in this MOA. The DOJ shall have the right to conduct unannounced visits to the facilities. The DOJ shall have the right to conduct interviews with staff and confidential interviews with residents, and former residents. State attorneys may be present at interviews of staff and tours of facilities. All non-public information obtained by the DOJ shall be maintained in a confidential manner. Other than as expressly provided in this MOA, this MOA shall not be deemed a waiver of any privilege or right the State may assert, including those recognized at common law and created by statute, rule or regulation against any other person or entity with respect to the disclosure of any information. Such information may, however, be used in any proceedings to enforce the requirements of this MOA.

(51) State Response to DOJ Questions Limited to ten succinct questions without subparts within a six month period, within 30 days of receipt of written questions from the DOJ concerning the State's compliance with this MOA, the State shall provide the DOJ with written answers and access to any requested documents regarding the State's compliance with the requirements of this MOA. Any dispute regarding the scope or burden of the requests shall be resolved by the Monitor.

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

(53) State Compliance Reports Fourteen calendar days before each report from the Monitor is due, the State shall provide the Monitor and the United States with a status report regarding its compliance with this Agreement.

(54) Privileges This MOA shall not be deemed to waive the attorney/client, attorney work product, deliberative process, or executive privileges. The State shall not assert physician/patient or psychotherapist/patient privileges with respect to the monitoring of this MOA by DOJ and the Monitor.

### **VIII. IMPLEMENTATION AND TERMINATION**

(55) Information to Employees The State shall ensure that all current and future relevant Division employees understand the terms of this MOA (to the extent necessary to carry out their job duties and responsibilities) and implement the terms of the MOA.

(56) Implementation The State shall implement all reforms necessary to effectuate this MOA. The implementation will begin immediately upon the filing of this MOA. The parties agree that the systemic and comprehensive nature of this MOA will require implementation and refinement of policies and programs over a number of years. In addition, the parties agree that the State shall make continuous progress during the first three years of this Agreement to provide adequate juvenile correctional officers, counselor aides, and security officers. The parties also agree that the State shall make continuous progress during the first eighteen months of this Agreement to provide adequate teachers, nurses, and nurse practitioners. As a separate matter, minor, inconsequential, sporadic, unintentional or isolated harmless instances of noncompliance with the MOA shall not be a basis for enforcement, provided they do not affect a substantial interest of the youth.

(57) Integration This MOA shall constitute the entire integrated agreement of the parties with respect to the United States' claims concerning mental health, rehabilitative services, education, and special education (as discussed above in Section I, a separate agreement addresses the United States' claims concerning protection from harm and medical and dental care). With the exception of DOJ's findings letter issued about the facilities in June 2003, the Consent Decree, and any DOJ technical assistance recommendations, no prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in this litigation or in any other proceeding.

(58) Enforcement If DOJ believes that the State has failed to substantially comply with any obligation under this MOA, DOJ will give written notice of the failure to the State. The parties shall conduct good-faith discussions to resolve the dispute. If the parties are unable to reach agreement within 15 days



of the DOJ's written notice, the parties shall submit the dispute to mediation. The parties shall split the cost of the mediator. In the first instance, the mediator shall be Judge Reuben Vincent Anderson. If Judge Anderson is not available, the mediator shall be Robin Rosenberg. Thereafter, the order in which mediators are contacted shall alternate between mediations. If neither of these mediators is available, the Court shall select a mediator. The parties shall attempt in good faith to mediate the dispute for a minimum of 30 days prior to seeking the reinstatement of the civil proceeding that this MOA settled. The terms of this MOA are not subject to state or federal court enforcement other than the reinstatement of those paragraphs of the complaint that this MOA settled. However, in case of an emergency posing an immediate threat to the health or safety of youths, the United States may omit the notice and cure requirements herein (including the provision regarding mediation), before seeking reinstatement.

(59) Agreement Coordinator The State shall appoint an Agreement Coordinator to coordinate and oversee compliance with this MOA and the Consent Decree.

(60) Termination This MOA shall terminate four years from the date it is filed with the Court. The MOA may also end earlier than four years from the date it is ordered by the Court if the State has substantially complied with each of the provisions of the MOA and has maintained substantial compliance for at least two years. The burden shall be on the State to demonstrate this level of compliance. There are two substantive sections of this MOA - mental health care and rehabilitative services, and special education. A section of the MOA may be terminated if the State sustains its burden with respect to that section of the MOA. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained noncompliance shall not constitute substantial compliance.

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

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

(63) No Waiver for Failure to Enforce Failure by either party to enforce this entire MOA or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this MOA.

(64) Notice "Notice" under this MOA shall be provided by courier or overnight delivery and shall be provided to the Governor of the State of Mississippi and to the Attorney General of the State of Mississippi.

(65) Unforeseen Delay If any unforeseen circumstance occurs which causes a

failure to timely carry out any requirements of this MOA, the State shall notify the DOJ in writing within 20 calendar days of the time that the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform under the MOA. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The State shall implement all reasonable measures to avoid or minimize any such failure.

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

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

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

(69) Attorney's Fees and Expenses Each party shall bear the cost of their fees and expenses incurred in connection with this cause.

FOR THE UNITED STATES:

/s/Dunn O. Lampton  
DUNN O. LAMPTON  
United States Attorney  
Southern District of Mississippi

/s/R. Alexander Acosta  
R. ALEXANDER ACOSTA  
Assistant Attorney General  
Civil Rights Division

/s/Bradley J. Schlozman  
BRADLEY J. SCHLOZMAN  
Deputy Assistant Attorney General  
Civil Rights Division

/s/Shanetta Y. Cutlar  
SHANETTA Y. CUTLAR  
Chief  
Special Litigation Section

/s/Tammi R. Simpson  
JUDY PRESTON  
Deputy Chief  
TAMMI R. SIMPSON  
JEFFREY J. RESETARITS  
LAURA L. COON

MATTHEW J. DONNELLY  
Trial Attorneys  
U.S. Department of Justice  
Civil Rights Division  
Special Litigation Section  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

FOR THE STATE:

/s/Haley Barbour  
HALEY BARBOUR  
Governor  
State of Mississippi

/s/Donald Taylor  
DONALD TAYLOR  
Executive Director  
Department of Human Services

/s/Kathy Pittman  
KATHY PITTMAN  
Director  
Division of Youth Services

/s/Jim Hood  
JIM HOOD  
Attorney General  
State of Mississippi