# Memorandum of Agreement Between the United States Department of Justice and the State of Arizona Concerning Adobe Mountain School, Black Canyon School, and Catalina Mountain School

Table of Contents

INTRODUCTION ..... 1

DEFINITIONS ..... 2

SUICIDE PREVENTION ..... 5

JUVENILE JUSTICE ..... 9

SPECIAL EDUCATION ..... 18

MEDICAL CARE ..... 22

MENTAL HEALTH CARE ..... 23

MONITORING AND ENFORCEMENT ..... 27

REPORTING REQUIREMENTS AND RIGHT OF ACCESS ..... 28

IMPLEMENTATION AND TERMINATION ..... 29

## MEMORANDUM OF AGREEMENT

## I. INTRODUCTION

A. On June 6, 2002, the United States notified State of Arizona officials of its intent to investigate conditions of confinement at the Adobe Mountain School ("Adobe") and Black Canyon School ("Black Canyon") in Phoenix, Arizona, and the Catalina Mountain School ("Catalina") in Tucson, Arizona, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.

B. On October 1-4, 2002, October 22-25, 2002, December 3-6, 2003, December 17-20, 2003, and January 5-13, 2003, the United States toured Adobe, Black Canyon, and Catalina with consultants in the fields of suicide prevention, juvenile justice, medical and mental health care, and education.

C. Throughout the course of the investigation, the United States received complete cooperation and access to all facilities, documents, and staff from the State of Arizona.

D. On January 23, 2004, the United States issued a findings letter pursuant to 42 U.S.C. § 1997 (a)(1) which concluded that certain conditions at Adobe, Black Canyon, and Catalina, violated the constitutional and federal statutory rights of juveniles confined in these facilities.

E. The United States acknowledges that the State of Arizona has already drafted and begun to implement a plan that is designed to institute a significant number of the measures required by this Memorandum of Agreement ("Agreement"). The State embarked upon a course of improvement before it received the United States' letter of findings and conclusions. The State's plan also adopts additional suggestions made by the United States to improve conditions at the facilities.

F. The State of Arizona enters into this Agreement because it is firmly committed to remedying the deficiencies identified in the United States' letter of findings and providing legally adequate conditions, by instituting the remedial measures required by this Agreement.

G. This Agreement does not constitute an admission of liability by the State.

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

## II. DEFINITIONS

A. The term "Adobe" shall refer to the Adobe Mountain School, located at 2800 West Pinnacle Peak Road, Phoenix, Arizona, and any facility that may be built to replace or supplement Adobe.

B. The term "Black Canyon" shall refer to the Black Canyon School, located at 24601 North 29th Avenue, Phoenix, Arizona, and any facility that may be built to replace or supplement Black Canyon.

C. The term "Catalina" shall refer to the Catalina Mountain School, located at 14500 North Oracle Road, Tucson, Arizona, and any facility that may be built to replace or supplement Catalina.

D. The term "facilities" shall refer collectively to Adobe, Black Canyon, and Catalina.

E. The term "ADJC" shall refer to the Arizona Department of Juvenile Corrections that is responsible for the care, treatment, and rehabilitation of youth confined at Adobe,

Black Canyon, and Catalina.

F. The term "the DOJ" shall refer to the United States Department of Justice which represents the United States in this matter.

G. The term "State" shall refer to the Governor, ADJC, and its employees, agents, contractors, or successors, who are wholly or partially responsible for the care of youth confined to the facilities.

H. The term "youth" shall refer to any juvenile who has been adjudicated delinquent and is residing at any of the facilities during the operation of this Agreement.

I. The term "effective date" shall mean the date the Agreement is filed with the Court.

J. The term "including" shall mean "including, but not limited to."

K. 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.

L. The term "Quality Assurance" shall mean a program including the following components:

1. Comprehensive audits by qualified professionals of relevant programs at the facilities to monitor compliance with the facilities' policies and procedures and the terms of this Agreement. A comprehensive audit shall be conducted at each facility within one year of the implementation of the quality assurance plan, and on a quarterly basis thereafter. A comprehensive audit shall include:

   (a) Review of relevant documents for both adequacy of documentation and for quality of services.

(b) Interviews with relevant staff, including not only those staff directly involved in the service being audited, but also other staff who may have relevant information, including administrators.
(c) Interviews with youth.
(d) Observation of relevant activities.
(e) Steps to determine whether there are youth in the facilities who should be receiving relevant services but are not, including random re-evaluations of recent intakes and interviews of line staff who may be aware of youth who should be, but are not, receiving relevant services.
(f) Written findings and the development of plans of correction.
(g) Review of the adequacy of each facility's internal quality assurance activities when relevant.

2. Regular unannounced site visits, in addition to comprehensive audits, to monitor compliance with policies and procedures and the terms of this Agreement, and to conduct other quality assurance activities.

3. Monitoring and review of serious incidents relevant to the area of care supervised by the quality assurance program, in accordance with written guidelines that determine when such review is triggered. Such review shall involve debriefings with relevant staff to determine whether policies, practices, or training should be modified to minimize the risk of such events in the future.

4. Analysis of relevant data to measure compliance with the facilities' policies and the terms of this Agreement.

5. Regular reports at least once every six months summarizing quality assurance activities, findings, and recommendations.

M. The term "qualified mental health professional" shall mean a physician, psychiatrist, psychologist, physician's assistant, nurse, psychiatric nurse, social worker or others who by virtue of their education, credentials, and experience, are qualified and licensed by the State of Arizona to evaluate and care for the mental health needs of residents in the facilities.

N. The term "serious suicide attempt" shall mean any suicide attempt which results in life-threatening injury and/or off-site medical treatment.

## III. SUBSTANTIVE REMEDIAL MEASURES

### A. SUICIDE PREVENTION

#### 1. Training

(a) The DOJ acknowledges that ADJC has designed and implemented a suicide-prevention training curriculum. ADJC shall continue to conduct suicide prevention training for youth contact staff. Within six months of the effective date of this Agreement, the State shall review and, to the extent necessary, revise its suicide prevention training curriculum, which shall include the following topics:

(1) the ADJC suicide prevention policy as revised consistent with this Agreement;
(2) why facility environments may contribute to suicidal behavior;
(3) potential predisposing factors to suicide;
(4) high risk suicide periods;
(5) warning signs and symptoms of suicidal behavior;
(6) case studies of recent suicides and serious suicide attempts;
(7) mock demonstrations regarding the proper response to a suicide attempt; and
(8) the proper use of emergency equipment.

(b) Within six months of the effective date of this Agreement, the State shall ensure that all existing and newly hired direct care, medical, and mental health staff, receive an initial eight-hour training on suicide prevention curriculum described in ¶ (1) above. Following completion of the initial training, the State shall ensure that two hours of refresher training on the curriculum are completed by all direct care, medical, and mental health staff each year.

**2. Identification/Screening**

(a) The DOJ acknowledges that the State has extensively revised its suicide prevention policies and procedures. Within six months of the effective date of this Agreement, the State shall revise its suicide prevention policy to reflect that any staff member who observes and/or identifies a youth as potentially suicidal shall immediately place the youth on suicide precautions and refer them to a qualified mental health professional for assessment.

(b) The State shall continue to ensure that any staff member who places a youth on suicide precaution shall document the initiation of the precautions, level of observation, housing location, and conditions of the precautions.

(c) The State shall continue to develop and implement policies and procedures to ensure that the documentation described in ¶ (b) above is provided to mental health staff and that in-person contact is made with mental health staff to alert them of the placement of a youth on suicide precaution.

(d) The State shall continue to ensure that a formalized suicide risk assessment by a qualified mental health professional is performed within an appropriate time not to exceed 24 hours of the initiation of suicide precautions.

(e) The State shall continue to ensure that mental health staff thoroughly review a youth's clinical and master files for documentation of any prior suicidal behavior.

(f) The State shall continue to ensure that newly arrived residents are placed under close observation until they can be assessed by mental health staff.

(g) The State shall develop and implement policies and procedures to expeditiously obtain from the juvenile divisions of all Superior Courts in the state, as well as all county juvenile detention facilities and/or placement settings from which the youth is committed, all pertinent records with the youth upon commitment to ADJC within one week of the youth's arrival.

(h) The State shall develop and implement policies and procedures to ensure that ADJC creates an integrated medical and mental health record system for each youth. The State shall promulgate a policy requiring that all ADJC mental health staff shall be required to utilize progress notes to document each interaction and/or assessment of suicidal youth.

(i) The State shall continue to develop, implement, and comply with policies and procedures for communicating the management needs of suicidal youth among direct care, medical, and mental health personnel.

**3. Safe Housing of Suicidal Youth**

(a) The DOJ acknowledges that the State has taken significant steps to remedy physical plant hazards to suicidal youth. The State shall continue its remedial plans to ensure that all youth placed on suicide precaution are housed in suicide-resistant rooms (i.e. rooms without protrusions that would enable youth to hang themselves).

(b) The State now requires that all direct care staff carry packs on their person containing extraction tools and CPR microshields. The State shall continue to ensure that direct care staff have immediate access to appropriate equipment to intervene in the event of an attempted suicide.

**4. Supervision**

(a) The State shall develop and implement a "step-down" level of observation whereby youth on suicide precaution are released gradually from the more restrictive levels of supervision to less restrictive levels for an appropriate period of time prior to their discharge from suicide precaution.

(b) The State shall ensure that all youth discharged from suicide precaution continue to receive mental health treatment in accordance with a treatment plan developed by a qualified mental health professional.

**5. Intervention**

(a) The State has revised ADJC's suicide prevention policy to specify the proper role of staff in responding to a suicide attempt by youth and shall continue to ensure that staff are trained in appropriate response techniques and the use of emergency equipment on an annual basis.

**6. Mortality Review**

(a) The State shall continue to ensure that all completed suicides and serious suicide attempts are reviewed by the Internal Review Committee for policy and training implications.

## B. JUVENILE JUSTICE

### 1. Grievance System

(a) Upon the effective date of this Agreement, the State shall provide youths with an effective, reliable process to raise grievances without exposing them to retribution from staff. The State shall:

(1) Ensure that at the time of orientation, newly arrived youths receive a clear explanation of the grievance process, and that youths' understanding of the process is at least verbally verified.
(2) Ensure that, without any staff involvement, youths can easily obtain grievance forms and submit grievances directly.
(3) Ensure that there are no formal or informal preconditions to the completion and submission of a grievance.
(4) Ensure that grievances are examined and investigated by persons other than staff and the direct supervisors of those staff, who supervise the youth making the grievance. This provision shall not be interpreted to exclude the possible use of mediation in accordance with ADJC policy and procedure to resolve grievances.
(5) Ensure that a youth who files a grievance is informed in writing of the results of the grievance process.

### 2. Protection from Harm

(a) The DOJ acknowledges that the State has made significant efforts to improve the policies, procedures, and practices for the reporting and investigation of allegations of abuse of a youth made by any person, including youth. Effective immediately upon the effective date of this Agreement, the State shall continue to make all reasonable efforts to ensure that all youth are protected from harm and that all

allegations of abuse, including but not limited to physical and sexual abuse, are investigated in a timely and thorough manner by ADJC's Investigations and Inspections Unit, or other appropriately trained investigative personnel, as designated by the ADJC Director.

(b) Each youth entering the facility shall be given an orientation that shall include simple directions for reporting abuse and assuring youth of their right to be protected from retaliation for reporting allegations of abuse.

(c) In collaboration with the local office of Child Protective Services and with local law enforcement, the facilities shall develop and implement policies and procedures regarding steps that must be taken immediately upon the reporting of an allegation of abuse in order to preserve evidence and to protect youths pending an investigation of the abuse.

(d) Each youth who reports to the Health Unit with an injury shall be questioned by a nurse or other health care provider outside the hearing of other staff or youths, regarding the cause of the injury. If, in the course of the youth's infirmary visit, a health care provider suspects abuse, that health care provider shall immediately:

(1) take all appropriate steps to preserve evidence of the injury (e.g. photograph the injury and any other physical evidence);
(2) report the suspected abuse to the Investigations and Inspections Unit, which shall in turn report it to the local Child Protective Services office;
(3) document adequately the matter in the youth's medical record; and
(4) complete an incident report.

(e) Within six months of the effective date of this Agreement, the State shall develop and implement policies directing how, when, and to whom (including to Child Protective Services, law enforcement officials, and/or facility administrators) allegations of abuse shall be referred and investigated. A referral to Child Protective Services shall be made in accordance with Arizona state law, and an abuse investigation shall be warranted, whenever:

(1) a health care provider, staff or youth reports suspected abuse; or
(2) an incident report, use of force report, injury report, grievance or other source of information provides a credible basis for concluding that abuse may have occurred.

(f) Effective six months from the effective date of this Agreement, the facilities shall provide appropriate behavior management/crisis intervention training to staff before staff may work in direct contact with youths.

(g) All staff shall continue to complete successfully competency based training in behavior management/crisis intervention before working directly with youths.

(h) The State shall evaluate regularly the training and the trained techniques through quality assurance data (including data correlating use of force incidents and abuse allegations with data measuring the efficacy, occurrence of, and staff participation in training programs), Performance based Standards data, evaluations from training program participants, Incident Review Team reviews of use of force incidents, abuse investigation reports, interviews with staff and youths, and other means evidencing the efficacy of the trained techniques in managing behaviors and crisis

interventions at the facilities. As warranted, the facilities shall adjust the training curriculum based on such evaluations.

**3. Staffing**

(a) The DOJ acknowledges that the State has embarked on a plan to add necessary additional direct care staff positions. The State shall ensure that there are sufficient numbers of adequately trained direct care and supervisory staff to supervise safely youth and protect youth from harm.

(b) The State shall continue to ensure that there are adequate staff to provide adequate security for the facilities; permit youth to use the bathroom facilities in a timely manner and provide a sufficient level of supervision to allow youth reasonable access to medical and mental health services, education, and adequate time spent in out-of-room activities.

**4. ADJC's Investigations and Inspections Unit and Quality Assurance Team**

(a) ADJC has created the Investigations and Inspections Unit within ADJC to consolidate and supplement quality assurance activities already undertaken by ADJC in accordance with this Agreement. ADJC has hired, from outside ADJC, an Administrator for the Investigations and Inspections Unit, who reports directly to the Director of ADJC. ADJC shall continue to provide the Administrator with sufficient staff and resources to perform the tasks required by this Agreement.

(b) ADJC shall create a Quality Assurance Team, the Administrator of which shall report directly to the Director of ADJC. The Quality Assurance Team shall work in conjunction with the Investigations and Inspections Unit.

(c) The Investigations and Inspections Unit and the Quality Assurance Team, in coordination, shall be responsible for the following tasks:

(1) monitoring compliance with Department policies and procedures in the facilities, with emphasis on policies and procedures relating to issues addressed in this Agreement;
(2) conducting audits and other quality assurance activities as described in ¶ 4(d) below;
(3) reviewing and, where appropriate, investigating allegations of child abuse;
(4) assuring the implementation and adequacy of the educational, medical, and mental health quality assurance programs required by this Agreement; and
(5) coordinating quality assurance activities performed by various Division offices to prevent unnecessary duplication of efforts.

(d) The Quality Assurance Team, in collaboration with the Inspections and Investigations Unit, shall create and implement a written quality assurance program, as defined in the Definitions Section of this Agreement, as supplemented below:

(1) The comprehensive audits as specified in the Definitions Section shall include:

i. inspection of institutional, medical and educational records, unit logs, incident reports, use of force reports, major disciplinary reports, documentation of room checks by line staff, etc.;
ii. interviews with staff, administrators, and youth at each facility;
iii. where appropriate, interviews with the parents or other care givers of youth confined in the facilities;
iv. inspection of the physical plant;
v. determination of compliance with the

facilities' policies, including those relating to: suicide prevention, staffing levels and youth supervision, use of force, disciplinary practices, positive behavior management programs, grievance procedures, sanitation, youth-on-youth violence, conditions in security units, adequacy of counseling and rehabilitative services, and the adequacy of all facility documentation; and

vii. a written report recording the findings of the audit.

(2) Unannounced periodic site visits will occur at each facility. Investigations and Inspections Unit staff and the Quality Assurance Team shall have complete and unimpeded access to the facilities, their records, staff, and residents. Staff at the facilities shall be informed of their obligation to cooperate in all Investigations and Inspections Unit and Quality Assurance Team operations.

(3) Investigation of significant incidents (as defined by the Administrator of the Investigations and Inspections Unit) shall include: deaths; serious injuries or hospitalizations; suicides and serious suicide attempts; escapes or other serious breaches of security; and medical emergencies. The investigation shall result in a written report to the Director of ADJC and shall include findings and recommendations. The Director of the Investigations and Inspections Unit shall issue protocols for coordination of such investigations with other law enforcement, administrative disciplinary, or other quality assurance investigations.

(4) Review of all incidents of use of force and the use of separation in excess of 24 hours shall be conducted. The Investigations and Inspections

Unit shall be sent copies of every use of force report. The Administrator of the Investigations and Inspections Unit shall establish criteria under which such incidents shall be independently investigated for compliance with the facilities' policies. Such criteria shall include review of all incidents of use of force resulting in serious injury or hospitalization.

(5) Review of grievances raising significant issues (as defined by the Administrator of the Investigations and Inspections Unit) shall be conducted.

(6) When, through audits, investigations or other quality assurance activities, there are findings of substantial non-compliance with the requirements of the facilities' policies or this Agreement, a plan of correction shall be developed.

(e) ADJC shall hire sufficient numbers of qualified investigators for the Investigations and Inspections Unit to permit prompt and thorough investigations of all allegations of abuse, including incidents of violence, use of force, serious injury or sexual misconduct. ADJC shall also ensure the investigators are provided initial and on-going training, and review and ensure the quality of all Investigations and Inspections Unit investigations.

(f) ADJC shall develop and implement policies and procedures specifying that abuse investigations may be initiated by Investigations and Inspections Unit staff's review of grievances, incident reports, use of force reports, and injury reports when it appears that abuse may have occurred but was not reported. Abuse investigations also may be initiated by Investigations and Inspections Unit staff as a result of staff tours of facilities and interviews with youth, parents, or staff.

(g) The Administrator of the Investigations and Inspections Unit shall issue policies and procedures regarding steps that must be taken upon the reporting of an allegation of abuse in order to preserve evidence and protect youth pending an Investigations and Inspections Unit investigation.

(h) The Administrator of the Investigations and Inspections Unit shall develop and implement an Investigations Manual and training program for abuse investigations. The training shall include specific instruction by qualified individuals on the conduct of abuse investigations relating to youth, and investigations within a correctional setting, and shall include an annual in-service training requirement.

(i) The Administrator of the Investigations and Inspections Unit shall ensure that the Investigations Manual contains guidance and information regarding the following requirements:

(1) An interview with the alleged victim and perpetrator;
(2) Identification and interview of all possible witnesses, including other youth and staff in the building or unit at the time of the incident;
(3) Examination of the youth and staff member's institutional and personnel records, including any prior allegations of abuse against the staff person whether substantiated or not;
(4) Examination of any potentially relevant medical records; and
(5) Determination whether any facility staff knew of but did not report the alleged abuse, or provided false information during the investigation.

(j) The Administrator of the Investigations and Inspections Unit shall continue to ensure that a written report of each investigation of an allegation of abuse is produced. The report shall describe steps taken during

the investigation, the information obtained, and the factual conclusions reached by the investigators finding the allegation substantiated, not resolved or unfounded. The Investigations and Inspections Unit shall continue to keep records of all of its investigations, and any disciplinary action taken in response to the investigation, including investigations that do not substantiate abuse.

(k) The Director of ADJC, upon receipt of an investigative report for allegations of abuse, shall approve or disapprove the report's conclusion that the allegation was substantiated, not resolved or unfounded, or shall order further investigation. Only the Director of ADJC shall have the authority to disapprove a report's conclusion that the allegation of abuse was substantiated. In such cases, the Director must explain the reason for such a decision in writing for personnel reasons. ADJC shall ensure that prompt and appropriate personnel actions are taken in response to substantiated findings.

(l) ADJC shall develop and implement policies and procedures to address management problems that are uncovered during the course of an Investigations and Inspections Unit investigation (e.g., inadequate staffing, location of abuse or fights, etc.). Corrective action plans will be developed to address these problems in an effort to prevent them from reoccurring.

**5. Disciplinary Confinement/Due Process**

(a) The DOJ acknowledges that the State has enacted policies and procedures regarding the use of exclusion, in-room confinement, lock down, large group, or other such restrictions to ensure usage when strictly appropriate consistent with facility security. The State shall continue to implement those policies and procedures, and shall monitor those policies and

procedures for compliance, as described in ¶¶ 4(c) and 4(d) above.

(b) The State shall continue to ensure that youths confined in Separation for more than 24 hours receive a due process hearing by an impartial official to determine whether cause exists for continued confinement.

## C. SPECIAL EDUCATION

1. The State shall, at all times, provide all youth confined at the facilities with special education services as required by IDEA, 20 U.S.C. §§ 1400 et seq., and regulations promulgated thereunder, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and regulations promulgated thereunder, and this Agreement.

2. The State shall retain a Superintendent of Education who shall meet minimum standards as specified by the State. The State shall provide the Superintendent with sufficient staff and resources to perform the tasks required by this Agreement, including:

   (a) Oversight of the special education programming in the facilities, including development and implementation of policies 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 Agreement; and
   (c) Development and implementation of a quality assurance program for special education services.

3. The DOJ acknowledges that the State has taken significant steps to address deficiencies in special education services, including improved assessments, compliance with Individual Education Plan ("IEP") requirements, tracking the number of hours special

education students are not in school and improved training. The State shall continue to develop and implement policies and procedures, consistent with federal regulations, to identify students who are receiving special education services. The Superintendent 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 procedures shall include:

(a) Guidelines for interviewing youth 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) Procedures identifying criteria under which staff or teachers must refer a student for evaluation for special education eligibility, including identifying criteria under which youth whose behavior has led to repeated exclusion from class must be referred for evaluation;
(d) Policies describing the required activities of Student Support Team pre-referral and support team functions;
(e) Policies describing the requirements for comprehensive evaluation procedures to determine eligibility for special education services; and
(f) Policies describing the criteria for multi-disciplinary team decision-making regarding eligibility for special education.

4. The State shall continue to ensure that qualified professionals participate in the process for

determining special education eligibility, as required by federal regulations.

5. The State shall continue its collaboration with the Arizona Department of Education to ensure appropriate parent, guardian or surrogate parent involvement in evaluations, eligibility determinations, placement and provision of special education services.

6. ADJC shall continue to ensure that if a youth is discharged from the facilities before the completion of the educational evaluation required above is complete, ADJC 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.

7. Individual Education Plans

(a) ADJC shall, in a reasonable time period, create and/or implement an IEP, as defined in 34 C.F.R. § 300.340, for each youth who qualifies for an IEP. As part of satisfying this requirement, ADJC shall conduct required re-evaluations of IEPs, adequately document special education services, and comply with requirements regarding parent, surrogate, and student participation in the IEP process. ADJC shall hold team meetings once per week, if necessary, to develop IEPs for qualified special education students in accordance with federal regulations.

(b) In developing or modifying the IEP, ADJC shall ensure that the IEP reflects the individualized educational needs of the youth. 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, ADJC shall provide an appropriate alternate educational setting. ADJC 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. ADJC shall employ or contract with appropriate professionals to ensure the timely availability of related services to youths in the facilities.

(c) The Superintendent shall continue to develop and implement a system to promote parent, guardian, and surrogate parent involvement in IEP development and placement meetings. This shall include holding such meetings through telecommunications technology or during times reasonably calculated to accommodate the schedules of parents, guardians, or surrogate parents. ADJC shall post notices in each facility stating the rights of students, parents or guardians regarding education services, including special education services.

(d) The Superintendent of Education shall develop and implement an education staffing plan to ensure adequate staff to comply with the terms of this Agreement. This plan shall provide for:

(1) Sufficient numbers of certified special education teachers and staff to provide all youths 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

(2) 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 and educational plans.

(e) ADJC will continue to designate an individual at each facility who is responsible for ensuring compliance with all provisions in this Agreement related to

special education services.

8. Section 504 Plans

(a) The State shall ensure that appropriate Section 504 plans are developed for all eligible youth. The State shall employ two Section 504 coordinators/guidance counselors at Adobe Mountain and one such position at each of the other facilities to develop and implement ADJC's Section 504 program and provide additional educational counseling services to youth.

9. Training and Quality Assurance

(a) The Superintendent of Education shall continue to 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 Agreement.

(b) The Superintendent of Education shall be charged with quality assurance of all special education services at all of the facilities. The Superintendent of Special Education shall, in coordination with the ADJC Quality Assurance Team, 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 ADJC policy and the IDEA.

**D. MEDICAL CARE**

1. The State shall ensure that youth in the facilities receive adequate, appropriate and timely medical, dental, and nursing care to meet the individualized needs of youth.

2. The State shall ensure there is a sufficient number of adequately trained nursing staff on all shifts to provide medical and nursing care to youth as needed. If, despite the State's good faith efforts to recruit and retain nursing staff, nursing shortages significantly impede substantial compliance with the paragraph, the State may utilize a sufficient number of adequately trained paramedics, as necessary, to provide medical coverage during the overnight shifts at the facilities.

3. The State shall continue to implement a nursing quality assurance process, including audits of medical charts and medication administration records to monitor nursing assessments, care and documentation. Where problematic trends are identified, the State shall timely develop, implement, and monitor a corrective action plan.

4. The State shall develop and implement a formal system for the pharmacist to document alerts to the physicians regarding information about any youth's medication issues.

**E. MENTAL HEALTH CARE**

1. The State shall ensure that adequate mental health care and treatment services are provided to youth in the facilities.

2. The State shall secure a Deputy Director, who shall meet minimum standards as specified by the State, to oversee the mental health care and rehabilitative treatment of youth at the facilities. The State shall provide the Deputy Director with sufficient staff and resources to perform the tasks required by this Agreement, including:

   (a) Oversight of mental health care in the facilities, including monitoring the performance of

psychologists, counselors and private psychiatric contractors, and the development and implementation of policies and training programs;

(b) Monitoring whether staffing and resources are sufficient to provide adequate mental health care and rehabilitative treatment services to the facilities' youth and to ensure compliance with this Agreement; and

(c) Development and implementation of a quality assurance program for mental health care in coordination with the Quality Assurance Team.

3. Intake Screening and Assessment

(a) The Deputy Director shall continue to develop and utilize policies and screening instruments for qualified mental health professionals to conduct proper intake screenings at each facility as soon as practicable upon the youth's admission. When no such professional is onsite to conduct the screening, it shall be conducted by another staff member who has received specific training in conducting such assessments. The staff member shall, as soon as is practicable, then contact a qualified mental health professional and confer. A psychologist or psychiatrist shall review and sign the mental health needs assessment.

(b) The Deputy Director shall issue policies and procedures to assure appropriate action when an intake screening indicates that a youth is taking, or prior to admission may have been prescribed, psychotropic medications. This shall include appropriate steps to contact the prescribing psychiatrist when necessary and referral to the facility's psychiatrist for evaluation.

(c) The Deputy Director shall develop and implement policies and procedures for referral of youth for mental health evaluations based on the results of

a mental health and suicide risk screening or a mental health needs assessment, other referrals from staff, or the conduct of the youth during the course of confinement at the facilities. These procedures shall require referrals when:

(1) A youth's mental health poses a risk of physical harm to him/herself or others or the youth has been diagnosed as mentally ill;
(2) The youth exhibits mental health problems but does not have a current mental health diagnosis from a psychologist or psychiatrist;
(3) The youth is determined to be taking psychotropic medications, or has taken them in the past; or
(4) The youth requires a change of medication prescribed as a result of any mental health condition.

(d) The Deputy Director shall, if a need for mental health treatment is indicated, ensure the youth receives the treatment indicated.

(e) Each youth receiving psychotropic medication or otherwise in need of mental health treatment shall have a treatment plan in accordance with professional standards of practice. The treatment plan shall be developed by a treatment team pursuant to policies developed by the Deputy Director, which shall include identification of the required members of the treatment team.

(f) The Deputy Director shall develop and implement policies and procedures for the required content of treatment plans, which shall include:

(1) That the treatment plan be individualized;
(2) An identification of the mental and/or behavioral health issues to be addressed;

(3) A description of any medication or medical course of action to be pursued, including the initiation of psychotropic medication;
(4) A description of planned activities to monitor the efficacy of any medication or the possibility of any side effects;
(5) A description of any behavioral management plan or strategies to be undertaken;
(6) A description of any counseling or psychotherapy to be provided;
(7) A determination of whether the type or level of treatment needed can be provided in the youth's current placement;
(8) A plan for monitoring the course of treatment; and
(9) A transition plan for when the youth leaves the care of the State, which 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; and providing assistance in making initial appointments with service providers. However, nothing in this Agreement shall make ADJC responsible for providing mental health services to youths no longer in the custody of the State.

(g) The Deputy Director 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 professional standards.

## F. MONITORING AND ENFORCEMENT

1. The parties have selected a Consultants Committee ("Committee") consisting of Russell Van Vleet, Lindsay Hayes, Peter Leone, and Louis Kraus to assist in monitoring compliance with all of the provisions of this Agreement. Mr. Van Vleet shall be the chairperson of the Committee. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Committee's activities, reports, findings, or recommendations. The cost for the Committee's fees and expenses shall be borne by the State. No Consultant shall be removed without good cause and only with the consent of both the State and the DOJ. In the event a Consultant becomes unavailable, the parties shall jointly select a replacement Consultant. In the event the parties can not agree upon a replacement, each party shall submit the names of three candidates to the Court and the Court shall select the replacement.

2. The Committee shall have full and complete access to the facilities, all facility and ADJC records, staff, and residents.

3. The Committee shall have full and complete access to the Director of ADJC or his designees and to the staff and records of the Investigations and Inspections Unit and the Quality Assurance Team. The Director of ADJC shall direct all employees to cooperate fully with the Committee. Any confidential information or documents not otherwise subject to Arizona's Public Records Law, obtained pursuant to this paragraph shall not be disseminated to any person not a party (or an employee or contractor of a party) to this Agreement, including the media, unless consented to by the parties. Such information may, however, be used in any proceedings to enforce the requirements of this Agreement.

4. The Committee shall be permitted to initiate and receive *ex parte* communications with all parties.

5. The Committee shall provide the parties with reports describing the steps taken by ADJC to implement this Agreement and evaluate the extent to which ADJC has complied with the requirements of the Agreement. Such reports shall be issued every six 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.

6. The Committee shall have a budget sufficient to allow it to carry out the responsibilities described in this Agreement, and may contract with such other experts or consultants as they may deem appropriate. The budget provided the Committee and any experts or consultants with whom the Committee contracts shall be subject to the approval of the State and the DOJ.

## G. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

1. With reasonable notice to counsel for the State, the DOJ shall have full and complete access to the facilities, and to youth records, staff records, staff, and residents of those facilities. The DOJ shall have the right to conduct confidential interviews with staff, residents, and former residents. Any confidential information or documents not otherwise subject to Arizona's Public Records Law obtained pursuant to this paragraph shall not be disseminated to any person not a party (or an employee or contractor of a party) to this Agreement, including the media, unless consented to by the parties. Such information may, however, be used in any proceedings to enforce the requirements of this Agreement.

2. The DOJ shall be provided, upon request, copies of all audits and periodic reports produced by the Investigations and Inspections Unit or the Quality

Assurance Team.

3. The State shall provide the DOJ with copies of any reports or other facility documents reviewed by the Investigations and Inspections Unit or the Consultant, upon request.

4. Within 30 days of receipt of written questions from the DOJ concerning the State's compliance with this Agreement, the State shall provide the DOJ with written answers and any requested documents regarding the State's compliance with the requirements of this Agreement. The State shall have additional time when reasonable due to the nature of the written questions.

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

## H. IMPLEMENTATION AND TERMINATION

1. The State has provided copies of existing policies and procedures to the DOJ on June 28, 2004. The State shall continue to refine and revise the policies and procedures as necessary in conjunction with comments and discussions with the DOJ, and will send all revised policies and procedures to the DOJ for review and comment as they are promulgated. The State represents that it has trained employees in the facilities with respect to these policies and procedures, has documented employee review of same in employee personnel files, and will continue to train and document training as to all new facility employees.

2. The State shall ensure that all current and future ADJC employees understand and implement the terms of this Agreement.

3. This Agreement shall constitute the entire integrated Agreement of the parties. With the exception of DOJ's findings letter referenced in ¶ D of the Introduction hereof, 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. If the DOJ believes that the State has failed to fulfill any obligation under this Agreement, the DOJ will, prior to seeking judicial action to enforce the terms of this Agreement, give written notice of the failure to the State. The State shall have three months from the date of such notice to cure the failure, or such additional time as is reasonable due to the nature of the issue and agreed upon by the parties, and provide the DOJ with sufficient proof of its cure. At the end of the three month period, or such additional time as is reasonable due to the nature of the issue and agreed upon by the parties, in the event that the DOJ determines that the failure has not been cured, the DOJ may request judicial action without further notice, other than that notice required by the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Arizona. The DOJ commits to work in good faith with the State to avoid enforcement actions. In the event the parties are unable to resolve disputes arising under this Agreement, the parties further agree to request the informal participation of the Court, as necessary, to facilitate discussions or resolution of disputes between the parties. However, in case of an emergency posing an immediate threat to the health or safety of youths, the United States shall notify the State but may omit any period for cure described herein, before seeking judicial action.

4. The State shall designate an Agreement Coordinator to coordinate the State's efforts in reporting to the DOJ

and to serve as a point of contact.

5. This Agreement shall terminate three years from the effective date of the Agreement. The Agreement or portions thereof may also terminate earlier than three years from the effective date if the DOJ agrees that the State has maintained substantial compliance with each of the provisions of the Agreement for at least eighteen months. 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.

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

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

**FOR THE UNITED STATES:**

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MICHAEL BRANHAM, Director
Arizona Department of Juvenile Corrections