

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

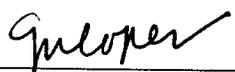
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Superior Court of the
District of Columbia
Washington, D.C.

JERRY M., *et al.*,)
)
 Plaintiffs,)
 v.)
)
)
 DISTRICT OF COLUMBIA, *et al.*,)
)
 Defendants.)
 _____)

Civil Action No. 1519-85
J. Dixon

**NOTICE OF FILING MAY 29, 2014 REVISED FINAL
APPROVED AMENDED COMPREHENSIVE WORK PLAN**

The Special Arbiter hereby submits the attached May 29, 2014 Revised Final Approved Amended Comprehensive Work Plan on behalf of the parties to incorporate orders dated November 19, 2013 and April 7, 2014 related to the August 16, 2013 Revised Final Approved Amended Comprehensive Work Plan.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Filing and attached May 29, 2014 Revised Final Approved Amended Comprehensive Work Plan were served on the following counsel of record in this matter by electronic mail on this 29th day of May, 2014:

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Grace M. Lopes

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JERRY M., <i>et al.</i> ,)	
)	Civil Action No. 1519-85
Plaintiffs,)	J. Dixon
v.)	
)	
DISTRICT OF COLUMBIA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**MAY 29, 2014 REVISED FINAL APPROVED
AMENDED COMPREHENSIVE WORK PLAN**

This Revised Final Approved Amended Comprehensive Work Plan (“Revised Work Plan”) incorporates orders relating to the December 5, 2007 Final Approved Comprehensive Work Plan that are dated December 12, 2007; January 16, April 1, April 25, August 22, September 17, October 1, and December 3, 2008; February 27, March 17, March 31, April 8, June 11, June 29, September 21, November 23, and December 9, 2009; February 1, April 9, April 30, and December 22, 2010; September 6 and November 7, 2011; June 28, July 23, and November 2, 2012; July 3 and November 19, 2013; and April 7, 2014.

The Final Approved Amended Comprehensive Work Plan (“Work Plan” or “Plan”) modified the November 7, 2007 Work Plan proposal in order to address a concern identified by the Court during a November 28, 2007 telephone conference with the Special Arbitrator. The Plan was agreed upon by the parties and endorsed by the Special Arbitrator. It was intended to implement the Court’s orders dated May 13, 2004 and

December 26, 2006. The Special Arbiter recommended that the Court approve the Work Plan for the reasons outlined in the Notice of Filing that accompanied the Work Plan.

Elements of the Work Plan

The Work Plan is divided into twelve goals intended to reflect the most essential purposes of the Consent Decree and the other substantive orders in this case. Progress toward achieving each goal will be measured and tracked by a series of corresponding indicators which are keyed to timelines. Each indicator includes a quantitative and/or qualitative outcome expressed in the Plan as a final performance standard. The final performance standards constitute the exit criteria. The Work Plan is intended to provide the defendants with the discretion and flexibility to manage their efforts to meet these goals as they deem appropriate.

For some of the indicators, a process for establishing the baseline performance levels and setting interim performance levels is defined. These interim performance levels are referred to as benchmarks or milestones. In those instances in which an indicator includes a benchmark or milestone reflecting an interim performance level, the corresponding timelines are not intended to serve as deadlines which must be achieved. Rather, the timelines represent the parties' current estimates of time frames within which certain interim performance targets may be met. The parties recognize the dynamic and complex nature of the institutional reform process and anticipate that defendants may not meet all of the interim performance levels specified in the Plan's benchmarks or milestones within the estimated timelines. Although defendants must demonstrate progress toward meeting the interim performance levels over time, the parties agree the failure to meet an interim performance level within the timeline estimated in the Work

Plan will not necessarily indicate that compliance efforts have been unsuccessful and shall not constitute grounds for enforcement.

As described above, some indicators include interim performance levels and final performance standards. Other indicators include only final performance standards because the parties anticipate that compliance with the final standards will be reasonably prompt. Regardless of whether an indicator has a corresponding interim performance level, the Special Arbiter will monitor defendants' progress and compliance with the terms of the Work Plan, and report to the Court and parties as required by the May 13, 2004 and December 26, 2006 orders.

The final performance standards and/or interim performance levels are already specified for some of the indicators in the Plan. However, for other indicators, the Plan describes a prospective process for establishing the final performance standards and/or interim performance levels. All indicators, interim performance levels and final performance standards that are subject to a prospective development process shall be submitted by the parties and/or the Special Arbiter to the Court for approval and expedited review.

The parties and the Special Arbiter intend to confer in a collaborative spirit regarding the Special Arbiter's draft reports. The parties recognize the Special Arbiter may report on any matter she deems relevant to the achievement of the Work Plan, but it is anticipated the reports will focus on defendants' progress toward meeting the exit criteria, including the interim performance standards. The parties and Special Arbiter recognize that defendants may elect to phase-in their implementation efforts as they deem

appropriate consistent with the deadlines established in the Plan, and the Special Arbiter will take this into account in assessing defendants' progress.

The Plan adopts an incremental approach to reducing the Court's monitoring and supervision of this lawsuit. Although defendants are required to sustain specific performance standards until the final dismissal and termination of this lawsuit, in certain designated instances, upon a finding by the Special Arbiter that a specific performance standard has been achieved and sustained as required, the Plan provides that subject to the approval of the Court, monitoring related to the indicator shall cease,¹ and the indicator may be vacated, and the corresponding order(s) may be terminated prior to the final dismissal and termination of this lawsuit.² In addition, the Plan contemplates that if the Special Arbiter finds that all of the performance standards related to either the Youth Services Center ("YSC") or Oak Hill ("OHYC") and/or its successor facility have been satisfied before all of the performance standards related to the other facility have been satisfied, upon approval by the Court, the facility which has satisfied the performance standards applicable to that facility shall no longer be subject to monitoring, and the related indicators may be vacated, and the corresponding order(s) may be terminated prior to the final dismissal and termination of this lawsuit.

The final performance standards are divided into two types of exit criteria: mandatory and conditional. The parties agree that each of the mandatory criteria must be achieved and sustained for the time periods specified in the Plan before the Court may

¹ However, there are two designated instances in which a finding by the Special Arbiter that a specific performance standard has been achieved and maintained as required results in cessation of monitoring without advance approval from the Court. See §§VII.A.2.b. and VII.B.3.b.

² In the event monitoring has ceased but the Court has not approved the vacatur of the specific indicator(s) and/or the termination of the related order(s), plaintiffs may seek Court intervention, including renewed monitoring, for material violations of the related order(s) that are not isolated or *de minimis* and that constitute a pattern and practice of material noncompliance.

terminate this lawsuit. The parties contemplate that if the principal goals of the Work Plan have been achieved after all of the mandatory and a number of conditional criteria have been satisfied, the parties may agree that compliance with the remaining conditional criteria can be achieved under a contractual arrangement that would not require the continuing supervision of the Court or monitoring by the Special Arbiter. If the parties are in agreement at some point in the future that such a point has been reached, the parties will consult with the Special Arbiter and will present to the Court a request to dismiss the lawsuit pursuant to the applicable legal standards for termination of consent decrees, and to resolve issues regarding the remaining conditional exit criteria by contract.

Dispute Resolution, Monitoring and Enforcement

Disagreements between the parties on specific terms of the Work Plan shall be resolved by the Special Arbiter pursuant to the dispute resolution provisions of the May 13, 2004 Memorandum of Agreement (“MoA”). The Work Plan shall be monitored and enforced pursuant to the requirements of the MoA as modified by the December 26, 2006 order, except that with respect to matters of non-compliance that do not substantially and adversely affect implementation of the Work Plan, the Special Arbiter shall not have the discretion to issue such directives as she shall deem appropriate to achieve compliance. The parties recognize the Special Arbiter has exercised the discretion to issue directives in a very limited set of appropriate circumstances; however, the parties and the Special Arbiter agree this exception is warranted because of defendants’ progress and the outcome-based nature of the Work Plan. Other than the above-described limitation on the Special Arbiter’s authority to issue directives, the MoA and orders of May 13, 2004 and December 26, 2006 shall remain in full force and effect. As required by the MoA,

upon the Court's approval of the Work Plan, plaintiffs shall withdraw their Motion for Transitional Receivership.

Following the Court's approval and adoption of the Work Plan, except as set forth herein, the Consent Decree and all related implementing orders shall be unenforceable during the time period the Work Plan shall be in effect.³ However, during such period, plaintiffs may seek court intervention for material violations of the Consent Decree in extraordinary circumstances that present imminent danger to the safety and well-being of members of the plaintiff class. In addition, if defendants do not satisfy any of the performance standards for §I.A.3. of the Work Plan, plaintiffs may enforce the Consent Decree only insofar as enforcement of the shelter house and group home waiting list and single room requirements and the corresponding orders imposing contempt fines for violations of such requirements.⁴ Plaintiffs expressly waive the right to seek imposition of any contempt fines that have not yet been and/or may be imposed up to the filing date of any motion to enforce the single room and/or shelter house and group home waiting list requirements.

Finally, plaintiffs may seek court intervention for material deviations that are not isolated or *de minimis* and that constitute a pattern and practice of material noncompliance with the following Consent Decree requirements: access to telephone calls; access to counsel; toilet access; home visits; handbook/rights/rules of conduct;

³ In addition to the MoA and the orders of May 13, 2004 and December 26, 2006, the following orders shall remain in full force and effect: Amended Order dated August 30, 2004 (contempt fine funds, accounts administered by the Special Arbitrator, accounting and audit requirements); Order dated June 26, 2006 (grant of quasi-judicial immunity); and, Order dated December 7, 2006 (unsealing pleadings, documents and proceedings).

⁴ July 24, 1986 Consent Decree ("Consent Decree") at §§I.F. and I.G.; Memorandum Orders E and Q.

transportation; visitation; and access by plaintiffs' counsel to staff members, records, staff and institutions.⁵

Modification

The parties recognize there may be instances in which provisions in the Work Plan should be modified or vacated. The current version of the Work Plan anticipates this possibility in several specific instances. In addition, any indicator and/or final performance standard may be modified substantively, or vacated, upon the approval of the Court, in any of the following circumstances: 1) if analysis of the relevant baseline data supports modifying or vacating the requirement in those instances in which the baseline data were unavailable at the time the Plan was filed with the Court; 2) if defendants are persistently unable to meet a specific exit criterion for reasons that are not within their control; or 3) if unanticipated or changed circumstances warrant the modification. Any non-substantive modifications to the Work Plan may be accomplished by the agreement of the parties and the Special Arbitrator, with notice to the Court.

Dismissal and Termination

The parties agree that the factual and legal predicates for dismissal and termination shall be satisfied when there is a finding by the Special Arbitrator that the performance standards have been achieved and sustained for the time periods prescribed in the Plan. Notwithstanding any finding made by the Special Arbitrator, the parties may at any time, jointly or unilaterally, request in good faith that the Court dismiss and terminate this class action.

⁵ Consent Decree at §§II.K., VII.A.2., VII. E.1. & E.2.(a), IX., and X.

WORK PLAN GOALS AND INDICATORS

- I. Goal One: Defendants shall operate secure facilities in a manner that is safe and humane. The Youth Services Center (“YSC”) and the Oak Hill Youth Center (“OHYC”) shall constitute “secure facilities” pursuant to this Goal.**

A. Indicators for Goal One

1. Critical Incidents and Assaults (Mandatory)⁶
 - a. Establish baseline, benchmark, if any, and maintain, or achieve and maintain, a specified rate of injuries to youth as a result of assaults at the YSC and at OHYC.⁷
(Mandatory)

⁶ The words “conditional” and “mandatory” are inserted in the text in parentheses to indicate whether the exit criteria for each indicator are conditional or mandatory.

⁷ Defendants are revising their incident reporting process, including their process for reporting assaults. Because this initiative includes modification of defendants’ data collection and analysis process and related staff training, it is anticipated that defendants will begin to collect baseline data by no later than February 1, 2008. For purposes of I.A.1.a.-d., by December 1, 2007, a committee convened by the Special Arbiter and composed of Dexter Dunbar, Earl Dunlap, Paul DeMuro, Pili Robinson, and Nathaniel Williams shall define the incidents that shall constitute assaults and critical incidents. The Special Arbiter, in consultation with the parties, shall determine the baseline measure for the baseline period within 15 days after the baseline period lapses, but in any event by no later than February 1, 2009. The parties, in consultation with the Special Arbiter, shall develop the benchmarks, if any, and performance standards and submit them to the Court for approval by February 28, 2009. The parties, in consultation with the Special Arbiter, shall give appropriate consideration to the relevant factors that may not be exclusively in defendants’ control, including whether the performance standard for I.A.1.d. should be represented by a range of performance standard rates instead of a specific rate. In the event the committee members are unable to reach agreement on any of these matters, the Special Arbiter shall notify the parties and the parties shall endeavor to reach agreement on all contested matters. If the parties are unable to reach agreement on any matter, they shall submit the dispute to the Special Arbiter for resolution pursuant to §III of the May 13, 2004 Memorandum of Agreement. *Update to December 5, 2007 Work Plan: The committee has agreed that assaults shall be defined as: 1) an attempt or effort, with force or violence, to injure, or 2) a nonconsensual and intentional (voluntary, on purpose, and not by mistake or accident) touching in a part of another person’s body that would cause fear, shame, humiliation or mental anguish if done without consent. The committee has also agreed that critical incidents shall be defined as: an incident that poses a risk of serious harm to youth and/or staff, including but not limited to the following categories: 1) fires or arsons; 2) riots; 3) serious assaults (for example, assaults resulting in significant injury, involving multiple assailants or the use of weapons); 4) suicides or suicide attempts (not gestures); 5) major contraband (for example, weapons, money (over \$5), drugs or liquor); 6) accidents resulting in significant injury or posing serious risk of significant injury; 7) significant operational breakdowns (for example, no staff on a unit results in youth being unsupervised); 8) major physical plant problems or emergency conditions (for example, a power failure, flood, or sabotage by staff or youth); 9) escapes and attempted escapes; 10) significant destruction of property; or 11) any other extraordinary events that pose a serious risk of harm to youth and/or staff (for example, credible evidence of a planned gang activity or conspiracy to “take out” a staff person).*

- i. By February 1, 2010 with respect to the YSC, and by December 1, 2009 with respect to New Beginnings (“NB”),⁸ defendants shall begin collecting the baseline data for a 60-day period.
 - ii. By May 15, 2010 with respect to the YSC, and by April 5, 2010 with respect to NB, the Special Arbiter in consultation with the parties shall determine the baseline measure of injuries to youth as a result of assaults for the baseline period and the parties, in consultation with the Special Arbiter, shall develop the benchmark, if any, and performance standard and submit them to the Court for approval.
 - iii. Performance Standard: By February 1, 2010, and thereafter at the YSC, and December 1, 2009, and thereafter at NB, defendants shall on a regular basis: 1) maintain management systems at the YSC and NB that collect complete and accurate incident report data regarding injuries to youth as a result of assaults; 2) validate the accuracy and completeness of such incident report data; 3) analyze the related incident trend data at regular intervals and address issues reflected in the trend data; and by April 1, 2010 and thereafter at NB and by May 15, 2010 and thereafter at the YSC, 4) identify any youth involved in an assault with physical contact at NB and at the YSC who were not evaluated promptly thereafter by medical staff and determine and address the reason why the youth was not evaluated.
- b. Establish baseline, benchmark, if any, and maintain, or achieve and maintain, a specified rate of staff-on-youth assaults at the YSC and at OHYC. (Mandatory)
- i. By October 1, 2008 with respect to the YSC, and by August 1, 2009 with respect to NB, defendants shall begin collecting the baseline data for a 90-day period at the YSC and a 60-day period at NB.
 - ii. By April 14, 2009 with respect to the YSC, and by January 15, 2010 with respect to NB, the parties, in consultation with the Special Arbiter, shall develop

⁸ New Beginnings is the successor facility to OHYC. For purposes of the Work Plan, all references to the New Facility, OHYC or its successor facility apply to New Beginnings.

the benchmark, if any, and performance standard and submit them to the Court for approval.

- iii. Performance Standard: By April 1, 2009, and thereafter at the YSC, and by February 1, 2010, and thereafter at NB, defendants shall on a regular basis: 1) maintain management systems that collect complete and accurate incident report data regarding staff-on-youth assaults; 2) validate the accuracy and completeness of such incident report data; and 3) analyze the related incident trend data at regular intervals and address issues reflected in the trend data.
 - iv. Performance Standard: By April 1, 2009, and thereafter at the YSC, and by February 1, 2010, and thereafter at NB, staff shall review promptly video recordings of all incidents reported as youth-on-staff and staff-on-youth assaults for consistency with the accounts in the written incident notification forms and to determine whether the incidents have been categorized accurately. If indicated, the incidents shall be referred promptly to Project Hands for a full investigation.
- c. Establish baseline, benchmark, if any, and maintain, or achieve and maintain, a specified rate of youth-on-youth assaults at the YSC and at OHYC. (Mandatory)
- i. By October 1, 2008 with respect to the YSC, and by August 1, 2009 with respect to NB, defendants shall begin collecting the baseline data for a 90-day period at the YSC and a 60-day period at NB.
 - ii. By April 14, 2009 with respect to the YSC, and by January 15, 2010 with respect to NB, the parties, in consultation with the Special Arbiter, shall develop the benchmark, if any, and performance standard and submit them to the Court for approval.
 - iii. Performance Standard: By April 1, 2009, and thereafter at the YSC, and by February 1, 2010, and thereafter at NB, defendants shall on a regular basis: 1) maintain management systems at the YSC and NB that collect complete and accurate incident report data regarding youth-on-youth assaults; 2) validate the accuracy and completeness of such

incident report data; and, 3) analyze the related incident trend data at regular intervals and address issues reflected in the trend data.

- d. Establish baseline, benchmark, if any, and maintain, or achieve and maintain, a specified rate of critical incidents, including critical incidents related to high-risk behavior, at the YSC and OHYC. (Mandatory)
 - i. By October 1, 2008 with respect to the YSC, and by August 1, 2009 with respect to NB, defendants shall begin collecting the baseline data for a 90-day period at the YSC and a 60-day period at NB.
 - ii. By April 14, 2009 with respect to the YSC, and by January 15, 2010 with respect to NB, the parties, in consultation with the Special Arbiter, shall develop the benchmark, if any, and performance standard and submit them to the Court for approval.
 - iii. Performance Standard: By April 1, 2009, and thereafter at the YSC, and by February 1, 2010, and thereafter at NB, defendants shall on a regular basis:
 - 1) maintain management systems at the YSC and NB that collect complete and accurate incident report data regarding critical incidents, including critical incidents related to high-risk behavior;
 - 2) validate the accuracy and completeness of such incident report data; and
 - 3) analyze the related incident trend data at regular intervals and address issues reflected in the trend data.
- e. Establish baseline, benchmark, if any, and maintain, or achieve and maintain, a specified rate of incidents involving self-injurious behavior, at the YSC and OHYC.⁹ (Mandatory)

⁹ Defendants shall propose a definition of self-injurious behavior to plaintiffs and the Special Arbiter by December 1, 2007. The definition shall be determined by agreement of the parties in consultation with the Special Arbiter by December 15, 2007. In the event the parties are unable to reach agreement, they shall submit the dispute to the Special Arbiter for resolution pursuant to §III of the May 13, 2004 Memorandum of Agreement. The Special Arbiter, in consultation with the parties, shall determine the baseline measure for the baseline period within 15 days after the baseline period lapses, but in any event by no later than June 30, 2008. The benchmark, if any, and the performance standard for this indicator, shall be established by agreement of the parties in consultation with the Special Arbiter and submitted to the Court for approval. *Update to December 5, 2007 Work Plan: The parties have agreed that self injurious behavior shall be defined as any action taken by a youth with the intention of inflicting bodily harm to her/himself.*

- i. By October 1, 2008 with respect to the YSC, and by August 1, 2009 with respect to NB, defendants shall begin collecting the baseline data for a 90-day period at the YSC and a 60-day period at NB.
- ii. By April 14, 2009 with respect to the YSC, and by January 15, 2010 with respect to NB, the parties, in consultation with the Special Arbiter, shall develop the benchmark, if any, and performance standard and submit them to the Court for approval.
- iii. Performance Standard: By April 1, 2009, and thereafter at the YSC, and by February 1, 2010, and thereafter at NB, defendants shall on a regular basis:
 - 1) maintain management systems at the YSC and NB that collect complete and accurate incident report data regarding incidents involving self-injurious behavior;
 - 2) validate the accuracy and completeness of such incident report data; and
 - 3) analyze the related incident trend data at regular intervals and address issues reflected in the trend data.

2. Timely Investigations and Disciplinary Action (Conditional)

- a. Defendants shall complete investigations and document findings within 35 days of a referral for allegations concerning abuse and/or neglect of youth in secure facilities. (Conditional)
 - i. Performance Standard: Starting November 1, 2007 through February 29, 2008, or any subsequent four-month period beginning on the first day of any month after November 2007 if this performance standard has not been met, defendants shall maintain an 80 percent rate of completed investigations with documented findings within 35 days of referral.
- b. Defendants shall provide a notice of proposed disciplinary action to any staff member as to whom there is a sustained allegation of abuse and/or neglect of a youth in a secure facility, within 30 days of the date on which the allegation is substantiated. (Conditional)
 - i. Performance Standard: From November 15, 2007 through June 30, 2008, or any subsequent six-month

period beginning on the first day of any month after November 2007 if this performance standard has not been met, defendants shall meet this performance standard in 80 percent of the cases of substantiated allegations, or, if fewer than five cases have not been substantiated by the end of the six-month period, in all but one such case.

3. Population (Mandatory)

a. Requirements concerning the number of youth housed in the YSC. (Mandatory)

i. Performance Standard: Upon the approval of this Work Plan, the population (including overnighters) at the YSC shall not exceed 80 youth (each of whom is to be housed in his or her own single room). However, the population at the YSC may increase to 88 youth in single rooms whenever and only so long as all of the criteria below are met:

(a) Alternative time out rooms approved as suitable as to number, location and design by Earl Dunlap and Paul DeMuro have been made permanently available in lieu of the time out rooms on the units;¹⁰ and

(b) The time out rooms on the units are renovated so that each room has a sink, toilet, bed, desk, and chair.

If the foregoing criteria have been met, the population may rise to 96 youth for up to seven overnights per month. For purposes of this standard, one overnight means either one week night or one Saturday night plus the immediately following Sunday night. If all of the foregoing

¹⁰ Update to December 5, 2007 Work Plan: The parties' agreement regarding the time-out rooms is that there shall be two rooms, one on each floor in the hallway adjacent to the staff offices and housing units. One room shall measure 64.7 square feet and the other shall measure 67.3 square feet. The rooms shall be suicide resistant (i.e., removal of electrical outlets and data jacks and installation of solid plate coverings) and a non-protruding (flush to ceiling without capacity to use as anchoring device) or appropriate break away security grade fire sprinkler head shall be installed. All fixtures and furnishings shall be removed, including the wall clock and the inner door handle which will be changed to a suicide-resistant type (further specifications on replacement handle are not included in the agreement). The rooms shall also have ModuForm seating and a surveillance camera. However, the parties agree the rooms may be occupied prior to the installation of the surveillance cameras, which defendants anticipate will be installed by September 15, 2008. The rooms shall not be used to house youth for any other purpose.

criteria have not been met, then the population at YSC shall not exceed 80 youth housed in the rooms currently designed for sleeping.

If defendants can maintain the population at or below the limits established in subparagraph i., above, for a period of eight consecutive months beginning on or after September 1, 2007, the performance standard for population limits at YSC shall be satisfied. During this eight-month period, if defendants exceed the population limits established in i., above, by up to two overnights in addition to the seven permissible monthly overnights, the performance standard for population limits at the YSC shall be deemed satisfied.

In the event that defendants prove persistently unable to meet the preceding performance standard for reasons beyond their control, the parties and the Special Arbiter shall meet to confer about a revised performance standard or a possible deletion of the performance standard for this indicator. Any proposed modification shall be submitted to the Court for approval.¹¹

- b. Population and single room requirement at the New Facility¹² (Mandatory)
 - i. Performance Standard at New Facility: For 120 days following the opening of the New Facility, the population of the New Facility will not exceed 60 committed youth housed individually in single rooms. Defendants may house up to 66 youth for two overnights during the 120-day period. If this requirement is met, the performance standard for population limits at the New Facility shall be satisfied.
 - ii. If the performance standard in b.i. is not satisfied, within 15 business days of notification from the Special Arbiter that this standard has not been satisfied, a new performance standard will be developed by the parties in consultation with the

¹¹ The possibility of revising or deleting the performance standard for this indicator is based on the parties' and Special Arbiter's recognition that defendants' performance may be affected by certain factors which defendants can influence, but not control.

¹² See *supra* note 9.

Special Arbiter and submitted to the Court for approval.¹³

- iii. Following a finding by the Court that all other Work Plan mandatory performance standards have been satisfied, or a finding that all other performance standards related to New Beginnings have been satisfied, the Special Arbiter shall determine whether the defendants have maintained the population at New Beginnings at or below 60 committed youth housed individually in single rooms for the six-month period preceding the Special Arbiter's assessment. In the event this standard has been exceeded at any point during the six-month period, the Special Arbiter shall nonetheless find that the performance standard has been satisfied if the Special Arbiter finds: 1) that the population has exceeded 60 youth for three or fewer nights in each of the previous six one-month periods; and 2) no more than 66 youth have been housed at the facility on any night during the six-month period. If either or both of these factors is not met, the Special Arbiter may still find that the performance standard has been satisfied if the defendants have demonstrated the capacity to generally maintain the population at New Beginnings at or below 60 committed youth housed individually in single rooms.

4. Restraints (Mandatory)

- a. Defendants shall substantially comply with Consent Decree requirements related to the use of mechanical restraints (*i.e.*, handcuffs and leg irons).
 - i. Review to determine whether defendants' practices regarding the use of mechanical restraints substantially comply with §VI of the Consent Decree.

Performance Standard: The Special Arbiter shall determine whether the use of mechanical restraints by DYRS employees over a 180-day period beginning no earlier than August 1, 2007

¹³ The possibility of revising the performance standard for this indicator is based on the parties' and Special Arbiter's recognition that defendants' performance may be affected by certain factors which defendants can influence, but not control.

substantially complies with the requirements in §VI of the Consent Decree. The Special Arbiter shall inform the parties, in writing, of her findings. The parties shall have 30 days to respond to the Special Arbiter's findings. The Special Arbiter shall consider the parties' response, and within 30 days thereafter, the Special Arbiter shall provide final written findings to the parties. Within 60 days following the issuance of the Special Arbiter's final findings, defendants shall correct any material deficiencies identified by the Special Arbiter.¹⁴ Within 60 days thereafter, the Special Arbiter shall determine whether the material deficiencies have been corrected and inform the parties, in writing, of her findings. Upon a finding by the Special Arbiter of substantial compliance with this requirement, the parties may file a motion to approve the cessation of monitoring of this indicator, to vacate the indicator and to terminate the corresponding orders prior to the final dismissal and termination of this lawsuit.

5. Room Confinement (Conditional)

- a. Defendants shall substantially comply with Consent Decree requirements related to the use of room confinement.
 - i. Review to determine whether the use of room confinement substantially complies with §V of the Consent Decree.

Performance Standard: Defendants shall notify the Special Arbiter and counsel for the plaintiff class, in writing, that behavior management systems have been implemented at the YSC and OHYC. Within 90 days thereafter, the Special Arbiter shall determine whether the use of room confinement at the YSC and at OHYC substantially complies with the provisions in §V of the Consent Decree as those provisions are reflected in the due process requirements of Rule 412 and in DYRS policy governing cooling off periods, YSA 11.1A, effective June 29, 2001, *Rules for Handling Youth*

¹⁴ Material deficiencies shall be limited to violations of the specific requirements in §VI of the Consent Decree that do not constitute isolated or *de minimis* deviations. A finding of noncompliance shall be based upon a determination that there is a pattern and practice of material noncompliance with §VI.

*Conduct.*¹⁵ The Special Arbiter shall inform the parties, in writing, of her findings. The parties shall have 30 days to respond to the Special Arbiter's findings. The Special Arbiter shall consider the parties' response, and within 30 days thereafter, the Special Arbiter shall provide final written findings to the parties. Defendants shall correct any material deficiencies identified by the Special Arbiter within 60 days following the issuance of the Special Arbiter's final findings.¹⁶ Within 60 days thereafter, the Special Arbiter shall determine whether the material deficiencies have been corrected and inform the parties, in writing, of her findings. Upon a finding by the Special Arbiter of substantial compliance with this requirement, the parties may file a motion to approve the cessation of monitoring of this indicator, to vacate the indicator and to terminate the corresponding orders prior to the final dismissal and termination of this lawsuit.

6. Intake Assessment and Housing Assignment (Conditional)

- a. Defendants shall assess all newly detained and committed youth at the YSC within 72 hours and at OHYC within 24 hours following their admission in order to identify vulnerabilities, known conflicts with other youth in DYRS facilities, and history of aggressive behavior. The results of such assessments shall be considered in making specific housing assignments.
 - i. Review to determine whether initial assessments are conducted, as required, and whether housing assignments consider the results of such assessments.

Performance Standard: By July 30, 2008, the Special Arbiter shall determine whether defendants have complied substantially with this requirement for a period of 180 days at OHYC and 90 days at the YSC. By January 1, 2009 defendants shall correct any material deficiencies identified by the

¹⁵ The parties recognize that defendants may confine youth to their rooms during population counts, shift changes, and for security purposes.

¹⁶ Material deficiencies shall be limited to material violations of Rule 412 or YSA 11.1A, that do not constitute isolated or *de minimis* deviations. A finding of noncompliance shall be based upon a determination that there is a pattern and practice of material noncompliance with Rule 412.

Special Arbiter.¹⁷ Within 60 days thereafter, the Special Arbiter shall determine whether the material deficiencies have been corrected and inform the parties, in writing, of her findings. Upon a finding by the Special Arbiter of substantial compliance with this requirement, the parties may file a motion to approve the cessation of monitoring of this indicator, to vacate the indicator and to terminate the corresponding orders prior to the final dismissal and termination of this lawsuit.

7. Supervision and Staffing (Conditional)

a. Defendants shall deploy Youth Development Representative (“YDR”) staff at New Beginnings in a manner that is consistent with the January 6, 2014 New Beginnings Modified Interim Post Analysis and Staffing Complement [hereinafter “modified interim staffing plan”] described more fully in I.A.7.b.viii., and at the YSC in a manner that is consistent with the deployment requirements in the January 6, 2014 Modified Post Analysis and Staffing Complement [hereinafter “modified staffing plan”].

i. Review to determine whether YDR staff at New Beginnings and at the YSC are deployed in a manner that is consistent with the modified staffing plans required by I.A.7.a. during 90 percent of all shifts.

Performance Standard: The Special Arbiter shall find this requirement is satisfied if an appropriate sample of time observations at both the YSC and New Beginnings, as determined by the Special Arbiter, shows that in 90 percent of the randomly selected time observations at each facility, YDR staff were deployed in the manner required by the modified staffing plans applicable to each facility.¹⁸

b. Defendants shall meet the YDS staffing complement requirements in §I.A. of the CAP at New Beginnings.

¹⁷ Material deficiencies shall be limited to deviations from this requirement that are not isolated or *de minimis*. A finding of noncompliance shall be based upon a determination that there is a pattern and practice of material noncompliance with this requirement.

¹⁸ These sampling requirements, and any other similar requirements in the Work Plan, are not intended to prohibit the Special Arbiter from determining whether a specified methodology is reliable by using alternate methodologies as she deems appropriate. Alternate methodologies may include review of records and interviews with youth and staff.

- i. Benchmark: Defendants shall report, in writing, to the Special Arbiter and counsel for the plaintiffs, the following information regarding OHYC staffing by June 10, 2008 for the period ending May 31, 2008; July 10, 2008, for the period ending June 30, 2008; August 10, 2008 for the period ending July 31, 2008; and September 10, 2008 for the period ending August 31, 2008: a) the number of vacant Youth Development Specialist (“YDS”) positions and the number of vacant Supervisory Youth Development Specialist (“SYDS”) positions; b) the number of filled YDS positions and the number of filled SYDS positions; and c) the number of filled YDS position and the number of filled SYDS positions for which the assigned staff member was unavailable for duty due to being placed on, or due to being eligible for placement on, any of the following statuses: light duty, modified duty, non-contact, disability compensation, extended sick or extended administrative leave, military leave or leave without pay.
- ii. Benchmark: By June 30, 2008 the number of filled YDS positions at OHYC shall be maintained within at least 7 percent of the YDS CAP staffing complement requirements for OHYC.
- iii. Benchmark: By August 31, 2008, and thereafter, at least 14 SYDS positions shall be filled at OHYC.
- iv. Benchmark: Consistent with the staffing plan and post analysis dated March 17, 2009, which are attachments to the March 31, 2009 Order, pending a trial period and the Court’s approval of a performance standard as described below, defendants shall maintain on a trial basis at the New Facility, upon the opening of all housing units, a complement of 116.55 non-supervisory YDS staff, six supervisory YDS staff, and seven unit managers. All staff shall be deployed in a manner consistent with the staffing plan and post analysis attached to the March 31, 2009 Order. Following a 90-day trial period after the opening of all housing units at the New Facility, the parties, in consultation with the Special Arbiter, shall determine whether any adjustments in the staffing level and deployment plan are warranted. The parties shall consider any

informal assessment data provided by the Special Arbiter. Within thirty days following the conclusion of the trial period, the parties, in consultation with the Special Arbiter, shall establish by agreement and submit to the Court for approval, the performance standards for the YDS complement and for YDS deployment at the New Facility.

- v. Benchmark: Effective immediately [September 6, 2011], all New Beginnings (“NB”) YDR, unit manager and SYDR staff shall be deployed in a manner consistent with the interim staffing complement and minimum deployment requirements [hereinafter “interim staffing plan”] established by the September 6, 2011 Order [granting the Second Joint Motion for Approval of Proposed Benchmarks for Goal I.A.7.b. for New Beginnings]. The purpose of the interim staffing complement and minimum deployment requirements is two-fold: 1) to assess the adequacy of the interim staffing and deployment requirements in order to inform the development of performance standards for the staffing complement and deployment at NB; and 2) to compensate for shortcomings in the facility’s physical plant on an interim basis pending the completion of the renovations addressed in subsection I.A.7.b.vi.

By October 31, 2011, defendants shall maintain a full required complement of six unit managers and 11 SYDRs. By October 1, 2011, Defendants shall implement a plan to hire term employees to fill those YDR positions for which an employee is unavailable due to extended time on worker’s compensation and where there is a substantial likelihood that the employee will not be returning to the agency. Defendants shall continue on an ongoing basis to fill these positions in the manner specified and shall also fill all vacancies in the current YDR complement of 116.55 FTEs on an ongoing basis.

Defendants shall increase the YDR complement for NB from 116.55 FTEs to 126 FTEs and take immediate steps, on an expedited basis, to convert sufficient FTEs to do so. By August 31, 2011, defendants shall inform plaintiffs’ counsel and the

Special Arbiter, in writing, of the date certain that shall occur as soon as reasonably possible by which the additional YDR FTE positions will be converted and funded in order to maintain a full complement of 126 FTEs at NB.

Within 14 days thereafter, the parties, in consultation with the Special Arbiter, shall develop and submit for the Court's approval a proposed benchmark which shall address: 1) timelines for achievement and maintenance of the required 126 interim YDR complement; 2) a time period within which the Special Arbiter shall report to the parties her findings regarding whether the interim staffing and deployment requirements have been satisfied, and whether any adjustments to the required complement and/or deployment plan are warranted; and, 3) a timeline and process for finalizing the NB performance standards for the YDR, unit manager and SYDR staffing complement and deployment plan.

- vi. Benchmark: By August 3, 2011, defendants shall provide plaintiffs' counsel and the Special Arbiter with a finalized written summary of the actions they have taken and plan to take to address physical plant and other security-related matters identified in Dr. Nelson Griffis's March 24, 2011 report to the Special Arbiter.¹⁹ The summary shall include defendants' final plan to address security-related limitations in the NB physical plant. By September 16, 2011, the parties, in consultation with the Special Arbiter, shall attempt to resolve by agreement the terms of an action plan to address physical plant and other security-related issues identified in Dr. Griffis' report.
- vii. Benchmark: By November 1, 2011, defendants shall maintain a full required interim complement of 126 YDRs at NB. Within 140 days from the date that the defendants have achieved a complement of 126 YDRs or achieved any lower required complement authorized by the court pursuant to a

¹⁹ Defendants have indicated that they do not agree with all of Dr. Griffis's findings, for the reasons expressed in comments to the Special Arbiter following submission of the Report to the parties. Defendants have stated that they maintain their objections.

court-approved modification to the interim deployment plan, and installed new secure hollow metal doors with detention-grade hardware and locks in each housing unit's bedroom doors, both gym doors, and the double door from the administration building to the culinary unit, the Special Arbiter shall report to the parties her findings regarding whether the interim staffing and deployment requirements have been satisfied and whether any adjustments to the requirement complement and/or deployment plan are warranted. Within 20 days thereafter, the parties, in consultation with the Special Arbiter, shall finalize by agreement and submit to the court for approval the performance standards for the NB YDR, unit manager and SYDR staffing complement and deployment plan.

- viii. Benchmark: Effective immediately [July 23, 2012], all NB YDRs, assistant youth treatment manager and SYDR staff shall be deployed in a manner consistent with the modified interim staffing complement and minimum deployment requirements dated May 3, 2012 [hereinafter "modified interim staffing plan"]. The modified interim staffing plan establishes minimum staffing levels on an interim basis for the purpose of assessing their adequacy and to inform the development of performance standards for the staffing complement and deployment at NB now that certain renovations referred to in I.A.7.b.v. have been completed.
- ix. Benchmark: Effective immediately [July 23, 2012], defendants shall maintain a full required interim complement of 115 YDRs, six assistant youth treatment managers, and 11 SYDRs at NB. Within 140 days from the date that the defendants have achieved these complement requirements and deployed staff on a consistent basis according to the requirements of the modified interim staffing plan, or achieved any other required modified complement authorized by the court pursuant to a court-approved modification to the modified interim staffing plan and deployed staff on a consistent basis in the manner required by any superseding modified interim staffing plan, the Special Arbiter

shall report to the parties her findings regarding whether the modified interim staffing and deployment requirements have been satisfied and whether any adjustments to the required complement and/or deployment plan are warranted. Within 20 days thereafter, the parties, in consultation with the Special Arbiter, shall finalize by agreement and submit to the court for approval the performance standards for the NB YDR, assistant youth treatment manager and SYDR staffing complement and deployment plan.

- x. Benchmark: Effective immediately [April 7, 2014], defendants shall maintain a full required interim complement of 103 YDRs, six assistant youth treatment managers, and 11 Supervisory Youth Development Representatives (“SYDR”) at New Beginnings. Within 140 days from the date that the defendants have achieved these complement requirements and deployed staff on a consistent basis according to the requirements of the modified interim staffing plan, the Special Arbiter shall report to the parties her findings regarding whether the modified interim staffing and deployment requirements have been satisfied and whether any adjustments to the required complement and/or deployment plan are warranted. Within 20 days thereafter, the parties, in consultations with the Special Arbiter, shall finalize by agreement and submit to the court for approval the performance standards for the New Beginnings YDR, assistant youth treatment manager, and SYDR staffing complement and deployment plan.

- c. Defendants shall meet the YDS staffing complement requirements in §II.A. of the CAP at the YSC.

- i. Benchmark: Defendants shall report, in writing, to the Special Arbiter and counsel for the plaintiffs, the following information regarding YSC staffing by June 10, 2008 for the period ending May 31, 2008; July 10, 2008, for the period ending June 30, 2008; August 10, 2008 for the period ending July 31, 2008; and September 10, 2008 for the period ending August 31, 2008: a) the number of vacant Youth Development Specialist (“YDS”) positions and the number of vacant Supervisory Youth

Development Specialist (“SYDS”) positions; b) the number of filled YDS positions and the number of filled SYDS positions; and c) the number of filled YDS position and the number of filled SYDS positions for which the assigned staff member was unavailable for duty due to being placed on, or due to being eligible for placement on, any of the following statuses: light duty, modified duty, non-contact, disability compensation, extended sick or extended administrative leave, military leave or leave without pay.

- ii. Benchmark: By June 30, 2008, and thereafter, at least 105 YDS positions shall be filled and at least 14 SYDS shall be filled at the YSC.
- iii. Benchmark: By August 31, 2008, and thereafter, at least 110 YDS positions shall be filled and at least 16 SYDS positions shall be filled at the YSC.
- iv. Performance Standard: By December 31, 2008, and thereafter, defendants shall hire and maintain at least 16 of the 18 required SYDS and 112 YDS at the YSC.
- v. Performance Standard: Effective February 25, 2014, and thereafter, defendants shall hire and maintain 151 YDRs and 15 SYDRs at the YSC consistent with the staffing complement required by the January 6, 2014 modified staffing plan.

II. Goal Two: Defendants shall operate secure facilities for discrete populations. The YSC shall generally house youth with orders for secure detention and youth with orders for shelter house placement who are awaiting assignment to a shelter house. The OHYC shall generally house committed youth, including committed youth with orders for secure detention and committed youth with orders for shelter house placement who are awaiting assignment to a shelter house. In the event it becomes necessary to transfer any detained youth to OHYC, the detained youth shall be housed in a unit separate from committed youth, and shall participate in programs and receive services separate from the committed youth.

A. Indicators for Goal Two

1. Separate Housing (Conditional)

a. Defendants shall generally house detained youth at the YSC. (Conditional) (*Vacated, September 6, 2011*)

i. Benchmark: Defendants shall generally house at the YSC youth with orders for secure detention and youth with orders for shelter house placement who are awaiting assignment to a shelter house, as established by 85 percent of the midnight counts between June 15, 2007 and September 15, 2007. If committed youth are housed at the YSC during this period, each shall be housed and participate in programs separate from the detained youth. Committed youth may not be housed at the YSC for longer than 45 days. (*Vacated, September 6, 2011*)

ii. Performance Standard: For a six-month period beginning three months before the opening of the New Facility, defendants shall generally house at the YSC youth with orders for secure detention and youth with orders for shelter house placement who are awaiting assignment to a shelter house, as established by 85 percent of the midnight counts for this six-month period. If committed youth are housed at the YSC during this period, each shall be housed and participate in programs separate from the detained youth. Committed youth may not be housed at the YSC for longer than 45 days. (*Vacated, September 6, 2011*)

- b. Defendants shall house committed youth at OHYC. (Conditional) (*Vacated, February 27, 2009*)
 - i. Benchmark: Defendants shall generally house committed youth at OHYC, including both committed youth with orders for secure detention and committed youth with orders for shelter house placement who are awaiting assignment to a shelter house, as established by 60 percent of the midnight counts between June 15, 2007 and September 15, 2007. If detained youth are housed at OHYC during this period, each shall be housed and participate in programs separate from the committed youth. (*Vacated, February 27, 2009*)
 - ii. Performance Standard: Defendants shall generally house committed youth at OHYC, including committed youth with orders for secure detention and committed youth with orders for shelter house placement who are awaiting assignment to a shelter house, as established by 70 percent of the midnight counts between September 15, 2007 and December 15, 2007. If detained youth are housed at OHYC during this period, each shall be housed and participate in programs separate from the committed youth. (*Vacated, February 27, 2009*)

III. Goal Three: Committed and detained youth shall be housed and provided services in the least restrictive setting consistent with the protection of the public and each youth's individual needs. (Mandatory)

A. Indicators for Goal Three: Committed Youth (Mandatory)

- 1. Planning and Delivery of Services and Placements²⁰
 - a. Defendants shall make best efforts to provide placements and services for youth committed following the Court's adoption of the Work Plan that are consistent with the placements and services in each youth's Youth Family Team Meeting ("YFTM") action plan(s),²¹ and are based

²⁰ These indicators shall include services and placements in the community, including community reintegration plans and services.

²¹ The parties recognize that deviations from the services and/or placements reflected in the YFTM plans may occur due to unanticipated circumstances.

on a complete case planning process, including use of a structured decision-making tool, consideration of the risk grid, and use of the YFTM process.

- i. Benchmark: At least 30 percent of the youth committed between November 15, 2007 and February 15, 2008 will undergo a complete case planning process, and defendants shall make best efforts to ensure youth are in placements and receive services consistent with their YFTM action plan(s).
- ii. Benchmark: At least 50 percent of the youth committed between February 15, 2008 and May 15, 2008 will undergo a complete case planning process, and defendants shall make best efforts to ensure youth are in placements and receive services consistent with their YFTM action plan(s).
- iii. Performance Standard: For each three-month period after March 1, 2009, at least 65 percent of the youth committed following the Court's adoption of the Work Plan will undergo a complete case planning process, and defendants shall make best efforts to ensure youth are in placements and receive services consistent with their YFTM action plan(s).

B. Indicators for Goal Three: Detained Youth

1. Detention Alternatives (Mandatory)

- a. Defendants shall maintain the capacity to serve 180 detained youth in the community in a diverse range of alternatives to secure detention other than shelter placements.²² (*Vacated, February 27, 2009*)
 - i. Review to determine whether the required capacity and range of alternatives to secure detention have been maintained.

Performance Standard: The Special Arbiter shall determine whether defendants have maintained the capacity to serve 180 detained youth in the community, in a diverse range of alternatives to

²² The parties recognize this capacity requirement may be subject to downward adjustment if there is a decrease in the need for such alternatives.

secure detention other than shelter placements, and shall notify the parties, in writing, of her findings by January 31, 2008. (*Vacated, February 27, 2009*)

IV. Goal Four: The OHYC and YSC educational programs shall meet the basic requirements for a free and appropriate education.

A. Indicators for Goal Four: The OHYC Educational Program

1. Staffing (Conditional) (*Vacated*)
 - a. Teaching staff at OHYC who are teaching core courses (*i.e.*, English, Mathematics, Social Studies and Science) shall hold an undergraduate or graduate degree and have achieved a passing grade in the Praxis 2 in the core subject areas they teach or shall hold a full or provisional teaching certification in the core subject areas they teach. (Conditional) (*Vacated, September 6, 2011*)
 - i. Benchmark: By December 1, 2008, 75 percent of teaching staff at OHYC who are teaching core courses will either (a) hold an undergraduate or advanced degree and have achieved a passing grade on the Praxis 2 in the core subject areas they teach or (b) hold a full or provisional teaching certification in the core subject areas they teach, or

90 percent of teaching staff at OHYC who are teaching core courses will either (a) hold an undergraduate or advanced degree and have taken the Praxis 2 in the core subject areas they teach or (b) hold a full or provisional teaching certification in the core subject areas they teach. (*Vacated, September 6, 2011*)
 - ii. Performance Standard: By September 1, 2009 and thereafter, 90 percent of the teaching staff who are teaching core courses shall hold an undergraduate or advanced degree and have achieved a passing grade in the Praxis 2 in the core subject areas they teach or shall hold a full or provisional teaching certification in the core subject areas they teach. (*Vacated, September 6, 2011*)
 - b. The ratio of special education teachers to students receiving special education services at OHYC shall be one special

education teacher to up to but no more than ten students (1:10) identified and served in special education. (Conditional) (*Vacated, September 6, 2011*)

i. Benchmark: By July 15, 2008, the ratio of special education teacher to student at OHYC shall be within one FTE of the number necessary, based on special education student enrollment as of July 15, 2008, to achieve a 1:10 ratio by September 30, 2008. (*Vacated, September 6, 2011*)

ii. Performance Standard: By September 30, 2008 and thereafter, the ratio of special education teachers to students receiving special education services at OHYC shall be no more than 1:10. For purposes of this standard, each vacant special education teacher position shall be counted as filled for up to 60 calendar days following the start of the vacancy. (*Vacated, September 6, 2011*)

c. The average teacher to general education student ratio at OHYC shall be no more than 1:15 with no single class exceeding 1:17. Classes with a teacher to general education student ratio of more than 1:12 also shall be staffed with an instructional assistant or trained youth care worker who serves as an instructional assistant. (Conditional) (*Vacated, September 6, 2011*)

i. Performance Standard: By December 31, 2007 and thereafter, the ratio of teacher to general education students at OHYC shall be no more than 1:15, no single general education classes shall exceed 1:17, and all general education classes with more than 12 students also shall be staffed by an instructional aid or youth care worker. For purposes of this standard, each vacant teacher position shall be counted as filled for up to 60 calendar days following the start of the vacancy. (*Vacated, September 6, 2011*)

2. Instruction (Conditional) (*Vacated*)

a. Students shall attend school on regularly scheduled school days, excluding days on which staff development and special planned activities prevent youth from attending school, or weather conditions prevent staff from traveling to the school. (Conditional) (*Vacated: insofar as youth enrolled in the model unit program, vacated September 6,*

awaiting placement status at New Beginnings, vacated July 3, 2013)

- i. By August 15, 2008, the Special Arbiter, in consultation with the parties, shall determine for the period beginning April 1, 2008 and ending June 30, 2008, the percent of all students who have individualized plans within 45 days of their arrival at OHYC. For special education students who enter OHYC with an existing individual education plan (“IEP”), this standard may be met by reviewing the student’s current IEP and modifying or adapting it, as appropriate for implementation. Within 30 days following this determination, the parties, in consultation with the Special Arbiter, shall re-evaluate the performance standard for this indicator, and if appropriate, submit a modification request to the Court.²³ *(Vacated: insofar as youth enrolled in the model unit program, vacated September 6, 2011; insofar as youth on awaiting placement status at New Beginnings, vacated July 3, 2013)*
 - ii. Performance Standard: By September 1, 2009 and thereafter, or by such earlier date as defendants indicate, in writing, that this standard has been met, no less than 90 percent of all students shall have individualized plans within 45 days of their arrival at OHYC. For special education students who enter OHYC with an existing individual education plan (“IEP”), this standard may be met by reviewing the student’s current IEP and modifying or adapting it, as appropriate for implementation. *(Vacated: insofar as youth enrolled in the model unit program, vacated September 6, 2011; insofar as youth on awaiting placement status at New Beginnings, vacated July 3, 2013)*
4. Each general education and special education student shall receive the educational services and supports prescribed in his/her individualized plan (Mandatory for special education students; conditional for general education students) *(Vacated)*

²³ *The December 5, 2007 version of the Work Plan required the prospective establishment by the Special Arbiter of a baseline time period. The time period was subsequently established in consultation with the parties. Thereafter, the parties agreed to forego proposing a benchmark for this indicator because of the limited period of time between the baseline time period and the time period required by the December 5, 2007 Work Plan for achieving the corresponding performance standard.*

- a. Review to determine whether students receive the educational services and supports prescribed in their individualized plans. (*Vacated: insofar as youth enrolled in the model unit program, vacated September 6, 2011; insofar as youth on awaiting placement status at New Beginnings, vacated July 3, 2013*)
 - i. Performance Standard: By September 1, 2009, the Special Arbiter shall engage an expert, selected by the Special Arbiter pursuant to the selection process established by the December 26, 2006 order, to assess whether individualized student education plans are being implemented at OHYC. The assessment shall include a review of the plans to determine whether the plans document the link between the assessed levels of student performance and the goals and objectives for each student, and whether the objectives and services are tailored to each student's needs. In addition, the assessment shall determine whether there is a demonstrable link between classroom academic activities, student goals and objectives as reflected in the plans, and the services described in the IEP.

In the event the expert finds material deficiencies in IEP implementation at OHYC that do not constitute isolated or *de minimis* deviations and that are indicative of a pattern and practice, the parties shall resolve by agreement whether such deficiencies should be addressed through a supplement to the Work Plan in consultation with the Special Arbiter. Any supplementary Work Plan provision shall be established by the agreement of the parties, in consultation with the Special Arbiter and the expert, within 30 days following the issuance of the expert's assessment, and shall be submitted to the Court for approval. (*Vacated: insofar as youth enrolled in the model unit program, vacated September 6, 2011; insofar as youth on awaiting placement status at New Beginnings, vacated July 3, 2013*)

B. Indicators for Goal Four: The Educational Program at the YSC

1. Assessment of the Adequacy of the Educational Program at the YSC (Mandatory)

- a. Performance Standard: By September 30, 2007, the Special Arbiter shall engage Dr. Peter Leone to assess whether the special education and general education program and services provided at the YSC meet the basic requirements for a free and appropriate education, including whether defendants have continued to deliver adequate special education services at the YSC.²⁴ In the event Dr. Leone finds material deficiencies in the educational program and/or services at the YSC that do not constitute isolated or *de minimis* deviations and that are indicative of a pattern and practice, the parties shall resolve by agreement whether such deficiencies should be addressed through a supplement to the Work Plan in consultation with the Special Arbiter. Any supplementary Work Plan provision shall be established by the agreement of the parties, in consultation with the Special Arbiter and Dr. Leone, by June 30, 2008, and shall be submitted to the Court for approval.

- b. Performance Standard: By September 1, 2009, the Special Arbiter shall engage an expert to assess whether defendants have adequately addressed the deficiencies at the YSC documented in the March 22, 2008 report by Dr. Peter Leone in the areas of staffing, intake, instructional activities,²⁵ individualized instruction, special education identification and related services, records request and review of students' files, attendance and opportunity to learn, and students' perspectives. In the event the Special Arbiter finds material deficiencies in the identified areas that do not constitute isolated or *de minimis* deviations and that are indicative of a patter and practice, within 60 days, the parties shall resolve by agreement whether such deficiencies should be addressed through a supplement to the Work Plan pursuant to this section or subsection a. in consultation with the Special Arbiter, which agreement

²⁴ In September 2006, Dr. Leone conducted an assessment of the special education program at the YSC for the defendants' State Education Office. Among other conclusions, Dr. Leone determined that the special education services provided at the YSC were adequate.

²⁵ The quality of instructional activities shall be evaluated according to the standards as discussed in Peter Leone's Report in footnote 7. Inadequate instruction is defined as follows: 1) where the class started more than 15 minutes after the scheduled start of the class period; 2) where students were kept on the living unit or pod and no instructional activities took place; or 3) where a majority of the students were engaged in activity unrelated to the lesson during the time of our observation. Instruction is adequate where a majority of students are engaged in what appears to be appropriate instructional activities. Instruction is engaging where nearly all students are actively engaged in appropriate instructional activities individually or as a group.

shall be filed with a motion requesting judicial approval of same.

- c. Performance Standard: By July 31, 2012, the Special Arbiter shall assess two elements of the educational program at the YSC: 1) whether general and special education students at the YSC receive individualized instruction; and 2) whether special education students receive related services as required by their IEPs. Insofar as individualized instruction, the assessment shall consider whether teachers incorporate, as a matter of routine practice, student assessment scores, IEP goals, or any other information derived from student academic histories into their efforts to individualize instruction. In the event the Special Arbiter finds, with respect to one or both of the elements that are the subject of the assessment, material deficiencies that do not constitute isolated or *de minimis* deviations and that are indicative of a pattern and practice, the parties shall, in consultation with the Special Arbiter, resolve by agreement whether such deficiencies should be addressed through a supplement to the Work Plan. Any proposed supplement to the Work Plan shall be supported by a motion for judicial approval, which shall be filed within 20 days of the submission of the Special Arbiter's findings.

- d. Performance Standard: By July 31, 2014, the Special Arbiter shall reassess two elements of the educational program at the YSC:
 - 1) whether general and special education students at the YSC receive individualized instruction; and 2) whether special education students receive related services as required by their IEPs. Insofar as individualized instruction, the assessment shall consider whether teachers incorporate, as a matter of routine practice, student assessment scores, IEP goals, or any other information derived from student academic histories into their efforts to individualize instruction. In the event the Special Arbiter finds, with respect to one or both of the elements that are the subject of the assessment, material deficiencies that do not constitute isolated or *de minimis* deviations and that are indicative of a pattern and practice, the parties shall, in consultation with the Special Arbiter, resolve by agreement whether such deficiencies should be addressed through a supplement to the Work Plan. Any proposed supplement to the Work Plan shall be supported by a motion for judicial

approval, which shall be filed within 20 business days of the submission of the Special Arbitrator's findings.

V. Goal Five: Defendants shall provide adequate behavioral health services which meet the basic behavioral health needs of youth at OHYC and the YSC. (Mandatory)

A. Indicators for Goal Five²⁶

1. Initial Behavioral Health Screening and Assessment

- a. Defendants shall administer the MAYSI-2 screening²⁷ by appropriately trained staff to youth within four hours of their admission to OHYC and the YSC.
 - i. Performance Standard: By February 1, 2009, and thereafter, at least 90 percent of the youth presented for admission at the YSC and at least 90 percent of the youth presented for admission at OHYC shall receive the MAYSI-2 screening, which shall be administered by appropriately trained staff, within four hours of their presentation for admission.
- b. Defendants shall conduct a face-to-face assessment by a qualified mental health professional ("QMHP")²⁸ to determine whether further assessment and identification of interventions is clinically appropriate for youth who flag a caution or warning on the suicidality and/or thought disorder dimensions of the MAYSI-2.
 - i. Performance Standard: By January 1, 2009, and thereafter, a QMHP shall conduct a telephone consultation in 90 percent of the instances in which a youth at OHYC or the YSC flags a caution or

²⁶ Unlike the other indicators in the Work Plan, the indicators in Goal Five and Goal Eight have not been designated as "mandatory" or "conditional" exit criteria because of the nature of medical and behavioral health services. Instead, achievement of each Goal is mandatory and will be evaluated in light of the indicators; the performance standards reflected in the indicators; and, if any performance standards have not been met, a determination whether defendants are providing and have the capacity to continue to provide adequate care as described in subsection B of Goals Five and Eight. The following indicators in Goal Eight are also intended to address behavioral health matters: Indicators VIII.A.2.a.-d., VIII.A.3.a. & b., VIII.A.6.a.-c., and VIII.A.10.a.

²⁷ The requirement for administering the MAYSI-2 can be met by the administration of an equivalent empirically supported initial behavioral screening and assessment measure.

²⁸ A QMHP is defined as a licensed behavioral health provider or an unlicensed behavioral health provider who is working under the supervision of a licensed behavioral health provider.

warning on suicidality and/or thought disorder dimensions of the MAYSI-2. This consultation shall include the youth and the staff members who reviewed their MAYSI-2 results at OHYC or the YSC. In addition to the telephone consultation, the QMHP shall conduct a face-to-face assessment within 18 hours of the administration of the MAYSI-2 or within a lesser specified time period if clinically appropriate.²⁹

- c. The assessments referred to in V.A.1.a.-b., above, and in Goal V.A.5.d., shall result in a problem list entry for each behavioral health need revealed by the assessments. The problem list entry shall be updated, as indicated, and addressed in the youth's treatment plan.
 - i. Performance Standard: By January 1, 2009, and thereafter, 90 percent of the youth at OHYC and 90 percent of the youth at the YSC with behavioral health needs revealed by the assessments conducted pursuant to V.A.1.a.-b., and V.A.5.d., shall have a problem list entry that is updated as indicated for each behavioral health need revealed by the assessments that is addressed in the youth's treatment plan.

2. Continuity of Care at Transfer

- a. Defendants shall maintain youth who have been placed on "suicide alert" status on such status during and following transfer to and from OHYC and the YSC and to and from any other location.³⁰
 - i. Benchmark: Between May 1, 2008 and August 31, 2008, 65 percent of youth at OHYC and 65 percent of youth at the YSC who have been placed on suicide alert status shall be maintained on such status during and following transfer to and from

²⁹ Youth who do not receive a face-to-face assessment initially and who demonstrate any level of suicide risk must be placed on suicide alert until the face-to-face assessment can be completed.

³⁰ According to the draft policy provided on July 17, 2007 by the General Counsel of the Department of Youth Rehabilitation Services ("DYRS"), *Suicide Prevention for Youth* (intended to supersede YSA III.4-008), which defendants intend to finalize shortly, there are three categories of suicide precautions to ensure youth identified as potentially suicidal are closely observed and receive appropriate mental health and medical services: watch, warning and alert. Suicide Alert status is described in the policy as the most restrictive suicide prevention measure, requiring a DYRS staff member to conduct direct one-on-one supervision of a youth who has engaged in self-injury or appears to be at imminent risk of an attempt.

OHYC and the YSC and to and from any other location. Within 30 days thereafter, the performance standard shall be established by agreement of the parties in consultation with the Special Arbiter and submitted to the Court for approval.

- ii. Performance Standard: By January 1, 2009, and thereafter, 90 percent of youth at OHYC and 90 percent of youth at the YSC who have been placed on suicide alert status shall be maintained on such status during and following transfer to and from OHYC, to and from the YSC and to and from any other location.

3. Crisis Intervention and the Management of Acute Episodes

- a. Defendants shall ensure a QMHP assesses youth with acute or emergent mental health needs at OHYC and at the YSC (*e.g.*, suicidality or thought disorder) within one hour of referral to a qualified behavioral health provider.

- i. Performance Standard: By January 1, 2009, and thereafter, 90 percent of the youth at Oak Hill and 90 percent of the youth at the YSC with acute or emergent mental health needs shall be assessed within one hour of referral to a member of the behavioral health staff.

- b. Defendants shall transfer youth to an appropriate psychiatric hospital within eight hours of a clinical determination that a youth at OHYC or at the YSC is in need of emergency psychiatric hospitalization.³¹

- i. Performance Standard: By June 30, 2008, and thereafter, 95 percent of youth at OHYC and 95 percent of youth at the YSC who are determined to be in need of emergency psychiatric hospitalization shall be transferred to an appropriate psychiatric hospital within eight hours of such clinical determination.

³¹ The parties recognize that pending the development of the necessary capacity to hospitalize all youth in need of emergency psychiatric hospitalization on a timely basis, there may be instances in which youth are transferred to a non-psychiatric hospital for emergency psychiatric treatment until bed space in a psychiatric hospital is available. This factor shall be considered in determining the timeline for this performance standard.

- c. Defendants shall provide one-on-one supervision following the determination that a youth at OHYC or at the YSC is in need of emergency psychiatric hospitalization. One-on-one supervision shall continue until the time of admission to a psychiatric hospital.
 - i. Performance Standard: Starting on January 1, 2008 and thereafter, defendants shall maintain a minimum of 90 percent of the youth at OHYC and 90 percent of the youth at the YSC who have been determined by a clinician to be in need of emergency psychiatric hospitalization on one-on-one supervision until such time as the youth are admitted to a psychiatric hospital.

- d. Defendants shall utilize a QMHP to monitor youth, as clinically appropriate, following the determination that a youth at OHYC or at the YSC is in need of emergency psychiatric hospitalization until such time as the youth is transported out of the facility.
 - i. Benchmark: Between January 1, 2008 and March 31, 2008, at least 80 percent of the youth at OHYC and 80 percent of the youth at the YSC who have been determined by a clinician to be in need of emergency psychiatric hospitalization shall be regularly monitored by a QMHP.
 - ii. Performance Standard: Between April 1, 2008 and June 30, 2008, and thereafter, a minimum of 90 percent of the youth at OHYC and 90 percent of the youth at the YSC who have been determined by a clinician to be in need of emergency psychiatric hospitalization shall be monitored regularly by a QMHP.

- e. Defendants shall assess, supervise, and provide appropriate interventions to youth on suicide precaution status, consistent with the draft DYRS policy, *Suicide Prevention for Youth*, and any related clinical protocol, as clinically indicated.
 - i. Benchmark: Between May 15, 2008 and August 15, 2008, at least 70 percent of youth at OHYC and 70 percent of youth at the YSC who are on suicide precaution status shall have been assessed,

supervised and provided appropriate interventions consistent with the draft DYRS policy and any related clinical protocols, as clinically indicated.

- ii. Benchmark: By September 15, 2008, the Special Arbiter shall issue written findings addressing defendants' performance during the benchmark period set forth in subsection e. (i)., above. Within 15 days thereafter, the parties shall establish by agreement, in consultation with the Special Arbiter, and submit to the Court for approval, an additional interim benchmark or the performance standard for this indicator, provided that if an additional interim benchmark is submitted, a date by which the performance standard shall be submitted to the Court for approval shall be included in the submission to the Court.³²
 - iii. Performance Standard: By February 1, 2009, and thereafter, at least 90 percent of youth at OHYC and 90 percent of youth at the YSC who are on suicide precaution status shall have been assessed, supervised and provided appropriate interventions consistent with the draft DYRS policy and any related clinical protocols, as clinically indicated.
- f. Defendants shall house any youth on Suicide Alert status in a room that is as suicide resistant as possible consistent with the specifications in the draft DYRS policy, *Suicide Prevention for Youth*.
- i. Benchmark: By December 1, 2007, defendants shall enhance the monitoring and supervision mandated by the draft DYRS policy, *Suicide Prevention for Youth*, and shall institute any additional measures reasonably necessary to protect each youth on Suicide Alert status from the risk of self-harm until suicide resistant rooms are available for housing youth on Suicide Alert status at OHYC and at the YSC.
 - ii. Performance Standard: By March 1, 2008 and thereafter, 90 percent of youth at OHYC and 90 percent of youth at the YSC who have been placed

³² If the parties and the Special Arbiter agree it is appropriate, the proposed interim benchmark period or proposed performance standard period may commence as early as August 16, 2008.

on Suicide Alert status shall be housed in a suicide resistant room consistent with the specification in the draft DYRS policy, *Suicide Prevention for Youth*.

4. Continuity of Care Related to Crisis Intervention and Acute Episodes
 - a. Defendants shall place and maintain on “Suicide Alert” status each youth who returns to the YSC or to OHYC after any period of in-patient psychiatric hospitalization for an acute condition until an evaluation is conducted by a QMHP and a determination is made to remove the youth from such status.
 - i. Performance Standard: Between November 1, 2007 and January 31, 2008, and thereafter, at least 90 percent of the youth who return to the YSC and 90 percent of the youth who return to OHYC after any period of in-patient psychiatric hospitalization for an acute condition shall be placed and maintained on “Suicide Alert” status until an evaluation is conducted by a QMHP and a determination is made to remove the youth from such status.
 - b. Defendants shall transmit copies of the relevant DYRS medical and behavioral health records of youth transferred from OHYC or the YSC to off-site acute care providers in advance or at the time of the appointment or transfer.
 - i. Performance Standard: Between November 1, 2007 and March 31, 2008, and thereafter, defendants shall transmit copies of the relevant DYRS medical and behavioral health records of at least 90 percent of the youth transferred from OHYC and at least 90 percent of the youth transferred from the YSC to off-site acute care providers in advance or at the time of the scheduled appointment or transfer.
 - c. Defendants shall request discharge summaries and other relevant records from off-site acute care providers. Upon receipt, such records shall be timely reviewed by a QMHP and filed in the youth’s medical record. The problem list in the youth’s medical record, and the youth’s treatment plan, shall be updated as appropriate.

- i. Benchmark: By April 30, 2008, DYRS Health Services staff shall request discharge summaries and other relevant records on 80 percent of the occasions upon which youth are returned to Oak Hill, and 80 percent of the occasions upon which youth are returned to the YSC, from off-site acute care providers. In such instances at each facility, a QMHP shall timely review the records from the off-site provider and update the problem list and treatment plan, as appropriate. The records from the off-site provider shall be filed in each youth's medical record.
- ii. Performance Standard: By June 30, 2008, and thereafter, DYRS Health Services staff shall request discharge summaries and other relevant records on 90 percent of the occasions upon which youth are returned to Oak Hill, and 90 percent of the occasions upon which youth are returned to the YSC, from off-site acute care providers. In such instances at each facility, a QMHP shall timely review the records from the off-site provider and update the problem list and treatment plan, as appropriate. The records from the off-site provider shall be filed in each youth's medical record.

5. Routine Care: Access, Treatment Planning and Counseling Services

- a. Medical/Behavioral staff shall collect "Request for Medical and/or Mental Health Care" forms twice daily at the YSC and at OHYC, and triage the requests for urgency.³³ Absent an indication of an urgent behavioral health problem, behavioral health staff shall clinically evaluate each youth who has submitted a request for behavioral health care within 48 hours of the collection of the request form.³⁴

³³ The forms shall be collected from the locked and confidential boxes described in VIII.A.3.a. of Goal Eight and an appropriate alternative for requesting care shall be available for youth who have literacy challenges. Requests for care received through alternate means shall also be subject to the requirements in this indicator.

³⁴ Requests for Care or any other type of referrals for behavioral health care shall be deemed urgent if there is an indication of suicidal and/or homicidal thought(s) or plan(s), extreme emotion, anxiety, disorganization or incoherence. The urgency of a request or referral may be indicated from many other circumstances, including the condition of the request form, inconsistencies between the submission and collection dates, or pictures and/or symbols drawn on the form. The final determination of urgency will require a QMHP to make a clinical judgment in light of established standards and protocols.

- i. Benchmark: By March 1, 2008, 75 percent of the youth at OHYC and 75 percent of the youth at the YSC who do not have an urgent behavioral health problem shall be clinically evaluated within 48 hours of the collection of their request forms.
 - ii. Performance Standard: By January 1, 2009 and thereafter, 90 percent of the youth at OHYC and 90 percent of the youth at the YSC who do not have an urgent behavioral health problem shall be clinically evaluated within 48 hours of the collection of their request forms.
 - b. Defendants shall provide behavioral health services³⁵ to youth at OHYC and at the YSC consistent with the service needs identified in their initial and updated behavioral health screenings and assessments, and treatment plans.³⁶
 - i. Performance Standard: By February 1, 2009, and thereafter, at least 90 percent of the youth at OHYC and at least 90 percent of the youth at the YSC shall receive behavioral health services consistent with the service needs identified in their initial and updated behavioral health screenings and assessments and treatment plans.
 - c. Defendants shall conduct a behavioral health assessment of youth who engage in repeated self-injurious behavior, or any other type of repeated behavior which puts them, or others, at serious risk of harm. As indicated and appropriate, within 24 hours of such repeated behavior, management strategies aimed at reducing the risks of the identified behaviors shall be implemented consistent with the youth's treatment plan, including any revisions to such plan resulting from the assessment.
 - i. Performance Standard: By March 1, 2008 and thereafter, 90 percent of the youth at OHYC and 90 percent of the youth at the YSC who engage in repeated behavior which puts them at serious risk of harm shall receive a behavioral health assessment within 24 hours of such behavior, and as indicated

³⁵ The term "behavioral health services" includes substance abuse services and mental health services.

³⁶ The parties anticipate there may be changes in the number and current titles of the plans that guide the delivery of such services.

and appropriate, management strategies aimed at reducing the risks of such behavior shall be implemented consistent with the youth's treatment plan, including any revisions to such plan resulting from the assessment.

ii. Performance Standard: By March 1, 2008 and thereafter, 80 percent of the youth at OHYC and 80 percent of the youth at the YSC who engage in repeated behavior which puts others at serious risk of harm shall receive a behavioral health assessment within 24 hours of such behavior, and as indicated and appropriate, management strategies aimed at reducing the risks of such behavior shall be implemented consistent with the youth's treatment plan, including any revisions to such plan resulting from the assessment.

d. Defendants shall administer within five (5) working days of commitment the GAIN-Q³⁷ by appropriately trained staff to all committed youth who score a caution or warning on the substance abuse scale of the MAYSI-2.

i. Performance Standard: By January 1, 2009, and thereafter, 85 percent of committed youth who score a caution or warning on the substance abuse scale of the MAYSI-2 shall receive the GAIN Q screening and assessment within 5 business days of their commitment.

6. Medication Management

a. Defendants shall conduct weekly psychiatric assessments for youth at OHYC and at the YSC who have been prescribed psychotropic medication until the youth have been stabilized, and thereafter, the psychiatric assessments shall be conducted as clinically indicated.

i. Benchmark: Between May 15, 2008 and August 15, 2008, 80 percent of youth at Oak Hill and 80 percent of youth at the YSC, who have been prescribed psychotropic medication, shall receive weekly psychiatric assessments until stabilized, and

³⁷ The requirement for administration of the GAIN-Q can be met by the administration of an equivalent empirically supported substance abuse screening and assessment measure.

thereafter, shall receive psychiatric assessments at intervals that are clinically indicated.

- ii. Performance Standard: By January 1, 2009, and thereafter, 90 percent of youth at Oak Hill and 90 percent of youth at the YSC, who have been prescribed psychotropic medication, shall receive weekly psychiatric assessments until stabilized, and thereafter, shall receive psychiatric assessments at intervals that are clinically indicated.
- b. Defendants shall, prior to the discharge of detained youth who receive psychotropic medications, in order to ensure the continuity of their medications and treatment, recommend to each youth necessary community-based behavioral health services and upon the youth's consent, make a referral to a community-based behavioral health services provider. Defendants shall notify the appropriate community entity (*e.g.*, parents, service providers, probation officers) of the recommendation, and, if indicated, of the referral.
- i. Benchmark: By June 1, 2008 and thereafter, defendants shall recommend necessary community-based behavioral health services prior to discharge to 80 percent of detained youth who receive psychotropic medications and upon each youth's consent make a referral to a community-based service provider and notify the appropriate community entity of the recommendation and as indicated, of the referral, prior to the youth's discharge from secure detention.
 - ii. Performance Standard: By September 1, 2008 and thereafter, defendants shall recommend necessary community-based behavioral health services prior to discharge to 90 percent of detained youth who receive psychotropic medications and upon each youth's consent make a referral to a community-based service provider and notify the appropriate community entity of the recommendation and as indicated, of the referral, prior to the youth's discharge from secure detention.

7. Community Re-Entry Planning and Services

- a. Defendants shall conduct Youth Family Team Meetings ("YFTMs") for committed youth with serious behavioral health needs 60 days prior to their anticipated release to the community.³⁸ During such meetings, the team shall: 1) consider recommendations from the behavioral health staff concerning the specific community-based services, if any, that are needed to address the youth's serious behavioral health needs; and 2) develop a YFTM action plan for the youth which addresses the youth's serious behavioral health needs upon release.
 - i. Performance Standard: Ninety days following the Court's approval of the Work Plan, and thereafter, YFTMs shall be conducted for at least 80 percent of committed youth with serious behavioral health needs at least 60 days prior to release to the community, informed by the recommendations from the behavioral health staff concerning the specific behavioral health services, if any, needed to address the youth's serious behavioral health needs, and result in the development of a YFTM action plan which addresses the youth's behavioral health needs upon release.
- b. Defendants shall make best efforts to secure enrollment with a community-based behavioral health services provider, at least seven days prior to release, for committed youth who have YFTM action plans that include community-based behavioral health services, if consistent with the agreement of the youth and his/her family.
 - i. Performance Standard: By January 1, 2009, and thereafter, at least seven days prior to the release of 80 percent of committed youth who have YFTM action plans which include community-based behavioral health services, defendants shall make best efforts to secure enrollment of such youth with a community-based behavioral health services provider if consistent with the agreement of the youth and his/her family.

³⁸ For committed youth with serious behavioral health needs who are in secure confinement for 30 days or less, defendants shall make best efforts to refer and secure enrollment with a community-based behavioral health services provider prior to their return to the community.

8. Training Requirements

- a. In addition to the suicide prevention training for YDS required by Goal Ten, defendants shall provide initial and refresher training to educational, somatic and behavioral health care staff on the policy and procedural requirements reflected in the draft DYRS policy, *Suicide Prevention for Youth*.
 - i. Benchmark: Between November 1, 2007 and February 29, 2008, 85 percent of the OHYC and 85 percent of the YSC education, somatic and behavioral health care staff shall complete the training program on the suicide prevention policy.
 - ii. Performance Standard: By January 1, 2009, and thereafter, 90 percent of the OHYC and 90 percent of the YSC education, somatic and behavioral health care staff shall complete the training program on the suicide prevention policy.

9. Continuous Quality Improvement (“CQI”)

- a. Defendants shall implement and maintain a behavioral health services CQI program with the demonstrable capacity to perform the following functions up to and at least for the six-month period immediately preceding the termination of this lawsuit:
 - i. Monitoring on a routine basis to determine compliance with the behavioral health services policy and procedure manual and routine monitoring of the timeliness, appropriateness, continuity, and quality of the following behavioral health services: initial behavioral health screening and assessment, continuity of care, crisis intervention, management of acute episodes, access to care, treatment planning, counseling services, medication management, training, and community re-entry planning and services.
 - ii. Review of critical incidents and sentinel events, including the circumstances leading to the referrals for crisis intervention and leading to sentinel events, and the ability to conduct special studies as indicated by clinical experience or any problems revealed by the aggregate data.

- iii. Implementation of a methodology for peer review of the quality of behavioral health care according to objective standards as well as the subjective standards of clinical practice.
- iv. Analysis of the data identified in V.A.9.a.(i-iii), above, on a routine basis to identify successes, shortcomings and obstacles to achieving performance standards and quality of services standards, and use of the analysis to plan, implement, monitor, track and adjust, if indicated, plans of correction to improve services.

B. Review to Determine Adequacy of Behavioral Health Services
(Mandatory)

- 1. Performance Standard: The Special Arbiter, in consultation with such behavioral health care expert consultant as she deems reasonably necessary, shall determine whether the behavioral health services provided to youth at OHYC and the YSC are adequate to meet the basic behavioral health needs of youth, as defined by the indicators agreed upon by the parties and the Special Arbiter and the performance standards agreed upon by the parties in consultation with the Special Arbiter that are set forth in V.A., above. Notwithstanding any deviation from such performance standards, the Special Arbiter shall find this goal has been met if the Special Arbiter, in consultation with her behavioral health expert, determines that defendants are providing, and have the capacity to continue to provide, adequate behavioral health care that meets the basic behavioral health needs of youth at the YSC and at OHYC.

VI. Goal Six: Youth at both the YSC and OHYC shall participate in structured activities during 80 percent of their waking hours, which shall include the type and amount of exercise and recreation required by the Consent Decree. In addition, youth at the YSC and OHYC shall have access to a non-mandatory and confidential grievance process.

A. Indicators for Goal Six³⁹ (Conditional)

- 1. Exercise and Recreational Activity

³⁹ Youth on medical hold status, overnights, and youth who have been admitted to OHYC or the YSC within the previous 24 hours shall be excluded from the sampling referred to in VI.A.1. and 2.

- a. Youth housed at OHYC shall participate in a minimum of two hours of structured recreational activities each day. Youth shall participate in at least one hour of “large muscle activity” and at least one hour of outdoor recreation, weather permitting.⁴⁰ (Conditional) (*Vacated insofar as “large muscle” activity, September 6, 2011*)
 - i. Performance Standard: For 85 percent of the days sampled between October 1, 2009 and December 31, 2009, 85 percent of the youth housed at OHYC shall participate in two hours of structured recreational activity each day, including one hour of “large muscle” activity and one hour of outdoor recreation, weather permitting. The Special Arbiter shall determine whether this standard has been met based on a sample of up to 30 days selected by the Special Arbiter from the period beginning October 1, 2009 and December 31, 2009. The Special Arbiter shall find that the performance standard has been met if 85 percent of the youth housed at OHYC engaged in two hours of structured recreational activities on 85 percent of the days sampled. (*Vacated insofar as “large muscle” activity, September 6, 2011*)

- b. Youth housed at the YSC shall participate in a minimum of two hours of structured recreational activities each day. Youth shall participate in at least one hour of large muscle activity, and at least one hour of outdoor recreation to the extent possible, weather permitting. (Conditional) (*Vacated insofar as “large muscle” activity, September 6, 2011*)
 - i. Performance Standard: For 85 percent of the days sampled between October 1, 2009 and December 31, 2009, 85 percent of the youth housed at the YSC shall participate in two hours of structured recreational activity each day, including one hour of “large muscle” activity and one hour of outdoor recreation to the extent possible, weather permitting. The Special Arbiter shall determine whether this standard has been met based on a sample of up to 30 days selected by the Special Arbiter from the period beginning October 1, 2009 and ending December 31, 2009. The Special

⁴⁰ “Large muscle” activity includes team sports, jogging and regular gymnasium activities.

Arbiter shall find that the performance standard has been met if 85 percent of the youth housed at the YSC engaged in two hours of structured recreational activities on 85 percent of the days sampled. (*Vacated insofar as "large muscle" activity, September 6, 2011*)

2. Daily Structured Activities (Conditional)

a. Youth at OHYC and the YSC shall be engaged in structured activities, including the exercise and recreational activity described in VI.A.1., above, during 80 percent of their waking hours.

i. Review to determine whether youth at OHYC and the YSC are engaged in structured activities during 80 percent of their waking hours.

Performance Standard: The Special Arbiter shall find this requirement is satisfied if an appropriate sample of time observations at both the YSC and OHYC⁴¹ shows that in 80 percent of the randomly selected time observations youth were engaged in structured activities. Structured activity for purposes of this requirement shall include adult-supervised out-of-room activity, other than free time.⁴²

3. Grievance Process (Mandatory)

a. Youth in secure facilities shall have access to a non-mandatory and confidential grievance process.

i. Performance Standard: The Special Arbiter shall find this requirement has been satisfied if DYRS provides a non-mandatory and confidential grievance process which youth in secure facilities have the right to access, and, during the orientation following admission to a secure facility, youth are informed about how the grievance process operates and receive written materials describing the process.

⁴¹ The time period for this sample shall be determined by the Special Arbiter in consultation with the parties.

⁴² The Special Arbiter shall exclude sleeping hours and shift changes from sampling.

VII. Goal Seven: OHYC and the YSC shall meet the Consent Decree’s environmental health, safety and fire safety requirements, except that at OHYC such environmental health requirements that are not critical to life, health and safety shall be met to the extent practical. (Mandatory)

A. Indicators for Goal Seven: Environmental Health and Safety (Mandatory)

1. Inspection and Abatement (Mandatory)

- a. Within 60 days following the Court’s approval of the Work Plan, and consistent with the environmental health and safety requirements of the Consent Decree, defendants shall develop audit instruments which shall guide routine Department of Health (“DOH”) and Department of Consumer and Regulatory Affairs (“DCRA”) environmental health and safety inspections at OHYC and the YSC. The audit instruments shall be developed in consultation with the Special Arbiter’s environmental health and safety expert, and shall specify the frequency of the inspections, the abatement process, and the specific Consent Decree environmental health and safety requirements subject to such inspections. The instruments shall allow for the designation of any specific deficiencies as critical to life, health and safety. The audit instruments shall be agreed upon by the parties and approved by the Special Arbiter.
- b. By February 15, 2008, and consistent with the audit instruments referred to in VII.A.1.a., above, environmental health and safety inspections of OHYC and the YSC shall be conducted on a routine basis by qualified inspectors employed by District of Columbia government agencies other than DYRS with expertise in the subject matter of the inspections.
- c. Inspection reports tracking the standards reflected in the audit instruments shall be issued within 30 days following the completion of each inspection. Any deficiencies identified in an inspection report shall be abated within the time period specified in the inspection report.
- d. By February 15, 2008, and consistent with the environmental health and safety requirements of the Consent Decree, in addition to the routine inspections described in VII.A.1.a.-c., above, regular environmental

health and safety inspections at OHYC and at the YSC shall be conducted by DYRS based on inspection instruments and a schedule that are agreed upon by the parties and approved by the Special Arbiter. The inspection instruments shall be developed in consultation with the Special Arbiter's environmental health and safety expert, and shall specify the frequency of the inspections, the abatement process, and the specific Consent Decree environmental health and safety requirements subject to such internal inspections. The instruments shall allow for the designation of any specific deficiencies as critical to life, health and safety. The inspections shall be documented and any deficiencies identified during such inspections shall be timely abated.

2. Review to Determine Environmental Health and Safety Program Meets Consent Decree Standards as Modified by Goal Seven (Mandatory)
 - a. By February 15, 2009, the defendants shall notify the Special Arbiter and plaintiffs' counsel, in writing, of their assessment that the audit, inspection and abatement process described in VII.A.1., above, has become routinized and that deficiencies identified in the audit and inspection instruments are timely and consistently abated at the YSC and/or OHYC.
 - b. Performance Standard: Within 60 days following the notice described in VII.A.2.a., above, the Special Arbiter, in consultation with such environmental health and safety expert she deems reasonably necessary, shall determine whether the defendants have the capacity to identify and timely correct the violations of the environmental health and safety requirements specified in the audit and inspection instruments at the facility identified in the notice submitted pursuant to VII.A.2.a., above. The failure to identify and correct all violations of the applicable requirements shall not preclude the Special Arbiter from finding the requisite capacity has been achieved and sustained. Any deficiencies critical to life, health and safety which are identified during the Special Arbiter's review shall be abated within a time period agreed upon by the parties and approved by the Special Arbiter unless the Special Arbiter finds that the defendants have demonstrated the capacity to abate critical deficiencies in an expedited manner.

Following the Special Arbiter's determination 1) that the defendants have the capacity to identify and timely correct the deficiencies identified in the audit and inspection instruments at the facility specified in the notice; and, 2) that any critical deficiencies identified during the review process established by VII.A.2.b. have either been abated, or defendants have demonstrated the capacity to abate critical deficiencies in an expedited manner, the facility subject to this determination shall no longer be subject to monitoring related to the requirements of VII.A., and the parties may file a motion to vacate the indicators in VII.A. and terminate the corresponding orders prior to the final dismissal and termination of this lawsuit. In the event such a motion is denied, plaintiffs may seek court intervention, including renewed monitoring, for material violations of the related order(s) that are not isolated or *de minimis* and that constitute a pattern and practice of material noncompliance.

B. Indicators for Goal Seven: Fire Safety (Mandatory)

1. Inspection, Abatement, Fire Drills (Mandatory)

- a. By January 15, 2008, and consistent with the fire safety requirements specified in the Consent Decree, defendants shall develop inspection instruments which shall guide fire safety inspections conducted at OHYC and at the YSC by the District of Columbia Fire and Emergency Medical Services Department ("DCF-EMS"). The inspection instruments shall be developed in consultation with the Special Arbiter's fire safety expert, and shall be agreed upon by the parties and approved by the Special Arbiter. The inspection instruments shall specify the specific Consent Decree fire safety requirements subject to such inspections and describe the abatement process. The instruments shall allow for the designation of any specific deficiencies as critical to life, health and safety.
- b. By February 15, 2008, and consistent with the inspection instrument referred to in VII.B.1.a., above, fire safety inspections at OHYC and at the YSC shall be conducted at six-month intervals by qualified inspectors employed by the DCF-EMS.
- c. Inspection reports, tracking the standards reflected in the inspection instruments, shall be issued by DCF-EMS within 30 days following completion of each inspection. Any

deficiencies identified in an inspection report shall be abated within the time period specified in the report.

- d. Within forty-five (45) days of hiring a DRYS Risk Manager, and consistent with the fire safety requirements of the Consent Decree and the DYRS policy developed pursuant to the Fire Safety Corrective Action Plan, in addition to the routine inspections described in VII.B.1.a.-c., above, regular fire safety inspections at OHYC and at the YSC shall be conducted by DYRS based on inspection instruments and a schedule that are agreed upon by the parties and approved by the Special Arbiter. The inspection instruments shall be developed in consultation with the Special Arbiter's fire safety expert, and shall specify the frequency of the inspections, the abatement process, and the specific Consent Decree environmental health and safety requirements subject to such internal inspections. The instruments shall allow for the designation of any specific deficiencies as critical to life, health and safety. The inspections shall be documented and any deficiencies identified during such inspections shall be timely abated.
 - e. By January 31, 2008, and consistent with the DYRS policy referenced in VII.B.1.d., above, DYRS shall conduct regular fire drills at OHYC and the YSC. DCF-EMS shall observe and critique fire drills at OHYC and the YSC until there is a determination pursuant to VII.B.3., below, that DYRS has the capacity to conduct fire drills appropriately.
2. Testing and Maintenance of Fire Protection Systems and Equipment (Mandatory)
 - a. Defendants shall maintain contracts for maintenance and testing of all fire protection systems and equipment in accordance with the D.C. Fire Prevention Code and the 2006 edition of the Life Safety Code.⁴³
 3. Review to Determine Fire Safety Program Meets Consent Decree Standards as Modified by Goal Seven (Mandatory)

⁴³ The contracts shall include maintenance and testing of the fire alarm detection and central fire alarm reporting systems pursuant to 2002 NFPA 72; the water-based fire protection systems pursuant to 2002 NFPA 25; the portable fire extinguishers pursuant to 2002 NFPA 10; the emergency generator pursuant to 2005 NFPA 110; the HVAC systems maintained in accordance with manufacturers' specifications and 2002 NFPA 90A; the electric and remote locking systems in accordance with manufacturer specifications and 2005 NFPA 70 and 2006 NFPA 101; and the extinguishing systems for range, hood and duct systems in the kitchen pursuant to 2004 NFPA 96.

- a. By February 15, 2009, the defendants shall notify the Special Arbiter and plaintiffs' counsel, in writing, of their assessment that the audit, inspection and abatement process described in VII.B.1., above, has become routinized and that deficiencies identified in the audit and inspection instruments are timely and consistently abated at the YSC and/or OHYC.
- b. Performance Standard: Within 60 days following the notice described in VII.B.3.a., the Special Arbiter, in consultation with such fire safety expert as she deems reasonably necessary, shall determine whether the defendants have the capacity to identify and timely correct violations of the fire safety requirements specified in the audit and inspection instruments at the facility identified in the notice submitted pursuant to VII.B.3.a., above. The failure to identify and correct all violations of the applicable requirements shall not preclude the Special Arbiter from finding the requisite capacity has been achieved and sustained. Any deficiencies critical to life, health and safety which are identified during the Special Arbiter's review shall be abated within a time period agreed upon by the parties and approved by the Special Arbiter unless the Special Arbiter determines the defendants have demonstrated the capacity to abate critical deficiencies in an expedited manner.

Following the Special Arbiter's determination 1) that the defendants have the capacity to identify and timely correct the deficiencies identified in the audit and inspection instruments at the facility specified in the notice; and, 2) that any critical deficiencies identified during the review process established by VII.B.3.b. have either been abated, or defendants have demonstrated the capacity to abate critical deficiencies in an expedited manner, the facility subject to this determination shall no longer be subject to monitoring related to the requirements of VII.B., and the parties may file a motion to vacate the indicators in VII.B. and terminate the corresponding orders prior to the final dismissal and termination of this lawsuit. In the event such a motion is denied, plaintiffs may seek court intervention, including renewed monitoring, for material violations of the related order(s) that are not isolated or *de minimis* and that constitute a pattern and practice of material noncompliance.

VIII. Goal Eight: Defendants shall provide adequate health services which meet the basic medical and dental health needs of youth at OHYC and at the YSC. (Mandatory)

A. Indicators for Goal Eight⁴⁴

1. Initial Medical Screening and Comprehensive Assessment

- a. Defendants shall provide each youth presented for admission to the YSC and OHYC with an initial medical and mental health risk screening to effectively identify acute health needs within four hours of presentation at the YSC and at OHYC. The scope and content of the risk screening shall be consistent with Attachment One to the Work Plan.
 - i. Benchmark: Ninety days following the Court's approval of the Work Plan, 85 percent of youth presented for admission at the YSC and 85 percent of youth presented for admission at OHYC shall receive an initial medical and mental health risk screening, within four hours of presentation for admission, that is consistent with the scope and content of Attachment One, and that identifies any acute health problems which are addressed on a timely basis, as clinically indicated.
 - ii. Performance Standard: By February 1, 2009, and thereafter, at least 95 percent of youth presented for admission at the YSC and 95 percent of youth presented for admission at OHYC shall receive an initial medical and mental health risk screening within four hours of presentation for admission, that is consistent with the scope and content of Attachment One, and that identifies any acute health problems which are addressed on a timely basis, as clinically indicated.

⁴⁴ Unlike the other indicators in the Work Plan, the indicators in Goal Five and Goal Eight have not been designated as "mandatory" or "conditional" exit criteria because of the nature of medical and behavioral health services. Instead, achievement of each Goal is mandatory and will be evaluated in light of the indicators; the performance standards reflected in the indicators; and, if any performance standards have not been met, a determination whether defendants are providing and have the capacity to continue to provide adequate care as described in subsection B of Goals Five and Eight. The following indicators in Goal Eight are also applicable to behavioral health services: Indicators VIII.A.2.a.-d., VIII.A.3.a. & b., VIII.A.6.a.-c., and VIII.A.10.a.

- b. Defendants shall provide a comprehensive medical assessment, within 24 hours of admission, to each youth, except for overnighters, admitted to the YSC and admitted directly to OHYC. For youth transferred from the YSC to OHYC, and transferred from OHYC to the YSC, the comprehensive assessment shall be reviewed and updated, as indicated, within 72 hours. The scope and content of the comprehensive medical assessment shall include, at a minimum, the criteria set forth in Attachment Two to the Work Plan.
 - i. Benchmark: Ninety days following the Court's approval of the Work Plan, except for overnighters, 85 percent of youth admitted to the YSC and 85 percent of youth admitted directly to OHYC shall receive a comprehensive medical assessment that is consistent with the criteria set forth in Attachment Two within 24 hours of admission, and if a youth is transferred from the YSC to OHYC, or transferred from OHYC to the YSC, the comprehensive assessment shall be reviewed and updated, as indicated, within 72 hours of the transfer for 85 percent of the transferees.
 - ii. Performance Standard: By February 1, 2009, and thereafter, except for overnighters, at least 95 percent of youth admitted to the YSC and at least 95 percent of youth admitted directly to OHYC shall receive a comprehensive medical assessment consistent with the criteria set forth in Attachment Two within 24 hours of admission, and if a youth is transferred from the YSC to OHYC, or transferred from OHYC to the YSC, the comprehensive assessment shall be reviewed and updated, as indicated, within 72 hours of the transfer for 95 percent of the transferees.
- c. The comprehensive health assessment described in VIII.A.1.b., above, shall result in a problem list entry and clinically appropriate plan of care for each health problem revealed by the assessment. The problem list entry shall be updated, as indicated, and the plan of care shall be implemented on a timely basis as clinically indicated.
 - i. Benchmark: Six months following the Court's approval of the Work Plan, 85 percent of youth at OHYC and 85 percent of youth at the YSC shall

have a problem list that is updated as indicated, and 85 percent of youth at OHYC and 85 percent of youth at the YSC shall have a clinically appropriate plan of care for each health problem revealed by the comprehensive assessment, that is implemented on a timely basis, as clinically indicated.

- ii. Performance Standard: One year following the Court's approval of the Work Plan, and thereafter, 95 percent of youth at OHYC and 95 percent of youth at the YSC shall have a problem list that is updated as indicated, and 90 percent of youth at OHYC and 90 percent of youth at the YSC shall have a clinically appropriate plan of care for each health problem revealed by the comprehensive assessment, that is implemented on a timely basis, as clinically indicated.

2. Medication Administration, Monitoring and Management⁴⁵

- a. Defendants shall verify orders for medications following the admission of youth to the YSC and OHYC, and if clinically appropriate, medications shall be administered, as prescribed, upon verification. In instances in which such verification cannot be obtained on a timely basis, medication evaluation shall be conducted by an appropriate provider within a clinically indicated time period.
 - i. Benchmark: Ninety days following the Court's approval of the Work Plan, 75 percent of youth admitted to OHYC and 75 percent of youth admitted to the YSC shall receive their prescribed medications following admission, if clinically appropriate, without missing a prescribed dose. In those instances in which a dose of medication is missed, and the youth is not an overnigher or otherwise discharged from DYRS custody prior to the missed dose, the medication shall be provided within a time period that does not subject the youth to a significant risk of harm.
 - ii. Performance Standard: Nine months following the Court's approval of the Work Plan, and thereafter, 85 percent of youth admitted to OHYC and 85 percent of youth admitted to the YSC shall receive

⁴⁵ Indicators VIII.A.2.a.–d. are applicable to all medications, including psychotropic medications.

their prescribed medications following admission, if clinically appropriate, without missing a prescribed dose. In those instances in which a dose of medication is missed, and the youth is not an overnigher or otherwise discharged from DYRS custody prior to the missed dose, the medication shall be provided within a time period that does not subject the youth to a significant risk of harm.

- b. Defendants shall administer newly prescribed medications to youth within 24 hours of the issuance of an order by a DYRS prescriber at the YSC and OHYC.
 - i. Benchmark: Ninety days following the Court's approval of the Work Plan, newly prescribed medications shall be administered to 80 percent of youth at OHYC and 80 percent of youth at the YSC within 24 hours of the issuance of the medication order.
 - ii. Performance Standard: By February 1, 2009, and thereafter, newly prescribed medications shall be administered to 90 percent of youth at OHYC and 90 percent of youth at the YSC within 24 hours of the issuance of the medication order.
- c. Defendants shall monitor the administration of prescribed medications, explain missed doses on the Medication Administration Record ("MAR"), and correct systemic factors, unrelated to refusals, which have resulted in missed doses at the YSC and OHYC.
 - i. Benchmark: Ninety days following the Court's approval of the Work Plan, 80 percent of missed doses at the YSC and 80 percent of missed doses at OHYC shall be explained on the MAR.
 - ii. Performance Standard: Nine months following the Court's approval of the Work Plan, and thereafter, 90 percent of missed doses at the YSC and 90 percent of missed doses at OHYC shall be explained on the MAR.
 - iii. Performance Standard: By February 1, 2009, and thereafter, defendants shall monitor and correct systemic factors unrelated to refusals which have resulted in missed doses at the YSC and at OHYC.

- d. Defendants shall administer medications, and monitor youth who have been prescribed medications, according to the standards set forth in Attachment Three to the Work Plan.
 - i. Benchmark: Ninety days following the Court’s approval of the Work Plan, 80 percent of youth at OHYC and 80 percent of youth at the YSC who have been prescribed medications shall have their prescribed medications administered and monitored according to the standards in Attachment Three.
 - ii. Performance Standard: By February 1, 2009, and thereafter, 90 percent of the youth at OHYC and 90 percent of the youth at the YSC who have been prescribed medications shall have their prescribed medications administered and monitored according to the standards in Attachment Three.
 - iii. Performance Standard: By March 1, 2009, defendants shall develop uniform standards for monitoring youth who have been prescribed psychotropic medications in consultation with plaintiffs, the Special Arbiter and her medical experts. Thereafter, defendants shall implement the standards.

3. Non-Urgent Routine Care

- a. Defendants shall maintain locked and confidential “Request for Medical and/or Mental Health Care” boxes on each housing unit and in the school at the YSC and OHYC which, in addition to writing implements and “Request for Care” forms (“request forms”), shall be readily accessible to youth for requesting non-urgent routine care.⁴⁶
 - i. Performance Standard: By September 15, 2007 and thereafter, defendants shall maintain locked and confidential “Request for Medical and/or Mental Health Care” boxes on each housing unit and in the school at the YSC and OHYC which, in addition to writing implements and “Request for Care” forms (“request forms”), shall be readily accessible to youth for requesting non-urgent routine care.

⁴⁶ An alternate means for requesting medical and/or mental health care shall be available by September 15, 2007, and thereafter, for youth who have literacy challenges.

- b. Medical/Behavioral Health staff shall collect request forms twice daily at the YSC and at OHYC, and triage the requests for urgency. Absent an indication of urgency, medical staff shall clinically evaluate each youth who has submitted a request for medical care within 24 hours of the collection of the request form.⁴⁷
 - i. Benchmark: Ninety days following the Court's approval of the Work Plan, 80 percent of youth at OHYC and 80 percent of youth at the YSC who do not have urgent health problems shall be clinically evaluated within 24 hours of the collection of their request forms.
 - ii. Performance Standard: By February 1, 2009, and thereafter, 90 percent of youth at OHYC and 90 percent of youth at the YSC who do not have urgent health problems shall be clinically evaluated within 24 hours of the collection of their request forms.

4. Off-Site/Urgent/Emergent Care

- a. Defendants shall review and assess all youth, and implement the recommended plan of care, upon the youth's return back to the YSC or OHYC from off-site health encounters, including off-site encounters for routine, follow-up, urgent or emergent care.
 - i. Benchmark: Ninety days following the Court's approval of the Work Plan, an advanced care medical provider⁴⁸ shall review and assess all youth and implement the recommended plan of care for 85 percent of youth at OHYC and 85 percent of youth at the YSC upon their return from off-site health encounters.
 - ii. Performance Standard: Nine months following the Court's approval of the Work Plan, and thereafter, an advanced care medical provider shall review and assess all youth and implement the recommended plan of care for 95 percent of youth at OHYC and 95 percent of youth at the YSC upon their return from off-site health encounters.

⁴⁷ Requests for care received through alternate means shall also be subject to the requirements in VIII.A.3.b.

⁴⁸ For purposes of Goal Eight, an advanced care medical provider is a doctor, physicians assistant, or nurse practitioner.

- b. Defendants shall maintain CPR certification for all licensed medical providers who work at OHYC and the YSC.
 - i. Performance Standard: By February 1, 2009, and thereafter, 95 percent of licensed medical providers at OHYC and 95 percent of licensed medical providers at the YSC shall have current CPR certification.
- c. Defendants shall develop and implement a protocol for responding to medical emergencies at OHYC and at the YSC as required by the February 14, 2006 modification to the Third-Short Term Deliverables Plan.
 - i. Performance Standard: By April 1, 2009, and thereafter, defendants shall implement the protocol for responding to medical emergencies at OHYC and at the YSC as required by the February 14, 2006 modification to the Third-Short Term Deliverables Plan.
- d. Defendants shall conduct quarterly medical emergency drills with at least one drill conducted annually on each shift at OHYC and at the YSC. Defendants shall critically review each drill, and, as indicated, implement improvements in the emergency response protocol and/or practice.
 - i. Performance Standard: By April 1, 2009, and thereafter, defendants shall conduct medical emergency drills three times per year with at least one drill conducted annually on each shift at OHYC and at the YSC. Defendants shall critically review each drill, and, as indicated, implement improvements in the emergency response protocol and/or practice.
- e. Defendants shall transfer to a hospital for medical treatment youth at OHYC and youth at the YSC who have medical needs which require more advanced care than close medical observation.
 - i. Performance Standard: By February 1, 2009, and thereafter, defendants shall transfer to a hospital for medical treatment youth at OHYC and youth at the YSC who have medical needs which require more advanced care than close medical observation.

5. Communicable Diseases

- a. Defendants shall identify, treat and track all youth at OHYC and the YSC with communicable diseases revealed by signs or symptoms occurring in the skin according to the current edition of the American Academy of Pediatrics Report of the Committee on Infectious Diseases (“Red Book”). All youth with skin rashes shall be referred to an advanced care medical provider for assessment and management. As necessary, defendants shall report such communicable diseases to the appropriate health authority.
 - i. Benchmark: Ninety days following the Court’s approval of the Work Plan, 85 percent of youth at OHYC and 85 percent of youth at the YSC with rashes shall be referred on a timely basis to an advanced care provider for diagnostic assessment and managed in a manner that is consistent with the relevant Red Book protocols.
 - ii. Performance Standard: Nine months following the Court’s approval of the Work Plan, and thereafter, 95 percent of youth at OHYC and 95 percent of youth at the YSC with rashes shall be referred on a timely basis to an advanced care provider for diagnostic assessment and managed in a manner that is consistent with the relevant Red Book protocols.

6. Use of Force, Altercations, Medical Restraints

- a. Defendants shall promptly provide an assessment by medical staff of youth at OHYC and at the YSC following their involvement in any altercation resulting in physical contact, or following any instance in which staff use force, including mechanical and/or physical restraints.
 - i. Benchmark: Six months following the Court’s approval of the Work Plan, 80 percent of youth at OHYC and 80 percent of youth at the YSC shall be promptly assessed by medical staff following their involvement in any altercation resulting in physical contact, or following any instance in which staff use force, including mechanical and/or physical restraints.

- ii. Performance Standard: By February 1, 2009, and thereafter, 90 percent of youth at OHYC and 90 percent of youth at the YSC shall be promptly assessed by medical staff following their involvement in any altercation resulting in physical contact, or following any instance in which staff use force, including mechanical and/or physical restraints.
- b. Defendants shall notify medical staff at OHYC and at the YSC immediately in all instances in which a youth is mechanically restrained, except in instances of routine transport. Medical staff shall report to the scene to medically monitor the youth during the restraint episode consistent with the DYRS policy guidelines included as Attachment Four to the Work Plan.
 - i. Benchmark: Ninety days following the Court's approval of the Work Plan, except in instances of routine transport, medical staff at OHYC and at the YSC shall be immediately notified of all instances in which a youth is mechanically restrained and shall medically monitor the youth during 85 percent of restraint episodes at each facility consistent with the DYRS policy guidelines included as Attachment Four.
 - ii. Performance Standard: Nine months following the Court's approval of the Work Plan, and thereafter, except in instances of routine transport, medical staff at OHYC and at the YSC shall be immediately notified of all instances in which a youth is mechanically restrained and shall medically monitor the youth during 95 percent of the restraint episodes at each facility consistent with the DYRS policy guidelines included as Attachment Four.
- c. Defendants shall develop, implement, and monitor implementation of a policy addressing the use of medical restraints, including mechanical devices and drugs to control behavior and restrict freedom of movement. The policy shall be generally consistent with Attachment Five to the Work Plan, the 2003 edition of the American Public Health Association Standards for Health Services in Correctional Institutions governing the administration of

restraints.⁴⁹ The policy shall describe the limited circumstances under which medical restraints may be used, and the appropriate medical and behavioral health interventions related to a restraint episode.

- i. Performance Standard: By June 30, 2009, and thereafter, defendants shall develop, implement and monitor implementation at OHYC and at the YSC of the policy described in VIII.A.6.c.

7. Preventive Care

- a. Defendants shall evaluate the immunization status of youth at OHYC and at the YSC as part of the assessment described in VIII.A.1.b., and administer and update immunizations in order to be compliant with current public health recommendations for adolescents.

- i. Benchmark: Ninety days following the Court's approval of the Work Plan, 85 percent of youth at OHYC and 85 percent of youth at the YSC shall have their immunization statuses evaluated and shall receive immunizations in order to be compliant with current public health recommendations for adolescents.
- ii. Performance Standard: By February 1, 2009, and thereafter, 95 percent of youth at OHYC and 95 percent of youth at the YSC shall have their immunization statuses evaluated and shall receive immunizations in order to be compliant with current public health recommendations for adolescents.

- b. Defendants shall provide youth who have been in secure confinement at OHYC or at the YSC for more than 12 months with an annual medical assessment according to the American Academy of Pediatrics Guidelines for Health Supervision III, including labs, vision, hearing, and for girls, cervical cytology testing.

- i. Performance Standard: Ninety days following the Court's approval of the Work Plan, and thereafter, defendants shall provide youth who have been in secure confinement at OHYC or at the YSC for more than 12 months with an annual medical

⁴⁹ The parties acknowledge that a physician may decide to use restraints instead of a psychiatrist provided that the physician consults with a psychiatrist prior to making a determination regarding the use of restraint.

assessment according to the American Academy of Pediatrics Guidelines for Health Supervision III, including labs, vision, hearing, and for girls, cervical cytology testing.

8. Chronic Disease Management

- a. Defendants shall manage the medical care provided to youth at OHYC and youth at the YSC who are diagnosed with asthma, diabetes, hypertension, obesity, seizures, and human immunodeficiency virus (“HIV”) infection in a manner that is consistent with the National Commission on Correctional Health Care (“NCCHC”) guidelines included in Attachment Six to the Work Plan. Consistent with length of stay and other objective factors which may influence clinical outcomes, clinical outcome measures for youth at OHYC and at the YSC shall include reduction in asthma symptoms or disability related to asthma; reduced or optimal Hemoglobin A1C for diabetes; reduced or optimal blood pressure for hypertension; cessation of weight gain or weight loss for obesity; and/or, fewer or no seizures.
 - i. Benchmark: Ninety days following the Court’s approval of the Work Plan, the medical care provided to 85 percent of youth at OHYC and 85 percent of youth at the YSC who are diagnosed with asthma, diabetes, hypertension, obesity, seizures, and HIV infection shall be provided in a manner that is consistent with the NCCHC guidelines included in Attachment Six, and for 80 percent of such youth,⁵⁰ consistent with length of stay and other objective factors which may influence clinical outcomes, there shall be a reduction in asthma symptoms or disability related to asthma; reduced or optimal Hemoglobin A1C for diabetes; reduced or optimal blood pressure for hypertension; cessation of weight gain or weight loss for obesity; and/or fewer or no seizures.
 - ii. Performance Standard: By February 1, 2009, and thereafter, the medical care provided to 90 percent of youth at OHYC and 90 percent of youth at the YSC who are diagnosed with asthma, diabetes,

⁵⁰ The clinical outcomes for youth with HIV infection are not addressed by VIII.A.8.a. Instead, such clinical outcomes are addressed in VIII.A.8.b.

hypertension, obesity, seizures, and HIV infection shall be provided in a manner that is consistent with the NCCHC guidelines included in Attachment Six, and for 80 percent of such youth, consistent with length of stay and other objective factors which may influence clinical outcomes, there shall be a reduction in asthma symptoms or disability related to asthma; reduced or optimal Hemoglobin A1C for diabetes; reduced or optimal blood pressure for hypertension; cessation of weight gain or weight loss for obesity; and/or fewer or no seizures.

- b. Defendants shall manage the health care provided to youth at OHYC and youth at the YSC who are HIV positive or diagnosed with AIDS through services that are delivered by a specialist in the management of adolescent HIV infection. Continuity of care following discharge from OHYC or the YSC, including referrals for community care, shall be arranged by defendants prior to the time of discharge. Clinical outcome measures for youth at OHYC and youth at the YSC shall include effective management of increased viral load and effective management of decreased T-cells consistent with length of stay and other objective factors which may influence clinical outcomes.
 - i. Benchmark: Ninety days following the Court's approval of the Work Plan, 90 percent of youth at OHYC and 90 percent of youth at the YSC who are HIV positive or diagnosed with AIDS shall have their health care managed by a specialist in the management of adolescent HIV infection, with continuity of care following discharge, including referrals for community care, arranged by defendants' health care staff prior to the time of discharge, and their clinical outcomes at OHYC and the YSC shall reflect effective management of increased viral load and effective management of decreased T-cells consistent with length of stay and other objective factors which may influence clinical outcomes.
 - ii. Performance Standard: Nine months following the Court's approval of the Work Plan, and thereafter, 100 percent of youth at OHYC and 100 percent of youth at the YSC who are HIV positive or diagnosed with AIDS shall have their health care managed by a specialist in the management of

adolescent HIV infection, with continuity of care following discharge, including referrals for community care, arranged by defendants' health care staff prior to the time of discharge, and their clinical outcomes at OHYC and the YSC shall reflect effective management of increased viral load and effective management of decreased T-cells consistent with length of stay and other objective factors which may influence clinical outcomes.

- c. Defendants shall provide youth at OHYC and at the YSC with significant correctible physical disabilities timely and appropriate specialty evaluation, management and treatment of their disabilities. Clinical outcome measures for youth at OHYC and at the YSC shall include reduction in disability consistent with length of stay and other objective factors which may influence clinical outcomes.
 - i. Performance Standard: Ninety days following the Court's approval of the Work Plan, and thereafter, youth with significant correctible physical disabilities at OHYC and at the YSC shall receive timely and appropriate specialty evaluation, management and treatment of their disabilities and their clinical outcomes at OHYC and at the YSC shall include reduction in disability consistent with length of stay and other objective factors which may influence clinical outcomes.

9. Dental Care

- a. Defendants shall provide a comprehensive dental assessment to youth within 14 days of admission to the YSC and OHYC that is consistent with the content and scope of Attachment Seven to the Work Plan. A treatment plan shall be developed to address the oral pathology identified as a result of the comprehensive assessment and it shall also include routine dental cleaning and prophylaxis services.
 - i. Benchmark: Ninety days following the Court's approval of the Work Plan, 85 percent of the youth at OHYC and 85 percent of the youth at the YSC shall receive a comprehensive dental assessment within 14 days of admission that is consistent with the content and scope of Attachment Seven, and that results in a treatment plan to address the oral

pathology identified as a result of the comprehensive assessment, routine dental cleaning, and prophylaxis services.

ii. Performance Standard: By February 1, 2009, and thereafter, 90 percent of the youth at OHYC and 90 percent of the youth at the YSC shall receive a comprehensive dental assessment within 14 days of admission that is consistent with the content and scope of Attachment Seven, and that results in a treatment plan to address the oral pathology identified as a result of the comprehensive assessment, routine dental cleaning, and prophylaxis services.

b. Defendants shall implement the plan of care described in VIII.A.9.a. on a timely basis. Insofar as possible based on length of stay, necessary restorative care shall be provided to securely committed youth prior to discharge from secure confinement.

i. Benchmark: Ninety days following the Court's approval of the Work Plan, the plan of care shall be implemented, including necessary restorative care insofar as possible based on length of stay, for 85 percent of the youth at OHYC and 85 percent of the youth at the YSC.

ii. Performance Standard: By February 1, 2009, and thereafter, the plan of care shall be implemented, including necessary restorative care insofar as possible based on length of stay, for 90 percent of the youth at OHYC and 90 percent of the youth at the YSC.

10. Autonomy of Health Services

a. Defendants shall provide timely access to medical, dental and behavioral health services for youth at OHYC and at the YSC based on the clinical judgment of licensed health care staff. The determinations of medical and/or behavioral health care staff on the timing and nature of access to necessary services shall not be prevented, obstructed, or delayed based on the action of facility staff. In instances in which the autonomy of health services has been violated, appropriate training, feedback, recourse and accountability measures shall be instituted.

- i. Performance Standard: By February 1, 2009, and thereafter, timely access to medical, dental and behavioral health services for youth at OHYC and at the YSC based on the clinical judgment of licensed health care staff shall be provided; the determinations of medical and/or behavioral health care staff on the timing and nature of access to necessary services shall not be prevented, obstructed, or delayed based on the action of facility staff; and, in any instances in which the autonomy of health services has been violated, appropriate training, feedback, recourse and accountability measures shall be instituted.

11. Continuous Quality Improvement

- a. Defendants shall implement and maintain a health services CQI program with the demonstrable capacity to perform the following functions up to and for the six-month period immediately preceding the termination of this lawsuit:
 - i. Monitoring on a routine basis to determine compliance with provisions in the health services policy and procedure manual and routine monitoring of the timeliness, appropriateness, continuity, and quality of the following medical services: intake screenings and assessments; primary care; chronic care; urgent/emergent care; preventive care; dental care; infirmary care; communicable disease management; medication assessment and administration; grievances; and continuity of care.
 - ii. The quality of clinical care provided during 95 percent of all sick call encounters at the YSC and 95 percent of all sick call encounters at OHYC shall be reviewed routinely by a facility physician, and problems identified by such reviews shall be addressed to improve the quality of care provided during sick call. The rate of reviews of sick call encounters may decrease, pursuant to an agreement between the parties, in consultation with the Special Arbiter and her medical experts, upon an appropriate showing by defendants that improvement in the quality of care delivered during sick call encounters warrants such a decrease.

- iii. Review of critical incidents and sentinel events, and the ability to conduct special studies as indicated by clinical experience or any problems revealed by the aggregate data.
- iv. Analysis of the data identified in VIII.A.11.a.(i-iii), above, on a routine basis to identify successes, shortcomings and obstacles to achieving performance and quality of services standards, and use of the analysis to plan, implement, monitor, track and adjust, if indicated, plans of correction to improve services.

B. Review to Determine Adequacy of Health Services (Mandatory)

- 1. Performance Standard: The Special Arbiter, in consultation with such health care expert consultants as she deems reasonably necessary,⁵¹ shall determine whether the medical and dental care provided to youth at OHYC and at the YSC adequately meet the basic medical and dental health needs of youth at each facility, as defined by the indicators agreed upon by the parties and the Special Arbiter and the performance standards agreed upon by the parties in consultation with the Special Arbiter and her expert consultant that are set forth in VIII.A., above. Notwithstanding any deviation from such performance standards, the Special Arbiter shall find this goal has been met if the Special Arbiter, in consultation with her health care experts, determines that defendants are providing, and have the capacity to continue to provide, adequate medical and dental care that meets the basic medical and dental health needs of youth at the YSC and at OHYC.

IX. Goal Nine: Defendants shall construct a New Facility for committed youth that shall replace OHYC. (Vacated, November 19, 2013)

A. Indicators for Goal Nine

- 1. Design and Construction Schedule
 - a. Performance Standard: By January 1, 2009, or such reasonably extended time period as is warranted by ordinary and customary construction delay, defendants

⁵¹ The Special Arbiter and the parties anticipate that the Special Arbiter will consult with Dr. Michael Cohen and Dr. Ronald Shansky.

shall complete the construction of the New Facility for committed youth consistent with the design and schedule specified in the January 5, 2007 design/build contract. (Mandatory) (*Vacated, November 19, 2013*)

- b. Performance Standard: On or before the date the New Facility is occupied by any youth, the warranties and/or maintenance contracts for the following systems shall be in effect: mechanical (including HVAC), security (including the hardware and software), and fire safety systems. Defendants may satisfy this requirement in part by providing qualified in-house staff to provide maintenance on the mechanical, and security systems. (Conditional) (*Vacated, November 19, 2013*)

2. Implementation of Preventive Maintenance Plan (Conditional)

- a. On or before the date the New Facility is occupied by any youth, the preventive maintenance plan for the New Facility shall include, at a minimum, the following components: (*Vacated, November 19, 2013*)
 - i. Performance Standard: A computerized system that is in use by staff trained in its operation, which tracks and produces reports on the maintenance schedule (*i.e.*, the frequency of maintenance) for the systems identified in IX.A.1.b., above, and the electrical and plumbing systems; designates the individual responsible for the maintenance of each system; and records all maintenance performed on each system. (*Vacated, November 19, 2013*)
 - ii. Performance Standard: A system for the storing and retrieval of documentation that is available on-site, and which describes the operation of each system identified in IX.A.1.b., above. (*Vacated, November 19, 2013*)

X. Goal Ten: Defendants shall employ adequately trained staff.
(Conditional)

A. Indicators for Goal Ten (Conditional)

1. Training for All Youth Development Specialists (“YDS”)

- a. Prior to any assignment to a position supervising youth, excluding any supervision conducted as part of pre-service on-the-job training, YDS shall receive at least 100 hours of pre-service and in-service training that covers, at a minimum, the following areas:⁵² DYRS vision, mission and basic expectations, cultural sensitivity, sexual harassment, behavioral observation and recording, communication skills, crisis management, security procedures, supervision of youth, signs of suicide risks, suicide prevention, use-of-force regulations and tactics, report writing, juvenile rules and regulations, rights and responsibilities of youth, fire and emergency procedures, safety procedures, key control, housekeeping, first aid, CPR, introduction to the District of Columbia juvenile justice system, adolescent development, anger management, working with youth with mental health and/or substance abuse disorders and developmental disabilities, and the side effects of psychotropic medications.
 - i. Benchmark: By March 1, 2008, 85 percent of the YDS staff hired after September 1, 2007 shall complete at least 100 hours of pre-service training prior to any assignment to a position supervising youth, except for any supervision conducted during pre-service on-the-job training.
 - ii. Performance Standard: By July 31, 2008, 90 percent of the YDS staff hired after September 1, 2007 shall complete at least 100 hours of pre-service and in-service training prior to any assignment to a position supervising youth, except for any supervision conducted during pre-service on-the-job training.
- b. Each year following their first year of employment, YDS staff shall receive 24 hours of refresher training that covers, at a minimum, the following areas: security procedures, supervision of youth, signs of suicide risks, suicide prevention, use-of-force regulations and tactics, report writing, youth rules and regulations, de-escalation tactics, first aid, CPR, working with youth with mental health and/or substance abuse disorders and developmental

⁵² YDS who are hired on an individual basis shall receive 21 hours of pre-service training in the topics listed in subsection b., and shall complete the balance of the 100 hours of training in an in-service fashion when a cohort of five newly hired YDS exists. Provided they receive the 21 hours of pre-service training, such individual hires shall not be counted when determining whether the benchmark and performance standard for this indicator have been achieved.

disabilities, and the side effects of psychotropic medications.

- i. Performance Standard: By March 31, 2008 and thereafter, at least 80 percent of YDS with more than one year of service shall receive 24 hours of refresher training each year.

XI. Goal Eleven: OHYC shall not be used for the housing of securely confined youth under the jurisdiction of the Family Court, except in connection with special enrichment programming such as outdoor education programs. (Vacated, November 19, 2013)

A. Indicators for Goal Eleven

1. Disable or Convert OHYC (Mandatory)
 - a. Within no less than 60 days prior to the dismissal and termination of this lawsuit, the parties, in consultation with the Special Arbiter, shall determine by agreement the manner in which OHYC shall be disabled or converted such that it will no longer be used for the housing of securely confined youth under the jurisdiction of the Family Court. (Mandatory) (Vacated, November 19, 2013)
 - b. Performance Standard: Within 90 days of the full occupancy of the New Facility, youth under the jurisdiction of the Juvenile Division of the Family Court shall not be housed at OHYC except in connection with special enrichment programming.⁵³ (Mandatory) (Vacated, November 19, 2013)

⁵³ Defendants intend to achieve the full occupancy of the new facility reasonably promptly and within six months of when the facility is first opened to beneficial occupancy by youth, but this Work Plan does not require that the transition occur within such period.

XII. Goal Twelve: Defendants shall Implement and Maintain an Adequate Continuous Quality Improvement (“CQI”) Program⁵⁴

A. Indicators for Goal Twelve (Mandatory)⁵⁵

1. Basic CQI Program Functions

- a. Defendants shall maintain a CQI program with a demonstrable capacity to perform the following functions up to and at least for the six-month period immediately prior to the termination of this lawsuit:
 - i. Accurately collect and analyze data related to the indicators in the Work Plan.
 - ii. Review critical and unusual incidents internally.
 - iii. Implement a methodology to review the quality of service delivery related to the following Work Plan provisions: I.A.6. (Intake Assessment and Housing Assignment), Goal Three, and Goal Ten.
 - iv. Analyze the data identified in XII.A.1.a.(i-iii), above, on a routine basis to identify successes, shortcomings, and obstacles to achieving performance and service quality standards, and use the analysis to implement, and adjust, as indicated, corrective action strategies to improve performance.

2. Review to Determine Basic CQI Functions Implemented and Maintained

- a. The Special Arbiter shall determine whether the defendants have implemented and maintained the CQI functions identified in XII.A.1.a., above, up to and at least for the six-month period prior to the termination of the lawsuit. The

⁵⁴ The indicators for this Goal do not apply to Goal Five (Behavioral Health) and Goal Eight (Medical and Dental Care), which have their own CQI indicators.

⁵⁵ In the event the Special Arbiter determines that defendants have not implemented and maintained a CQI program with the demonstrable capacity to perform the functions specified in Goal Twelve for the prescribed time period, but defendants have otherwise satisfied all of the mandatory exit criteria, a number of the conditional exit criteria, and the other principal goals of the Work Plan, the Court may nonetheless find that Goal Twelve has been satisfied if the Court determines there is substantial evidence establishing that compliance with the principal goals of the Work Plan can be sustained, or in the case of conditional exit criteria that have not been satisfied, achieved and sustained, by an appropriate alternative or combination of alternatives to one or more of the CQI functions specified in Goal Twelve.

following evaluation criteria shall guide the Special Arbitrer's determination:

- i. Whether defendants have implemented a management information system and/or any other data collection process(es) which routinely collect basic data elements related to the Work Plan indicators, and if so, whether such system(s) and/or process(es) perform at a minimally acceptable level of accuracy.
- ii. Whether serious problems or obstacles related to the achievement of the Work Plan's indicators are identified through the CQI activities described in XII.A.1.a.(i-iv), above, and whether strategies are implemented, and adjusted, as indicated, to improve performance. The purpose of this review shall be to determine whether defendants have the capacity to identify serious problems and to formulate, implement and adjust strategies to improve performance in response. This determination shall not be based on whether all such serious problems are identified and corrected, and will recognize defendants' management prerogatives to select from a range of reasonable strategic responses.

Submitted: May 29, 2014