



JI-GA-001-003

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JOHN DOE 1, by his next friend {  
MARY DOE 1; JOHN DOE 2 by his {  
next friend MARY DOE 2; JANE {  
ROE 1, by her next friend MARY {  
ROE 1; JANE ROE 2, by her next {  
friend MARY ROE 2; JANE ROE 3 {  
by her next friend, MARY ROE 3, {

Plaintiffs, {

v. {

CIVIL ACTION

GEORGE NAPPER, JR., in {  
his official capacity as {  
Commissioner of the Georgia {  
Department of Children and {  
Youth Services; JAMES PHILLIPS, {  
in his official capacity as {  
Director of the Marietta {  
Regional Youth Development {  
Center; WERNER ROGERS, in his {  
official capacity as Georgia {  
State School Superintendent; {  
and the Georgia STATE BOARD OF {  
EDUCATION, {

FILE NO. 1 93-CV-642-JEC

Defendants.

CONSENT DECREE

This Consent Decree is made and entered into by the parties listed below to resolve claims asserted by the Plaintiffs in this class action. The Court, having considered the submissions of the parties, the record of the case, and any written comments of class members, in order to approve this agreement, and under 18 U.S.C. § 3626(a)(1), on the basis of this stipulation and the entire record found herein, finds that the relief set forth herein is narrowly drawn, and extends no further than necessary to correct violations of the federal rights of plaintiffs, and is the least intrusive means necessary to correct the federal violations, for this and for other good and just cause:

IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

I. PARTIES

The parties to this Consent Decree are:

1. Plaintiff children John Doe 1, by and through his next

friend, Mary Doe 1; John Doe 2, by and through his next friend, Mary Doe 2; John Doe 3, by and through his next friend, Mary Doe 3; Jane Roe 1, by and through her next friend, Mary Roe 1; Jane Roe 2, by and through her next friend Mary Roe 2; and Jane Roe 3, by and through her next friend, Mary Roe 3 on behalf of themselves and all other juveniles similarly situated who are, or who will be, confined at the Marietta Regional Youth Development Center in Marietta, Georgia. The Plaintiffs, including the certified class and subclass, may be hereinafter collectively referred to as "the Plaintiffs."

2. The Defendants, acting in their official capacities, are George Napper, Jr., and his successors, the Commissioner of the Georgia Department of Children and Youth Services; James Phillips, and his successors, the Director of the Marietta Regional Youth Detention Center; Werner Rogers, and his successor, Linda Schrenko, the State School Superintendent; and the Georgia State Board of Education. The Commissioner of the Georgia Department of Children and Youth Services and the Director of the Marietta Regional Youth Detention Center are responsible for the operation of the Marietta Regional Youth Detention Center.

## II. APPLICABILITY

This Consent Decree shall apply to the Marietta Regional Youth Detention Center and any other secure detention facility, subsequently operated by the Department of Children and Youth Services for the population currently accommodated in the Marietta Regional Youth Detention Center.

This Consent Decree encompasses the policies and procedures attached to and incorporated into the Consent Decree with the exception of portions of the policies and procedures applying exclusively to the Divisions of Campus Operations, Community Programs and/or the Investigations Unit. As these portions have been excluded from the negotiations and accompanying agreement, they will have no binding authority for the purposes of this case and will not be included in the subsequent monitoring activities.

Defendants shall comply with all policies and procedures attached to this Decree and part of this agreement.

This Consent Decree shall apply to the named defendants and their successors, agents, employees, assigns and those acting in concert with them.

## III. DEFINITION OF TERMS

For purposes of this Consent Decree, "days" shall mean calendar days, except as expressly otherwise provided.

"Plaintiffs' Counsel" means members of the Firm of Powell, Goldstein, Frazer & Murphy LLP.

"DCYS" means Department of Children and Youth Services (n/k/a Department of Juvenile Justice).

"MRYDC" means the Marietta Regional Youth Detention Center.

"JCO" means Juvenile Corrections Officer.

"BOE" means the Georgia State Board of Education.

"DOE" means the Georgia State Department of Education.

"IEP" means an individualized education program.

"IRC" form means incident report counseling form.

"DFCS" means the Georgia Division of Family and Children Services.

"OC" means oleoresin capsicum (natural oil of pepper).

"LSS" means local school system.

#### IV. RESERVATION OF RIGHTS

By entering into this Consent Decree, Plaintiffs and members of the Plaintiff class are not waiving any rights to pursue any individual claims for declaratory, injunctive, and/or mandatory relief. The only claims against Defendants that are settled herein are class claims for injunctive relief of a general nature as detailed in the Complaint filed in this case.

#### V. PRIVACY

All personally identifiable information concerning individual residents obtained by Plaintiffs, Plaintiffs' Counsel, and their experts shall be kept private and shall be used solely for the purpose of litigation and no other purpose.

#### VI. MERGER CLAUSE

This Consent Decree contains the entire agreement of the parties and none of the parties have made any additional promises not contained in the Consent Decree.

## VII. SPECIFIC STIPULATIONS

### A. POPULATION AND STAFFING

1. Population: There will be no more than two (2) youth sharing a sleeping room. Youth meeting the MRYDC criteria discussed in § VII.A.2 below for single room placement will be assigned to a room with no roommate.

2. Criteria for Single Room Placement: DCYS shall maintain a system of classifying juvenile residents upon admission to the MRYDC in order to control, separate, and/or segregate, for the purpose of sleeping, dangerous residents from the general population and to separate and/or segregate, for the purpose of sleeping, those residents whose well being or safety would be threatened by exposure to the general population. Youth admitted to the MRYDC will be assigned a room placement in accordance with the following classification plan:

a. Male and female youth shall never occupy the same sleeping room.

b. Female youth will be housed on the designated living unit for females.

c. Male youth will be housed on the designated living unit for males.

d. Sleeping rooms that are not in use (empty) will ordinarily be used prior to the assignment of a second youth to a sleeping room unless an empty room is not available for a valid reason such as painting in progress, needed repair, etc. In addition, there may be occasions where it is desirable to assign a second youth to a room even though there may be empty rooms, such as assigning a suicidal youth a roommate.

e. When there is no available empty room in a living unit and the need arises to assign a second youth to one room, the following procedures will be followed:

(i) Youth held on the following offenses will not be assigned two (2) to a room with another youth: murder, voluntary manslaughter, aggravated battery, rape, aggravated sodomy, aggravated child molestation, child molestation, aggravated sexual battery, armed robbery and car jacking.

(ii) Youth whose institutional behavior demonstrates a pattern of predatory or violent behavior will be assigned a single room.

(iii) Youth who have a known or suspected medical need for a single room as determined by medical personnel, will be assigned a single room.

(iv) Any youth, whose exposure to the general population would threaten his or her well being or safety, will be assigned a single room for sleeping purposes in order to protect any such youth. DCYS shall make all efforts to assure that these youth are never excluded from any activities or programs available to the general population to the greatest extent possible.

(v) Other factors to be considered in making single room assignments include known prior histories, age and size.

3. Staffing: DCYS shall comply with the Staffing policies and procedures for the MRYDC and its successor facilities set forth as Attachment § VII.A to this Consent Decree. The policies and procedures are incorporated and made a part of this Consent Decree as if fully set forth herein.

a. DCYS will implement a phased or graduated approach of increasing direct care and support staff at the MRYDC to adequately address safety, security and service demands according to Chart A in Attachment § VII.A.

b. Supervisors are not included in the staff levels set forth in Chart A in Attachment § VII.A.

c. No increase in staffing levels will be implemented for populations of sixty (60) youth or fewer.

d. When the detention population is between 61 and 75 youth, the following positions will be added according to Chart A in Attachment § VII.A:

One (1) Teacher;  
Four full-time and one part-time (4.5) Juvenile Correctional Officers;  
One part-time (.5) maintenance helper working under the supervision of the Craftsman;  
One (1) Food Service Employee;  
One part-time (.5) clerical worker.

e. When the detention population is between 76 and 90\*\* youth, the following positions will be added according to Chart A in Attachment §VII.A:

One (1) Teacher;  
One part-time (.5) LPN;  
Two-four (2-4) hours additional physician hours per week, as needed;  
Five (5) Juvenile Correctional Officers;  
One part-time (.5) Food Service Employee.

f. DCYS may make an allowance for a number of youth who are released from the RYDC within 2-3 days after their detention admission in calculating the number of Teachers needed in order to meet the required 1:15 ratio of students per Teacher. On an average daily basis, 2-3 youth are released within 2-3 days of admission to the RYDC and, therefore, are not enrolled in school. This has the effect of reducing the number of youth who attend classes and the number of teachers needed because these youth do not remain in MRYDC long enough to attend school.

#### B. RECREATION

1. The youth at the MRYDC will have one hour per day of outdoor recreation (weather permitting).
2. A JCO will be designated to coordinate recreation for the MRYDC.
3. Barring safety and security concerns in accordance with the policies and procedures contained in the Consent Agreement, the youth at the MRYDC will be provided with indoor recreation on days they are not allowed outside as a result of inclement weather. This will allow the children to engage in large muscle group activity.

#### C. ORIENTATION

DCYS shall distribute an orientation manual set forth as Attachment § VII.C to this Consent Decree to assist in familiarizing detained youth with program requirements at the MRYDC. This manual will be translated into Spanish and MRYDC will ensure that the children are familiar with the contents of the manual.

#### D. POST ORDERS

1. DCYS shall comply with the Post Order policies and procedures for the MRYDC and its successor facilities set forth as Attachment § VII.D to this Decree. The policies and procedures are incorporated and made a part of the Consent Decree as if fully set forth herein.
2. All staff members will receive training in post orders.

3. A copy of the post orders will be retained in both units to provide easy access to JCOs requiring guidance.

#### E. TRAINING

1. DCYS shall comply with the Training and Staff Development policies for RYDCs and procedures for the MRYDC and its successor facilities set forth as Attachment § VII.E to this Decree. The policies and procedures are incorporated and made a part of the Consent Decree as if fully set forth herein.

2. DCYS will train staff members to implement this Consent Decree and familiarize MRYDC staff members with the attached policies and procedures. The training program will be designed to ensure that all JCOs and staff members are thoroughly familiar with their responsibilities.

3. All MRYDC labor pool JCOs will receive, at a minimum, an in-house orientation and training before they work with the residents. This training will be documented and the records retained for three (3) years.

4. All MRYDC labor pool JCOs will receive the level one DCYS Juvenile Corrections Officer training at the next available JCO training course scheduled by DCYS, following their initial date of employment.

5. All MRYDC staff members responsible for supervising residents will be trained in administering the behavior management system. At a minimum, that training will consist of sixteen (16) hours broken down to include:

- a) Four (4) hours: class time, introduction to written material outlining the system;
- b) Four (4) hours: JCOs on the floor observing the system;
- c) Four (4) hours: classroom work including role playing exercises;
- d) Four (4) hours: job training, trainee is out on the floor and works assigned post with trainer's supervision;

After the initial sixteen (16) hours, the JCO is ready to work a normally scheduled shift.

6. Supervisors will receive specialized training enabling them to monitor adequate compliance with the behavior management system. JCO compliance will be monitored by supervisors conducting at least five random checks a month using the policy

enforcement checklist.

7. All MRYDC staff interacting with youth will be trained to understand the ways that mental health and special education needs may affect a youth's behavior at the facility.

8. All MRYDC staff members will receive medical training outlined in the health care policy and procedures. That training will include:

a. A minimum of six-eight (6-8) hours in-service training on suicide prevention;

b. Emergency procedures including obtaining emergency care and transportation;

c. Recognition of illness including mental illness, retardation and emotional disturbance;

d. Medical protocols;

e. Relaying medical complaints to medical personnel through completion of the sick call list;

f. Administering and recording medication;

g. Receiving/Intake Screening.

9. All MRYDC staff interacting with the youth, including, but not limited to, JCOs, administrators, medical staff, counselors, social workers, chaplain, educational and recreational staff, will be trained for six to eight (6-8) hours on-site to conduct admission interviews and learn to identify signs of depression or suicidal behavior from recognition to reporting, supervision, intervention and follow-up.

10. All JCOs who are allowed to administer medications must first receive competency-based medication training of no less than eight (8) hours.

11. All MRYDC staff will receive basic training and familiarization with emergency procedure and evacuation requirements.

12. All MRYDC staff members in contact with the residents will receive eight (8) hours training in the use of force.

13. Staff members must successfully complete the OC training before they are allowed to utilize OC.

14. All MRYDC will be trained on the correct use of the logging system, appropriate methods of recording data in the logs,

correct utilization of the room check patrol system, and record keeping requirements at the MRYDC.

#### F. USE OF FORCE

1. DCYS shall comply with the Use of Force policies and procedures for the MRYDC and its successor facilities set forth as Attachment § VII.F to this Consent Decree. The policies and procedures are incorporated and made a part of the Consent Decree as if fully set forth herein. Portions of the Use of Force policies and procedures applying exclusively to the Divisions of Campus Operations, Community Programs and/or the Investigations Unit are not incorporated into this Consent Decree. As these portions have been excluded from the negotiations and accompanying agreement, they will have no binding authority for the purposes of this case and will not be included in the subsequent monitoring activities.

2. No staff member at the MRYDC will be allowed to use OC until after successfully completing the training prescribed in the Use of Chemical Agents policies and procedures.

3. Youth at the MRYDC will never be restrained to a fixed object or have their hands and feet bound together.

4. Any youth in restraints at the MRYDC will be under constant visual observation by a staff member having physical possession of the keys for unlocking the restraints.

#### G. LOGGING

1. DCYS shall comply with the Logging policies and procedures for the MRYDC and its successor facilities set forth as Attachment § VII.G to this Consent Decree. The policies and procedures are incorporated and made a part of this Consent Decree as if fully set forth herein.

2. The MRYDC staff will make appropriate timely entries in the following logs:

a. Control Log: to be maintained by control room staff and read by supervisor, JCO II, counselor, director and assistant director, and control room staff at the beginning of the shift. Staff reading the log are responsible for making the other staff members aware of significant logbook entries at the beginning of each shift;

b. Unit Log: to be maintained in the living units, to be read by shift supervisors and oncoming staff working on that unit. Supervisors will alert their staff members to salient information contained in the log on the other unit, in order

to facilitate appropriate supervision when unit populations are mixed.

c. Special Management File: to be kept in the control center and containing the special management instructions for appropriate residents. This file will be reviewed at the beginning of the shift by all oncoming staff who will be working with the residents;

d. Key Log: maintained in the control room;

e. Restraint Log: to be maintained in the restraint cabinet now located in the control room and requiring that each and every use of mechanical restraints be logged;

f. Confinement Log: to be maintained in the control room; entries to be made for every resident placed in his/her room for emergency or disciplinary reasons;

g. Emergency Drill Log: to be maintained by the Trades Craftsman and contain records of all emergency drills;

h. Vehicle Log: logs detailing vehicle use and condition to be maintained in each vehicle;

i. Medication Log: medication dispensed to each resident will be logged in a book in the clinic and the page(s) applying to a particular resident will be maintained in the resident's medical file;

j. Incident Counseling Report: to monitor the unit log books, the mental health counselor will review the logs. Upon either witnessing an incident, or discovering evidence of a significant incident in the unit log, the counselor will initiate contact with the resident for the purpose of inquiring about the resident's behavior. The counselor's interview will be memorialized in the Incident Counseling Report (ICR). These reports will be maintained by the MRYDC for at least three years after they have been completed;

#### H. URINE CHECK PROCEDURE

1. DCYS shall comply with the Urine Check policies and procedures for the MRYDC and its successor facilities set forth as Attachment § VII.H to this Consent Decree. The policies and procedures are incorporated and made a part of the Consent Decree as if fully set forth herein.

2. MRYDC staff will complete a daily urine check in each of the resident's rooms.

3. In the event the staff member detects a urine odor, a written incident report will be filled out and the supervisor will investigate, interview the residents in that room, and if necessary, check the electronic patrol system in order to determine whether the room was appropriately included in the rounds.

4. In addition to being retained with the other incident reports, these reports will be routed to the Director.

5. This specific requirement will not be attached to any sleeping rooms in the new facility containing functioning toilet facilities, but shall be implemented whenever such toilets are not functioning.

#### I. MEDICAL AND HEALTH CARE SERVICES

1. DCYS shall comply with the Medical and Health Care Services policies for RYDCs and procedures for the MRYDC and its successor facilities set forth as Attachment § VII.I to this Consent Decree. The policies and procedures are incorporated and made a part of this Consent Decree as if fully set forth herein.

2. The Mental Health counselor will assess all youth within forty-eight (48) hours after their admission or not later than the counselor's next shift after the youth is admitted. However, if upon admission a youth presents observable evidence of an immediate need for evaluation, that youth will be assessed within twenty-four (24) hours.

3. Information about access to health care services, including sick call, will be communicated orally and in writing in the student handbook (available in English and Spanish) at the MRYDC.

4. All medications will be dispensed by the facility nurse or by a JCO who has been trained by the facility nurse or physician to administer medications. Training on medications is to be competency-based with annual updates for existing staff.

5. All medications will be securely stored, with controlled substances accessible to nurses and physicians only.

6. A full health appraisal will be completed on each youth within seven (7) days of admission to the MRYDC.

7. Verbal requests for medical services will be solicited from the residents by the JCO on a daily basis at the MRYDC. JCOs are responsible for writing the name of each youth requesting medical attention on the sick call list. The list will be kept in a central location and reviewed the same day, or the next scheduled

work day for entries made after 5:00 p.m., by the nurse or physician for appropriate triage.

8. Specialized individual medical treatment plans shall be developed by a physician for any resident with special medical needs.

9. The medical classification program outlined in the MRYDC health procedures will be followed and documented in the affected resident's medical file.

#### J. EDUCATION

1. DCYS shall comply with the Education Program, Right to Education, and Special Education policies and procedures for the MRYDC and its successor facilities as set forth as Attachment § VII.J to this Consent Decree. The policies and procedures are incorporated and made a part of this Consent Decree as if fully set forth herein.

2. DCYS, and where applicable the Department of Education, shall provide the following:

a. Detained youth shall be admitted to the education program after their first court appearance provided it is determined that the youth will remain in detention pending further court hearings. In all cases, the maximum amount of time a student will not attend classes is seventy-two (72) hours excluding weekends and holidays. Prior to the time a youth begins attending school, he/she will be involved in program activities, unless in an individual case the youth's behavior warrants that he/she not be involved in program activities.

b. Each youth admitted to the RYDC school shall receive appropriate individual testing services.

c. Educational records from the student's last educational placement shall be requested within seventy-two (72) hours of admission excluding weekends and holidays. Where DCYS encounters difficulty in obtaining such records, DCYS shall notify DOE and DOE shall assist in obtaining such records from the local school district.

d. A transcript will be prepared for any student enrolled in the RYDC school for ten (10) or more days. When a student leaves the RYDC school, transcripts will be forwarded to the receiving school if requested by the LSS, in accordance with applicable rules and regulations governing the transfer of such records; it is up to the LSS to give the student credit for his work. DOE agrees to

negotiate with the appropriate school systems and encourage them to recognize course work completed in the MRYDC educational program. For students enrolled in the RYDC school less than ten (10) days, an educational narrative will be forwarded to the court service worker for handling.

e. The MRYDC shall provide three hundred and thirty (330) minutes of instruction per day pursuant to Rule 160-5-1-.02, "School Days for Students," or per IEP content for students with disabilities. Special education students shall receive the instruction and services required by their IEPs.

f. Students with disabilities shall receive instruction from qualified personnel as provided by state and federal regulations.

g. The MRYDC shall have a special education Teacher to serve identified students.

h. DCYS shall maintain a 1 to 15 teacher/student ratio in the MRYDC school program. MRYDC will use only Teachers certified by the State of Georgia in its educational program, except:

(i) Non-certified Instructors may be used to perform administrative and/or clerical functions (i.e., grading papers), assisting certified Teachers in the delivery of lessons, or administer the automated version of the TABE test, used to assess all incoming students who have been previously tested.

(ii) On rare occasions, non-certified Instructors may fill in for a certified Teacher using a lesson plan prepared by a certified Teacher.

(iii) A substitute Teacher, holding at least a high school diploma may be called-in to substitute in case of a short-term Teacher absence.

i. The curriculum and instruction shall be tailored to meet the needs of students at the MRYDC.

j. All Teachers at the MRYDC shall write daily lesson plans one week in advance.

k. The MRYDC shall maintain a half-time clerical staff person to handle all school record requests and to assist the special education Teacher with processing the records and IEPs.

l. A JCO or other staff member shall be available to

observe the activities of the classroom.

m. Youth who miss class due to a period of disciplinary confinement will still receive school work assignments and will earn credit for their completed work. An exception to this practice will be made where it is not appropriate for a youth to be given work to complete in his/her room. The factors to be considered when making such a decision include a youth's assaultive or violent behavior or severe emotional distress.

n. The MRYDC will provide a free appropriate public education to all eligible students with disabilities.

o. Students who are experiencing academic and behavioral difficulties in the general education program may be referred by the regular Teacher to the Student Support Team (SST). The role of the SST is to review student information and recommend alternative strategies for meeting the student's needs in the regular education program. The alternative strategies will be tried for a specified period of time as defined by the SST, and evaluated for effectiveness at least bi-weekly. Where alternative SST strategies have failed to bring about positive results, the student must be referred for evaluation to determine eligibility for special education.

p. The MRYDC shall be responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a student with a disability. The IEP shall be developed in an IEP/Placement Committee meeting. Parents or guardians must be allowed to participate in IEP development, subject to the parent participation provisions found in the applicable federal and state regulations. The IEP shall be developed within thirty (30) calendar days of the determination of the student's eligibility for special education. Permission for placement must be obtained.

q. The special education Teacher and lead Teacher at the MRYDC shall be responsible for reviewing the information sent from the student's last educational placement. Current IEPs must be reviewed upon receipt and one of the following actions shall be implemented within one (1) week of the student entering the school program: continuation of present IEP; interim IEP; development of a new IEP.

r. The MRYDC shall ensure that each IEP meeting includes the following participants: a representative of the MRYDC, other than the student's Teacher, who is qualified to provide or supervise the provision of special education; the

student's Teacher; one or both of the student's parents/guardians, subject to the parent participation provisions found in the applicable federal and state regulations; the student when appropriate; at least one regular education Teacher if the student is or may be in the regular education environment; and other individuals at the discretion of the parent or agency.

s. The MRYDC shall maintain a list of eligible surrogate parents.

t. Special education records shall be maintained separately from general education records. All personally identifiable information will be stored in secure areas within each facility.

K. GRIEVANCES, DISCIPLINE, BEHAVIOR MANAGEMENT  
AND ROOM CONFINEMENT

1. DCYS shall comply with the Grievance, Discipline, and Behavior Management policies and procedures for the MRYDC and its successor facilities set forth in Attachment § VII.K to this Consent Decree. The policies and procedures are incorporated and made a part of the Consent Decree as if fully set forth herein.

2. Residents whose behavior is out of control may be placed in their rooms for a "cooling off" period of no longer than sixty (60) minutes, starting as soon as the youth's behavior is under control. If the period of confinement exceeds two (2) hours from the time the student is actually placed in the room, a major rule violation report shall be written and a disciplinary hearing for a major rule violation shall be scheduled.

3. No rights of a student may be suspended for disciplinary reasons. Rights include meals, sleep, health care services, access to the courts, confidential access to legal counsel, freedom from physical or psychological abuse, recreation, education, due process in disciplinary matters and grievance procedures. Visitation and other privileges may be suspended or modified for documented reasons of safety, security or discipline. Privilege suspension or modification must be approved by the Director or Assistant Director and a disciplinary report must be completed.

4. Disciplinary confinement may only be used when a student commits one or more of the major rule violations specified in Policy 14.4.

5. No disciplinary confinement will be implemented prior to a disciplinary hearing and completion of the review process, except in those special circumstances enumerated in the policies and

procedures.

6. Any confinement over twenty-four (24) hours duration must be approved in writing by the Director or his/her designee.

7. In no case may a student be continued in disciplinary confinement for more than one hundred and twenty (120) hours.

#### L. CLASSIFICATION

1. DCYS shall comply with the Classification and Segregation of Youth policies and procedures for the MRYDC and its successor facilities set forth as Attachment § VII.L to this Consent Decree. The policy and procedure is incorporated and made a part of the Consent Decree as if fully set forth herein.

2. In order to protect each juvenile resident from harm or violence, DCYS shall also maintain a system of classifying youth upon admission to the MRYDC as set forth in § VII.A.2 above (Criteria for Single Room Placement). DCYS officials at the MRYDC shall control, separate, and/or segregate, for sleeping purposes, dangerous residents from the general population and shall separate and/or segregate, for sleeping purposes, those residents whose well being or safety would be threatened by exposure to the general population.

#### M. FIRE

1. DCYS shall comply with the fire safety policy and procedure for the MRYDC and its successor facilities set forth as Attachment § VII.M to this Consent Decree. The policy and procedure is incorporated and made a part of the Consent Decree as if fully set forth herein.

2. DCYS shall conduct fire drills at the MRYDC three (3) times per month; once on each shift on a random shifts basis, to ensure that all staff members on each shift participate in at least one (1) fire drill per month.

3. DCYS shall conduct emergency drills other than fire drills at least quarterly at the MRYDC.

4. DCYS shall conduct annual evacuation drills.

5. DCYS shall follow the preventative maintenance schedule for the fire alarm and smoke detector systems at the MRYDC set forth in the Preventative Maintenance policies and procedures referenced in § VII.N below. Records of maintenance and repairs on these systems will be maintained as part of the systems.

6. DCYS shall maintain an adequate number of fire extinguishers

at the MRYDC. The number and placement of the extinguishers shall be based on the recommendations of the appropriate fire prevention official.

7. DCYS agrees that the MRYDC shall be inspected annually by the appropriate state or local fire officials.

8. DCYS shall also follow Emergency Plans and procedures, in addition to fire emergency procedures, as set forth in the MRYDC Emergency Plans at Attachment § VII.R.

9. DCYS agrees to designate and train a fire safety officer responsible for ensuring compliance with fire safety and emergency plans at the MRYDC.

#### N. PREVENTATIVE MAINTENANCE

1. DCYS shall comply with the Preventative Maintenance policies and procedures for the MRYDC and its successor facilities set forth in Attachment § VII.N to this Consent Decree. The policies and procedures are incorporated and made a part of the Consent Decree as if fully set forth herein.

2. DCYS agrees to designate a physical plant manager for the MRYDC.

3. DCYS has allocated and shall maintain a supplemental labor position to assist with repairs on the MRYDC.

4. DCYS shall maintain existing plumbing at the MRYDC in working order and good operating condition.

5. DCYS shall ensure the appropriateness of water temperature settings in the bathrooms, kitchen, and laundry facilities at the MRYDC, and will continue to monitor the temperature setting, making adjustments when needed.

6. DCYS agrees that the roof of the MRYDC shall be maintained in adequate repair.

7. DCYS agrees that all lighting at the MRYDC shall be maintained and kept in good repair.

8. DCYS agrees that all sleeping room windows at the MRYDC shall be unfogged glass.

9. DCYS agrees to design procedures ensuring that lighting problems at the MRYDC are addressed in a timely manner.

10. DCYS shall ensure prompt repair of all wiring problems at the MRYDC.

11. DCYS shall establish a lock maintenance program at the MRYDC. Problems with locks shall be noted on the fire drill logs, and locks shall be repaired within twenty-four (24) hours of the problem being noted.

#### O. SANITATION AND HYGIENE

1. DCYS agrees to ensure that sanitation fixtures at the MRYDC are maintained in compliance with all applicable federal, state, and local sanitation and health codes.

2. DCYS agrees that mattresses at the MRYDC shall be sanitized between uses.

3. DCYS agrees that mattresses in use at the MRYDC shall be covered by flame retardant anti-static ticking fabric designed to allow cleaning procedures that will control bacterial growth and allow for the eradication of ectoparasites.

4. DCYS agrees that mattresses at the MRYDC shall be maintained in good repair, and that any rips or tears will be repaired before the mattresses are re-used to ensure that the mattresses are amenable to appropriate cleaning regimens.

5. DCYS agrees that the MRYDC shall maintain appropriate health and sanitary standards required in doing laundry and in transporting clean and soiled laundry.

6. DCYS shall maintain and implement a written housekeeping plan for MRYDC, and in areas where youth are responsible for housekeeping, shall supply appropriate cleaning supplies and equipment.

7. DCYS shall provide appropriate outdoor clothing for outdoor recreation.

8. DCYS shall issue suitable, clean bedding and linen, including two sheets, one pillow and pillow case, one mattress, and sufficient blankets to provide comfort under existing temperature conditions. DCYS shall provide for linen exchange at least weekly.

#### P. FOOD SERVICE

1. DCYS agrees all youth in the MRYDC shall eat in the multipurpose room, with the exception of youth confined to rooms for disciplinary or health reasons.

2. DCYS agrees that the MRYDC shall comply with USFDA and state law requirements pertaining to food service.

3. DCYS agrees that the MRYDC shall comply with the Georgia Rules and Regulations of food service requirements in preparation and maintaining appropriate temperatures.

4. DCYS agrees that a licensed dietician shall review the menus at the MRYDC.

5. DCYS agrees to ensure that the MRYDC shall conduct a daily self-inspection of kitchen premises, food service areas, and all food service equipment, and that this inspection shall be recorded and logged.

6. DCYS agrees that the MRYDC shall provide pest control services on at least a monthly basis.

7. DCYS agrees that the MRYDC shall carry out timely and periodic disposal of refuse, meaning at a minimum of two (2) times a week.

8. DCYS agrees that all special diets at the MRYDC shall be reviewed by a nutritionist and physician.

9. DCYS agrees that the MRYDC shall request and submit to annual inspections by the health department.

#### Q. KEY CONTROL

1. DCYS shall comply with the Key Control policies and procedures for the MRYDC and its successor facilities set forth as Attachment § VII.Q to this Consent Decree. The policies and procedures are incorporated and made a part of the Consent Decree as if fully set forth herein.

2. DCYS agrees to designate a key control officer to enforce the key control policy.

3. DCYS shall continue to maintain a key control policy that meets the safety needs of the residents of the MRYDC.

#### R. EMERGENCY PLANS

1. DCYS shall comply with the Emergency Plans policies and procedures for the MRYDC and its successor facilities set forth as Attachment § VII.R to this Consent Decree. The policies and procedures are incorporated and made a part of the Consent Decree as if fully set forth herein.

## VIII. MONITORING

### A. GENERAL PROVISIONS

1. For a period of two years from the signing of this Consent Decree, DCYS and DOE shall permit Plaintiffs' Counsel to monitor compliance with the terms set forth in the Consent Decree. The implementation of the Consent Decree will be reviewed at regular intervals for two years following the signing of the Decree.
2. Dr. Vincent Carbone will serve as the Plaintiff's expert during the monitoring period. DCYS will be responsible for the monitor's reasonable fees and actual costs incurred in connection with monitoring the agreement up to \$6,000.00 a year.
3. If at any time during the monitoring period Dr. Carbone identifies a significant issue or problem with Defendant's performance under the terms of the Consent Decree, Defendants may retain their own expert to conduct a review and render an opinion as to the validity of the alleged issue or problem. Should the parties be unable to resolve any difference in their view points, Plaintiffs may invoke the procedures set out below for enforcing the Consent Decree.
4. Should significant problems in the technical physical plant arise during the course of the monitoring, DCYS and Plaintiffs' Counsel shall choose an independent sanitarian or otherwise qualified expert to address the physical plant issues. If agreement cannot be reached on a mutually satisfactory party, DCYS and Plaintiffs' Counsel will each designate a sanitarian and the two will choose a third that will be used by the parties. The expert will be reimbursed by DCYS for reasonable fees and actual costs of up to \$2,000.00. All parties will have access to the findings relating to the monitoring visits.
5. For the duration of the two-year monitoring period, Plaintiffs' Counsel shall conduct semi-annual on-site inspections of the MRYDC accompanied by their expert, Dr. Carbone. These two inspections shall occur in February and August, after Plaintiffs' Counsel have completed the first and second document reviews in each of the two monitoring years. Each monitoring visit will consist of no more than two consecutive days on-site. Following the visit, the expert shall prepare a written report outlining the expert's findings and conclusions. This report shall be provided to the parties within thirty (30) of the completion of the expert's on-site visit.
6. Document production and review will take place in January, July and November.
7. Plaintiffs' Counsel will consult with DCYS and DOE to

schedule the twice-yearly visits. DCYS and DOE shall receive thirty (30) days notice of each monitoring visit.

8. During monitoring visits, Plaintiffs' Counsel will be provided the opportunity to observe relevant educational programs, as well as daily program activities in order to monitor compliance with the agreement.

9. Defendants shall be responsible for reasonable legal fees accrued by Plaintiffs' Counsel during the course of the two year monitoring period. Defendants will not, however, be responsible for legal fees associated with monitoring in excess of \$2,500.00 per year.

10. Upon reasonable notice to DCYS, Plaintiffs' Counsel will continue to have access to the youth detained at the MRYDC for the purpose of monitoring compliance with this agreement.

#### B. PROVISION OF DOCUMENTATION AND REPORTS

During the two-year monitoring period, DCYS and DOE, where applicable, shall provide Plaintiffs' Counsel with copies of the following documents three times annually:

1. Program Review:

- a. Use of Force reports filled out during that trimester;
- b. Mechanical Restraint Inventory Control forms filled out during that trimester;
- c. OC Inventory Control forms filled out during that trimester;
- d. OC Report forms filled out during that trimester, including the assessments required by the Director;
- e. Incident Reports filled out during that trimester;
- f. Documents containing requests to any outside agency (i.e. DFCS or law enforcement, but not the crisis team) to investigate an incident or to control behavior, including any reports or findings connected to that incident. If the investigation of a particular incident is open, Plaintiffs' Counsel will be given notice of the existence of an investigation and the nature of the allegations when copies of documents are provided under this section, and will be provided with a copy of the final report when the investigation is resolved or closed;
- g. Documents containing requests directed at an outside

agency, or department within DCYS, to investigate alleged child abuse, and any findings of the investigations. If the investigation of a particular incident is open, Plaintiffs' Counsel will be given notice of the existence of the investigation and the nature of the allegations when copies of documents are provided to Plaintiffs' Counsel under this section and will be provided with a copy of the final report when the investigation is resolved or closed;

h. A quarterly report documenting disciplinary action against any staff member at the MRYDC to the extent such information is not treated as confidential by law, in which case a summary will be provided to Plaintiff's counsel under an agreement of confidentiality;

i. Copies of all the IEPs drafted or used by the MRYDC staff during the trimester; subject to applicable rules and regulations governing the release of such records;

j. Copies of program reviews, audits and findings related to the MRYDC and programs offered therein;

k. Reports setting forth the following information, subject to applicable rules and regulations governing the release of such records:

(i) Youth at the MRYDC previously identified as handicapped or as qualified for special educational services by another school;

(ii) Youth admitted to the MRYDC school who are then referred for an individual evaluation to determine the appropriateness of special education services;

(iii) Youth at the MRYDC who were provided a triennial special education evaluation or a new evaluation for special education services; and

(iv) Impartial due process hearings requested for youth at the MRYDC.

l. All resident grievances filled out during the quarter, including the dispositions;

m. All criminal or juvenile legal charges filed against any youth during the reporting period for actions occurring while in the physical custody of the MRYDC, including the dispositions of the above-mentioned charges if known.

n. In addition to providing Plaintiffs' Counsel with copies of the above-listed documents three times annually,

DCYS will continue to send Plaintiffs' Counsel the MRYDC census report once a week on Wednesday. The census report will include each resident's name, age, room number, commitment date, number of days in the facility, and the offense with which the resident is charged;

2. Health and Safety:

a. All fire and safety inspection reports required by policy, including any reports received by a state or local government agency;

b. Reports documenting emergency evacuation and fire drills during the trimester;

c. Report describing all fires and emergency situations requiring evacuation or emergency response (police, fire, EMT) during the trimester;

3. Training and Background Checks:

a. DCYS will provide a list of new hires and an acknowledgement that each person's criminal record was checked in accordance with DCYS policy;

b. Documentation of any criminal charges known by DCYS to be pending against any MRYDC employees.

C. ACCESS TO DOCUMENTATION AND REPORTS

During the two-year monitoring period, DOE and DCYS shall provide Plaintiffs' Counsel with access to documents three times a year. Plaintiffs' Counsel will provide DCYS and/or DOE with forty-eight (48) hours advance notice of their intent to review and/or copy records. Plaintiffs' Counsel will review records between the hours of 8:30 a.m. and 5:00 p.m., during the work week. These record review sessions will not exceed three days in a trimester. Plaintiffs' Counsel will have the right to review and/or copy the contents of all reports, logs, and documents. This section is not intended to limit any rights Plaintiffs' Counsel may have to access information under any other laws. Plaintiffs' Counsel shall be provided access to materials documenting the following:

1. All logs, files, incident reports and other documentation relating to the use of isolation for control or disciplinary purposes;

2. All logs, files, incident reports and other documentation relating to the use of physical force, including restraint for the purposes of control;

3. All logs, files, incident reports and other documentation relating to the use of chemical restraints;
4. All logs, files, incident reports, written staff notification and other documentation relating to youth placed on suicide watch;
5. All logs, files, incident reports, written staff notification and other documentation relating to youth transferred to other facilities for any reason, including medical or mental health control, discipline etc.;
6. All logs, files, incident reports, written staff notification and other documentation relating to injury to staff or youth involved in an altercation, attack or accident;
7. All logs, files, incident reports, written staff notification and other documentation relating to educational services for the general population, complaints filed with DOE and IEPs for all MRYDC special education students, subject to applicable rules and regulations governing the release of such records;
8. All logs, files, incident reports, written staff notification and other documentation relating to program reviews, audits and findings concerning the MRYDC and programs offered therein;
9. All staff meeting forms;
10. All of the MRYDC director's reports turned in to the DCYS, including the monthly action plan prepared by the MRYDC director for review by the director of detention services;
11. All training materials distributed to staff as part of on-site training and all training materials which are brought back to the facility by MRYDC staff who attend off-site training programs;
12. All logs, files, incident reports, written staff notification and other documentation filed relating to youth grievances, including the dispositions;
13. All logs, files, incident reports, written staff notification and other documentation relating to legal charges filed against any youth while in the MRYDC, with the exception of information related to an incident currently under investigation or contained in a personnel file and classified as confidential.  
In circumstances where an investigation is open, Plaintiffs' Counsel will be notified at the time a charge is filed and will

be provided access to files and reports when the matter is officially closed;

14. All logs, files, incident reports, written staff notification and other documentation relating to youth discipline, including the findings of fact and the disposition of the major rule violations, and any related staff conduct investigations with the exception of information related to an incident currently under investigation or contained in a personnel file and classified as confidential. In circumstances where an investigation is open, Plaintiff's Counsel will be notified of the existence and nature of the investigation when access to documents is provided under this section, and will be provided access to the files and reports relating to the investigation when the matter is officially closed;

15. All logs, files, incident reports, written staff notification and other documentation relating to the residents' progress in the behavior modification plan;

16. All logs, files, incident reports, written staff notification and other documentation relating to items or privileges purchased through the behavior modification points plan;

17. All logs, files, incident reports, written staff notification and other documentation relating to evacuation plans and documentation of fire and emergency drills;

18. All logs, files, incident reports, written staff notification and other documentation relating to the inspection and testing of fire prevention equipment;

19. All logs, files, incident reports, written staff notification and other documentation relating to building repair and maintenance, including work orders;

20. All logs, files, incident reports, written staff notification and other documentation relating to the building affecting health, safety or security, including work orders and outside inspection results;

21. All logs, files, incident reports, written staff notification and other documentation relating to keys, tool control and scheduled building maintenance;

22. All logs, files, incident reports, staff notification and other documentation relating to diet and food service;

23. All logs, files, incident reports, written staff notification and other documentation relating to medical and

mental health services;

24. All medical and health files for youth residing in the MRYDC;

25. Access to documentation that the facility furnishings used in living units meet applicable fire and safety standards;

26. All logs, files, incident reports, written staff notification and other documentation relating to staffing levels, patterns, and scheduling;

27. All information, logs, files, incident reports, written staff notification and other documentation relating to population census, population levels, and population control planning;

#### IX. TRAINING ON IMPLEMENTATION OF CONSENT ORDER

DCYS shall conduct a training program with the goal of familiarizing all employees responsible for carrying out this Agreement and Consent Decree. DCYS shall provide Plaintiffs' Counsel with access to all written materials to be used in the training program, in addition to a list of all positions and employees who receive the training.

#### X. ENFORCEMENT

1. During the two-year monitoring period, if Plaintiffs' Counsel discovers significant problems with Defendant's compliance with the terms of the Consent Decree, they will provide written notice to DCYS and/or DOE, including a demand to cure the alleged breach at issue. DCYS and/or DOE shall respond to the complaint within thirty days (30) days, and if agreed upon, attempt to address and cure the problem within a specified time. In the event there is no agreement concerning the alleged breach, the parties agree to submit the disputed issues to mediation within sixty (60) days of the written notice of the contested issues, and prior to bringing the matter back to court.

2. In the event the problem discovered is an emergency affecting the health, safety or security of the youth detained at the MRYDC, Plaintiffs' Counsel will provide DCYS and/or DOE with written notice of the problem and give Defendants seventy-two (72) hours to cure the problem. If the level of risk merits it, however, Plaintiffs' Counsel will demand immediate reaction, and should DCYS refuse to respond, Plaintiffs' Counsel will petition the Court for emergency relief limited only to the situation at hand.

#### XI. MODIFICATION

The parties recognize that the policies and procedures may need to be revised in the future. The need for change may stem from revision to federal statutes or state regulations. DCYS and DOE agree to make any proposed changes in policy in good faith and in keeping with the spirit of the Consent Decree. For a period of two years from the date of signing the Stipulation for Consent Decree and Consent Decree, prior to enactment, all proposed changes to the policies and procedures attached to and incorporated in the Consent Decree shall be submitted in writing to Plaintiffs' Counsel. Plaintiffs' Counsel shall then have a thirty (30) day right to respond. However, if the change in policy or procedure relates to a health or safety issue, or is proposed in response to an emergency situation, Plaintiffs' Counsel shall have a maximum of fifteen (15) days to respond. If no agreement is reached concerning the proposed changes, the parties agree that prior to going back to Court, the issue will be submitted to mediation by the Consortium on Negotiation and Conflict Resolution. This mediation will take place within seventy-five (75) days of the initial notice of the proposed change. DCYS and DOE shall provide written copies of the revised portion of the policies to Plaintiffs' Counsel.

#### XX. TERMINATION OF JURISDICTION

This Order will automatically terminate upon the passage of two years from its date of entry by the Court unless there is a contempt motion pending or unless otherwise ordered by the Court. With satisfactory compliance with the terms and conditions of the Consent Order entered in this case, the jurisdiction of this Court shall automatically terminate two years from the date of entry of this Order.

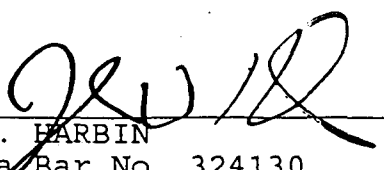
On the basis of this Order, the right of Plaintiffs' Counsel to visit youth detained at the MRYDC for purposes of monitoring compliance with the agreement shall terminate when the Court's jurisdiction terminates.

IT IS SO DECREED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

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JUDGE JULIE E. CARNES  
UNITED STATES DISTRICT COURT

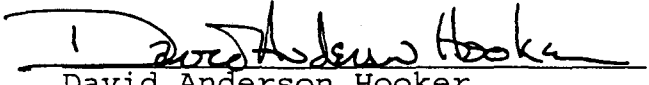
PRESENTED BY:

  
\_\_\_\_\_  
JOHN W. HARBIN  
Georgia Bar No. 324130

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CONSENTED TO AS TO FORM AND ENTRY:

  
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