

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
OKLAHOMA COUNTY DETENTION CENTER
AND THE
OKLAHOMA DISABILITY LAW CENTER, INC.**

PARTIES

The Oklahoma Disability Law Center, Inc. (ODLC) is the protection and advocacy (“P&A”) system authorized under federal law to protect and advocate for the human and legal rights of individuals with mental illness, developmental disabilities and other disabilities, including individuals with severe mental illnesses or emotional impairments, pursuant to the Protection and Advocacy for Individuals with Mental Illness (“PAIMI”) Act, 42 U.S.C. § 10801, *et seq.*, the Developmental Disabilities Assistance and Bill of Rights (“DD”) Act, 42 U.S.C. § 15043, and Protection and Advocacy of Individual Rights (“PAIR”) Program, 29 U.S.C. § 794e and their accompanying regulations (The Acts).

The Oklahoma County Criminal Justice Authority (OCCJA) operates the Oklahoma County Detention Center (OCDC), formerly the "Oklahoma County Jail", which is a secure pre-adjudication detention facility.

HISTORY

ODLC initiated an investigation into the Oklahoma County Jail in February 2019 while the Oklahoma County Sheriff was overseeing the Jail. ODLC found many deficiencies regarding provision of mental health care and treatment of its inmates. ODLC concluded its investigation of the Sheriff’s actions regarding the jail when the Oklahoma County Criminal Justice Authority took over management of the Jail in July 2020. ODLC contacted the Oklahoma County Criminal Justice Authority (“OCCJA”) within a week of taking over management of the Jail for the purpose of informing them of ODLC’s concerns regarding the lack of mental health care and treatment of inmates with mental illness under the Sheriff’s administration with the expectation they would look for ways to remedy those situations for the benefit of individuals with disabilities in the Jail as quickly as possible.

PURPOSE

This MOU will be disseminated to all involved staff of both organizations. It shall be used as a guide for OCDC staff and ODLC staff to streamline ODLC’s access to the OCDC, inmates, staff and records. This MOU will be in effect until either party revokes it in writing or as provided by a new MOU executed by the parties. The purposes of this MOU are to:

1. Promote the mutual goal of the OCDC and ODLC to protect the human and legal rights of individuals with mental illness, developmental disabilities and other disabilities.
2. Facilitate a constructive working relationship between the OCDC and ODLC.

3. Facilitate ODLC's access to the OCDC, its inmates, staff and records to the fullest extent allowed under federal law.

Therefore, ODLC and the OCDC, in order to fulfill their legal and other responsibilities, and to facilitate a constructive working relationship, hereby agree to and establish the following protocols and procedures for access by ODLC to the OCDC, to its inmates, staff and records:

TERMS

All terms used in these protocols which are defined in the PADD, PAIR or PAIMI Acts and/or their accompanying regulations and related case law will have the meanings given to them in those Acts, regulations and/or case law, unless otherwise stated in this agreement. The following are specialized definitions that shall apply to these protocols:

"ACTIVELY AGGRESSIVE" means that the patient is assaulting others, or is threatening to assault, or the patient is actively harming himself/herself.

"ODLC STAFF" means any and all ODLC STAFF and duly authorized ODLC consultants, contractors, or other duly authorized agents. ODLC will provide the OCDC Administrator and General Counsel a list of its staff that will or may visit the OCDC.

"ODLC CLIENT" means any person who resides in the OCDC, and who is determined to be suffering from mental illness as that term is defined in 42 CFR § 51.2; a person with a developmental disability, meaning they have a physical or mental impairment that manifested before the age of 22, is likely to continue indefinitely; and which substantially limits three or more of such person's major life activities as that term is defined in 42 U.S.C. §15002(8); and/or a person who has a physical or mental impairment which substantially limits one or more of such person's major life activities or has a record of such an impairment or is regarded as having such an impairment as defined in 42 U.S.C. §12102.

"COMPLAINTS" OR "REPORTS" of abuse or neglect or other rights violations shall include but are not limited to informed written or oral communications such as telephone calls (including anonymous calls) as well as media reports that, in the judgment of ODLC state credible allegations.

"OCDC" means the Oklahoma County Detention Center.

"GUARDIAN OF THE PERSON" as used in this protocol is the legal parent of a minor, or one who is appointed by the appropriate court of this state to be a legal guardian for an inmate, and who has the authority to consent to physical or mental health care or treatment for the inmate. "Guardian of the Person" as used in this protocol does not include the State or its agencies or those persons acting on behalf of the inmate as guardian of the property of the inmate or an attorney acting on behalf of the inmate in the criminal matter only.

"PROBABLE CAUSE" to believe that an inmate has been or is in danger of being subject to abuse and neglect exists when ODCL determines that a reasonable person in a like position, drawing on his or her training and experience, would suspect abuse or neglect.

“INMATE” means any person who has been booked into the OCDC.

II. CONFIDENTIALITY

ODLC will not release or disclose to a third party any inmate record(s) or information gathered as a result of an investigation of a complaint or report without the authorization of the inmate, the guardian of the person, or a court order in accordance with appropriate P&A statutes and regulations. 42 C.F.R. 10806, 42 C.F.R. §51.45 and §51.46

ODLC will maintain the confidentiality of all records to the same extent as is required of the OCDC, all provisions of state regulations and law regarding the disclosure of inmate records and in accordance with appropriate laws of the United States, regulatory procedures as contained in 42 C.F.R. §51.45 and §51.46. In any instance of conflict between state law and federal law, federal law will prevail.

ODLC will not release or disclose records to the inmate or their guardian if the mental health professional responsible for supervising the provision of mental health services to the inmate with mental illness or a developmental disability provides ODLC, at the same time as access to the records containing the information is granted, a written determination that the disclosure of such information to the inmate would be detrimental to the inmate’s health. ODLC will disclose such information to the inmate only upon the determination of another mental health professional, in accordance with the procedure in 42 C.F.R. §51.46, that the disclosure of the information would not be detrimental to the inmate’s health.

III. ODLC PHYSICAL ACCESS TO THE OCDC

A. Investigations

1. Current: ODLC may access the OCDC in an effort to ensure that the OCDC is making the changes necessary to provide appropriate mental health care and treatment to its inmates and remedy the issues of the OCDC’s prior administration.

2. Future: ODLC may access the OCDC to investigate new incidents of abuse and neglect of individuals with mental illness, developmental disabilities and other disabilities if incidents are reported to them, if ODLC has probable cause to believe that an incident of abuse has occurred or if ODLC determines that there is or may be imminent danger of serious abuse or neglect of an individual with a mental illness, developmental disabilities and other disabilities. This access includes access to all inmates of the OCDC as well as records relating to those inmates determined to have a mental illness, developmental disabilities or other disabilities.

While on OCDC premises, for safety reasons, ODLC staff shall have access, while accompanied by OCDC staff, to any parts of the OCDC which are accessible to inmates.

Under 45 C.F.R. §1326.27, 42 U.S.C. §10805(a)(3), 45 C.F.R. §51.42 ODLC may access the OCDC at any time with no notice if the conditions above are met.

B. Access Not Related to an Investigation - General Monitoring

ODLC may also access the OCDC for the following purposes: To provide information, education and training regarding ODLC's services and programs; to monitor compliance with respect to the rights and safety of inmates and ODLC clients which includes the ability to inspect, view and photograph all areas of the OCDC that are used by inmates or are accessible to them; and to interview inmates, ODLC clients and staff. Monitoring OCDC compliance with respect to the rights and safety of inmates may be of a general nature. 42 C.F.R. §1326.27(c), 42 CFR § 51.42(c) and 29 U.S.C. §794e.

C. Notice of ODLC's Intent to Visit to the OCDC

ODLC will not be required to provide notice to the OCDC prior to their arrival during regular business hours of 8:30 a.m. to 5 p.m. ODLC, in its sole discretion, may provide advance notice of its intent to visit the OCDC by contacting the OCDC's Administrator or its designee by telephone or email.

ODLC will provide 24-hour advance notice of its intent to enter the OCDC at any time outside regular business hours by contacting the OCDC's Administrator or its designee by telephone or email unless the visit is related to an investigation referenced in Section III (2) above.

However, whenever possible ODLC will attempt to enter the OCDC between the hours of 8:30 am and 5 pm. ODLC will always announce their arrival on OCDC grounds and will check in with designated OCDC staff.

While on OCDC premises, for safety reasons, ODLC staff shall have access, while accompanied by OCDC staff, and to all areas accessible to inmates. 42 C.F.R. §1326.27(c), 42 CFR § 51.42(c) and 29 U.S.C. §794e.

IV. IDENTIFICATION

ODLC Staff will identify themselves upon arrival to the OCDC to a designated OCDC staff person by showing an ODLC photo identification card or a driver's license and an ODLC business card. OCDC staff may then notify any other personnel, as their supervisors have directed them. The OCDC may deny access to any person who does not present the proper identification as provided herein. ODLC will upon arrival and prior to access, sign in a log maintained by the OCDC for this purpose if required by the OCDC.

The OCDC Administrator or designee shall ensure that all appropriate OCDC staff are aware of the right of ODLC's access to the OCDC as stated in Section III (3) above.

V. ODLC ACCESS TO INMATES AND STAFF: ODLC Access to be Reasonable

On execution of this agreement, the OCDC will provide ODLC with a copy of the policies

and procedures required to be followed when onsite at the OCDC. ODLC Staff will abide by all security and safety policies and procedures of the OCDC. As soon as practicable, the OCDC will notify ODLC staff of any changes in their policies regarding safety and security that ODLC staff need to be aware of while onsite at the OCDC.

While on the OCDC premises, ODLC staff shall have access, while accompanied by OCDC staff, to any part of the OCDC accessible to inmates. This access shall be provided to the maximum extent possible to permit a free exchange of information between an inmate and ODLC staff. 42 C.F.R. §1326.27(c)

ODLC staff shall be permitted to have a camera or cell phone with a camera with them while onsite at the OCDC. Additionally, they shall be allowed to have writing materials with them. ODLC staff have the right to inspect, view, or photograph areas of the OCDC which are used by inmates or accessible to inmates. 42 C.F.R. §1326.27(c)(2)(iii) Any photographs taken within the OCDC will be reviewed with the OCDC Administrator or designee upon leaving the OCDC to determine if any of the pictures taken may pose a security risk or concern to discuss a mutually agreeable resolution of any concerns.

Photographs of an inmate shall not be taken unless photographs are taken for the purpose of documenting evidence of suspected physical abuse or neglect of an inmate. Additionally, ODLC staff will obtain releases from the inmate unless the inmate is physically incapacitated and unable to execute a release.

ODLC staff will conduct its investigations, monitoring, and communications as well as all other advocacy activities in a manner that:

1. minimizes interference with the OCDC's programs;
2. honors the privacy interests of inmates and OCDC staff;
3. honors an inmate and OCDC staff request to terminate an interview; and
4. does not violate standards or policies of the OCDC.

If any instance of conflict between state regulations or law and federal regulations or law exists, federal law will prevail.

A. ODLC Communication with Inmates, ODLC Clients and OCDC staff¹

While on the OCDC's premises, ODLC staff shall have the authority to speak with inmates, OCDC staff, or other persons on the OCDC's property for the purposes of investigating a complaint or report of abuse and neglect or for general monitoring as described in Section III (A) and (B) above.

¹ During COVID-19, or other similar situations, it may be that in person visits are not safe or practicable. In those circumstances, the OCDC will allow and facilitate alternative ways (via phone, zoom, etc.) to speak with ODLC clients, inmates and OCDC staff.

1. Communication for the purpose of investigating ODLC Client Complaints or Complaints received from other sources

While engaged in investigation of a complaint or report of abuse and neglect as described in Section III (A) above, ODLC staff shall be permitted to speak to inmates, OCDC staff or other person on the OCDC's property reasonably determined to be a witness to the matter under investigation or determined to have relevant information regarding the matter under investigation, and observe the physical environment and review pertinent records.

If an investigation is related to a specific client (rather than an overall concern regarding the OCDC) ODLC staff will disclose the name of a particular inmate and the purpose of the visit as necessary to facilitate scheduling or to locate the inmate.

The OCDC shall permit inmates and ODLC clients to request an appointment with ODLC staff and a meeting shall be set within three (3) business days of the request. A date later than three (b) business days can be set if mutually agreed upon by ODLC staff and the OCDC.

If ODLC staff requests an interview with the inmate or ODLC client in private, a room will be provided for interview purposes. This means a location that minimizes the possibility of intrusion by other inmates and OCDC staff and affords a reasonable expectation that communications between ODLC staff and inmates are confidential.

ODLC staff will not give inmates medical, psychiatric or clinical advice.

The OCDC will not deny ODLC staff access to any ODLC Client unless at the time ODLC staff seeks access:

A. The ODLC client in question is engaged in a "therapy session" or other scheduled programming. ODLC Staff will either wait until the session is completed, or reschedule the visit at a time mutually agreeable to the parties.

B. The ODLC client is on suicide watch in a cell designated for this purpose or on suicide watch in their own cell. In either event, ODLC staff shall be allowed to view the client through the cell door to assure they are being provided with appropriate "suicide smocks" and appear to be safe. At this time ODLC staff may request to review ODLC's client's medical records related to the reason the client is on suicide watch. ODLC will present a records release to the OCDC, if they have not already done so, allowing access to the client's records.

C. The access to any ODLC client would involve a substantial risk of physical harm to ODLC staff, OCDC staff or to the client. In this event, the OCDC Administrator or his/her designee shall explain the circumstances to ODLC staff and any security or supervision concerns.

D. The ODLC client declines to meet with ODLC staff. A client who does not wish to talk with ODLC staff shall communicate this directly and privately to ODLC staff. ODLC staff will honor the client's request to terminate an interview.

E. The OCDC is experiencing a situation that justifies the OCDC Administrator to lock down the OCDC. Situations that justify a OCDC Administrator to lock down the OCDC include those that create a risk to security including but not limited to natural disasters, outbreak of COVID-19 (or other similar health pandemics) riot, rebellion, escape, other situations that require assistance from city, county or state law enforcement agencies or situations as described in previously established written policies or procedures.

At such time the OCDC Administrator or his or her designee, in the best interest of the OCDC security, will request ODLC staff to reschedule their visit if ODLC staff or onsite to vacate the OCDC. ODLC Staff will adhere to the request.

In conformity with 42 C.F.R. §51.43, the OCDC under the circumstances listed in A-E above will provide a prompt written statement of the basis and grounds for such exclusion from the OCDC to ODLC. An oral statement will suffice if agreed to by both parties.

2. Communication for the purpose of Monitoring

As stated in III (B) above, ODLC may access the OCDC to provide information, education and training regarding ODLC's services and programs and to monitor compliance with respect to the rights and safety of inmates and ODLC clients.

ODLC may bring materials with them regarding ODLC services, materials regarding the rights of inmates while in the OCDC or other relevant materials to hand to inmates and ODLC clients during the visit.

If an inmate or ODLC client wishes to speak with ODLC staff, ODLC staff will take their information and will later schedule a date and time to meet with them as set forth in V (A)(1) above. However, if the situation is of an urgent nature that delaying the visit would potentially harm the inmate or ODLC client, ODLC will request to visit privately with the inmate or ODLC client at the end of the monitoring visit.

ODLC staff will minimize interference with the OCDC's security and programs during monitoring visits, will honor the privacy interests of inmates and ODLC clients and will honor an inmate's or ODLC client's request to terminate conversations with them.

3. Communication with OCDC staff - Generally

ODLC staff may meet privately with the OCDC Administrator or his/her designee to advise him or her of the nature of an investigation and to request an interview with a staff member. The OCDC shall make every reasonable effort to allow for the availability of its staff for investigation related interviews. Interviews will be arranged at times so as not to interfere with the staff's work responsibilities.

The OCDC shall permit OCDC staff to talk openly with ODLC representatives concerning inmate issues, concerns and problems including, but not limited to, investigations of incidents of abuse and neglect of inmates without retaliation. OCDC staff may have the OCDC Administrator or his/her designee, or a legal representative of the OCDC, accompany the OCDC staff in interviews with ODLC if the OCDC staff so desires.

B. Phone and Mail

With regard to inmates who wish to contact ODLC, the OCDC shall conform to existing standards regarding inmate communications applied to attorney/client communications.

The OCDC or OCDC staff shall not hinder mail or telephone communications between ODLC and inmates so long as such communications comply with applicable standards and policies of the OCDC and applicable to attorney/client communications.

VI. ACCESS TO RECORDS

A. On-site Review of Records

ODLC has legal authority to review the records of an inmate when there is written authorization (if required), a complaint has been received, or there is probable cause to believe that the inmate has been subject to abuse or neglect. In some limited circumstances ODLC has the right to obtain records without written authorization from the ODLC Client/Inmate. 45 C.F.R. §1326.25(b); 42 C.F.R. §51.41(c)

When these criteria are met, ODLC staff will have immediate access to review records which are available at the OCDC provided that the requirements of authorization described below, if any, have been met.

ODLC staff will have access to review records in conformity with applicable state or federal law or regulatory guidelines. If there is a conflict between federal and state law, the federal law shall apply. Under no circumstances will ODLC staff remove the original record or any part thereof from the control of the OCDC or add or make changes to the record.

After pulling the requested records, continued oversight on the part of OCDC staff will not be required because ODLC is designated by the Governor of the State of Oklahoma, operates under federal law, and is fully aware of its obligation to leave inmate and OCDC records intact. Any problems with an ODLC Staff's handling of the records should be reported to the OCDC Administrator and ODLC Director of Investigation and Monitoring or Executive Director.

B. Internal Investigation Reports

When the OCDC is required to internally investigate issues regarding abuse and neglect of an ODLC client, the OCDC will provide copies of their internal investigation as required by 42 C.F.R. §51.41(c), 45 C.F.R. §1326.25(b) and 29 U.S.C. § 794e.

C. Copies of Records

Copies will be provided to the ODLC staff making the request, promptly. If at all possible, the records will be provided electronically (ie: via secure email, fax, USB or CD) to avoid copy charges. The OCDC may charge a reasonable rate, not exceeding the fee permitted under the Oklahoma Open Records Act.

In the event of a death, or when ODLC determines that there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, copies will be provided to the ODLC Staff making the request within 24 hours unless agreed to otherwise in writing. 45 C.F.R. § 1326.25(c), 42 C.F.R. §51.43.

When feasible, copies of records should be provided on the same day on which access is provided to the records, but in any event, not less than five (5) working days from the date the request was received unless agreed to otherwise in writing.

D. Form of Written Authorizations for Access to a Inmate's File

ODLC will use the standard Oklahoma HIPAA Authorization form or the OCDC's form, or a written statement of authorization made by the inmate or their legal guardian. It is ODLC's responsibility to maintain valid authorization for release of records. Objection to the fact that such authorization may not be on a form used by the OCDC shall not delay processing the requested information.

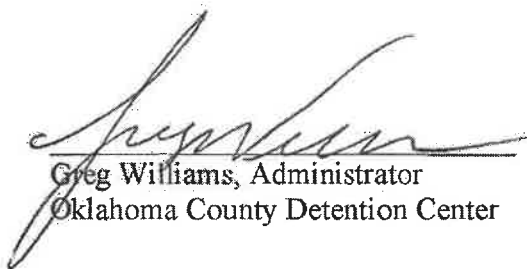
DISPUTE RESOLUTION

This Memorandum of Understanding should guide the actions of both ODLC staff and the OCDC staff. If at any point problems arise concerning access of ODLC staff to the OCDC, OCDC staff, ODLC client records or inmates under this protocol, effort shall be made to resolve the problem informally in the following manner:

1. Any complaint concerning actions of ODLC staff while at the OCDC shall be immediately brought to the attention of the ODLC Director of Investigation and Monitoring or the ODLC Executive Director. The OCDC Administrator or his/her designee and the ODLC Director of Investigation and Monitoring or Executive Director shall resolve any complaints as expediently and as informally as possible.
2. Any complaint concerning OCDC staff denying ODLC access to the OCDC, OCDC staff, inmates, ODLC clients, or records shall be brought immediately to the attention of the OCDC Administrator or his/her designee. The OCDC Administrator or his/her designee and the ODLC Director of Investigation and Monitoring or Executive Director shall resolve any complaints as expediently and as informally as possible.

3. If the OCDC Administrator or his/her designee and the ODLC Director of Investigation and Monitoring or Executive Director cannot informally resolve the complaints or issues listed in #1 or #2 above, either party may pursue any legal or enforcement action allowed by state or federal law.
4. This agreement is intended to carry out the provisions of the P&A Acts and, therefore, in the event of any ambiguity in this agreement or any conflict between this agreement and federal law, federal law shall control.

Dated: 10-13-20



Greg Williams, Administrator
Oklahoma County Detention Center

Dated: 10-13-20



Joy Turner, J.D.
Oklahoma Disability Law Center, Inc.