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January 2, 2020

Via Federal Express & E-Mail

Eugene DePasquale, Auditor General
Department of Auditor General
Finance Building
613 North Street, Room 229
Harrisburg, PA 17120-001

**RE: Berks County Residential Center
Review of December 11, 2019**

Dear Mr. DePasquale,

As you may be aware, this office represents the Berks County Residential Center (BCRC). On December 11, 2019, your office issued a “Review” of the BCRC. This correspondence is to provide a response to the “Review” to correct the myriad of inaccuracies contained in the “Review”.

Background of the Berks County Residential Center

In 1998, the BCRC began operating a residential facility for unaccompanied immigrant minors who entered the United States illegally. In 2001, the County of Berks signed an Inter-Governmental Service Agreement with the Federal Government, Immigrations and Customs Enforcement (hereinafter “ICE”) to run the BCRC as a family immigration program. The BCRC provides an avenue for the residents, undocumented illegal immigrants seeking asylum, to maintain family unity while ICE enforces immigration laws. The BCRC promotes family unity during immigration proceedings. It is one (1) of only three (3) such facilities in the entire country and the only facility licensed by a state agency. While many of the residents of the BCRC are from Central America, the BCRC has housed residents from all over the world.

While it is a popular refrain of groups and individuals who oppose the mission of the BCRC to refer to the facility as a detention center, the reality is that the BCRC does not operate as a detention center or in any way treat its residents as criminals. The BCRC provides a wealth of services to its residents; including Spanish-speaking counselors and a twenty-four (24) hour translation service that Shelter Care Counselors – the employees who interact with residents of

the BCRC – and residents can utilize in the event they have difficulty communicating. The BCRC is equipped with a full-service medical center operated by the United States Office of the Surgeon General, Immigration Health Corps., so that residents have access to medical care to address any necessary medical needs 24 hours, seven days per week. Children residing at the BCRC are enrolled in school provided by the Berks County Intermediate Unit with teachers who are bilingual, licensed and certified. Berks County has contracted with the Reading Conference of Churches to provide religious services at the BCRC and there is a full-time in house bi-lingual Chaplain. Activities are scheduled throughout the day for families, who are also provided Internet access twelve (12) hours per day. Residents have unrestricted access to the BCRC from 8:00 a.m. to 8:00 p.m., aside from the medical center and Administration offices. There are no “lockdowns” and adults and children who are not attending school are permitted to sleep and wake whenever they choose. In short, the BCRC operates to ensure that family unity is paramount and that the families who reside there are offered services to improve their lives while they await immigration proceedings.

Shelter Care Counselors assist residents with the daily needs of living and provide a safe and stable environment. However, Shelter Care Counselors are not permitted, nor are they qualified, to provide legal advice to residents regarding the availability or logistics, of seeking immigration relief. Residents can have legal visitation from 8:00 a.m. to 8:00 p.m. seven (7) days per week and attorneys who represent residents of the BCRC routinely utilize that visitation to meet, confer and provide legal services to their clients.

The Relationship Between DHS and the BCRC

The Pennsylvania Department of Human Services (DHS) licenses the BCRC to operate as a child residential facility because children reside at the BCRC. DHS has various regulations that the BCRC is required to follow in order to maintain that license as set forth in 55 Pa. C.S. § 3800 et. seq. DHS performed yearly inspections of the BCRC and renewed their license yearly from 2001 through 2015. DHS had never revoked or otherwise called into question BCRC’s license until late 2015, when the license revocation proceedings began. The BCRC continues to operate as it has since 2001, with DHS approval and oversight. In 2015, DHS arbitrarily and capriciously attempted to revoke the license and has ignored the license applications submitted by Berks County each year since. Due to DHS’s failure to perform its statutory duty by acknowledging and responding to each license application, Berks County has filed Complaints in Mandamus for each Application that DHS has ignored. Those actions are currently pending in the Pennsylvania Commonwealth Court, under which DHS has agreed to maintain the status quo regarding the operation of the BCRC pending the outcome the licensing proceedings. As such, DHS now performs monthly inspections of the BCRC.

Mr. DePasquale, You and Your Staff Were Not Denied Access to the BCRC

At the outset, Berks County would welcome you and your staff to tour the BCRC as it has other Commonwealth Officials on multiple occasions. In fact, Teresa Miller, Acting Secretary of DHS, Ronni Burkhart, Fiscal Management Director and Kevin Hancock, Deputy Secretary of DHS, have all personally toured the facility.

The United States Department of Homeland Security and Immigration and Customs Enforcement has issued guidelines for official visitation to the BCRC.¹ Those Guidelines require that an official visitation request must be accompanied by a statement of the proposed visitors' need/purpose to tour the BCRC and how touring the facility specifically relates to that purpose. Further, guidelines require that the names of the individuals touring the facility be provided. While the BCRC was provided the names and proposed dates and times for a tour, your office chose to not sufficiently provide the need/purpose to tour the BCRC or explain how touring the facility specifically relates to the Auditor General Office's statutory duties in order to satisfy the requirements of the Federal Government. Contrary to the statements in the "Review", your office failed to comply with these reasonable requests. In fact, your office was advised that once they complied with the Federal Government's requirements, the Federal Government would permit them to tour the BCRC. Rather than provide such information, your staff subsequently advised that it no longer wished to tour the BCRC.

Reports on Conditions of the BCRC

The BCRC is aware of the reports made by certain residents regarding the conditions of the BCRC. However, since DHS first attempted its assault on the lawfully issued license to operate the BCRC in October of 2015, DHS inspectors have inspected the BCRC at least forty (40) times. Clearly, if DHS had found any violations that would compromise the above stated objectives of DHS' mission, it would have taken action. Rather, as your "Review" acknowledges ever so slightly in a single sentence, DHS officials have stated that the facility is "an excellent facility". Further, DHS inspectors who have repeatedly visited the BCRC on a monthly basis for years have praised the facility for the excellent work performed by employees and the quality of the facility.

Such actual evidence belies the "conclusions" stated in your "Review." Moreover, there is no indication in your "Review" that anyone from the Auditor General's Office spoke with the DHS inspectors who conduct the inspections. These individuals could have provided invaluable information as to what they see monthly during their inspections and what they learn from the residents themselves about the BCRC.

E.D.

The "Review" cites to the circumstances of E.D., a BCRC resident in 2014. While that matter is in litigation, your "Review" self-servingly fails to recognize that E.D. acknowledges that she willingly participated in a relationship with Mr. Sharkey, evidence that includes E.D.'s own sworn testimony. Berks County is aware that Mr. Sharkey's behavior was criminal, and therefore it is disturbing that your "Review" fails to mention that upon learning of the inappropriate relationship, Berks County promptly terminated Sharkey's employment and arranged for his arrest, prosecution and, upon conviction, imprisonment.

¹ The Guidelines were precipitated by various government officials appearing at the BCRC under false pretentions or without proper warning to allow the implementation of appropriate safeguards and thereafter violating safety protocols.

Fifteen Minute Bed Checks

Shelter Care Counselors are required to perform fifteen (15) minute checks throughout the night. These checks are performed in the least intrusive manner possible. A Shelter Care Counselor opens the door to a residential room and flashes a flashlight on the walls and ceiling to confirm that the residents are safe and secure. **This practice is required by DHS, not Berks County officials.** Further, the BCRC has never received a complaint directly from a resident that these fifteen (15) minute bed checks are intrusive or disruptive of their sleep. However, when the BCRC began receiving allegations through media outlets that these fifteen (15) minute checks were disruptive, the BCRC requested from DHS that they be permitted to stop the checks during the course of the night or extend the length of time between each check. Despite multiple such requests, DHS has never given BCRC permission to cease or modify these checks. As such, in order to comply with the regulations under which they are licensed by DHS, the BCRC must continue to conduct the 15-minute checks during the night.

Compliance Checks

The BCRC is inspected twice monthly by two (2) different agencies: DHS and Danya International, a contractor of the Federal Government. Each of these agencies independently inspect the BCRC. DHS inspects the BCRC to ensure compliance with The Pennsylvania Child Residential and Day Treatment Facilities regulations, 55 Pa. C.S. § 3800 et. Seq. Danya inspects the BCRC to ensure compliance with the Federal Family Residential Standards (FRS). The FRS were developed by Immigration and Customs Enforcement after soliciting “guidance from medical, psychological and educational subject matter experts while collaborating with various organizations that included the DHS Office of Civil Rights and Civil Liberties (CRCL) and many non-governmental organizations (NGOs).” www.ice.gov/factsheets/facilities-residential-stds.

In its own words, DHS provides “high-quality supports and protections to vulnerable Pennsylvanians.” www.dhs.pa.gov. Moreover, DHS promotes that “Children are a big part of the Department of Human Services and the Department's Office of Children Youth and Families serves children and families through a nationally recognized child support enforcement program, oversees adoption and foster care services, and works with counties on child abuse prevention and juvenile justice issues.” (id.) Lastly and honorably, DHS states that its mission is to “improve the quality of life for Pennsylvania's individuals and families. We promote opportunities for independence through services and supports while demonstrating accountability for taxpayer resources.” www.dhs.pa.gov/about/Learn-About. Clearly, should DPW have found any violations at the BCRC, they would have taken immediate action in accordance with their mission.

The DHS inspections of the BCRC include a full site inspection, inspection of various files including medical files and the policies and procedures of the BCRC. Furthermore, DHS inspectors speak with residents and staff during the inspections. While it is accurate that the Center has faced approximately six (6) minor violations since DHS began inspecting monthly, there have been more than forty (40) inspections where there have been no violations. As previously noted, it appears that your office made no effort to speak with the inspectors from DHS who could have provided invaluable information as to what they see and hear monthly

from the residents themselves. In short, the County of Berks and its officials fully comply with all inspection requirements and more.

Danya International's monthly inspections are conducted in order to ensure that the County is operating the BCRC in accordance with the requirements of the FRS. Danya's inspections typically entail a three (3) day inspection of operations and conditions at the BCRC. Danya's inspections include a physical tour and inspection of the facility, review of program operations, resident interviews, staff interviews and review of program documentation.

The Conclusion in the "Review" that the BCRC Operates in Violation of the Flores Agreement is False.

As with many aspects of the "Review", the "facts" related to the *Flores* Settlement Agreement are misstated. The Berks County Residential Center does not operate in violation of the *Flores* Agreement. In 2005, the *Flores* Agreement was reached between the United States Government and the Plaintiff in an action filed in the United States District Court for the Central District of California. The *Flores* Agreement initially related to the holding of unaccompanied minors, who entered the United States seeking asylum. Pursuant to the *Flores* Agreement, children must be released from Immigration and Customs Enforcement (ICE) custody within twenty (20) days unless those children were housed in a licensed facility.^[1] In 2015, the Ninth Circuit expanded *Flores* to also include accompanied minors. However, the Ninth Circuit's expansion of *Flores* does not apply to parents and therefore, does not require release of parents with their minor children. Further, the Ninth Circuit's expansion did not change ICE's ability to place minors who are not released from custody pending their immigration proceedings into licensed facilities. In fact, the Ninth Circuit's decision specifically permits ICE to place families who would not be released pending their immigration proceedings into licensed facilities. The BCRC is a licensed residential facility and therefore is not limited to the twenty (20) day restriction mandated by *Flores*.

Conclusion

In 1998, the BCRC began operating a residential facility for unaccompanied immigrant minors who entered the United States illegally. DHS licensed the BCRC pursuant to 55 Pa. Code § 3800, related to child residential facilities and began inspecting the BCRC yearly. While the BCRC later began accepting families, DHS performed yearly inspections of the BCRC and continued to renew their license as a child residential facility yearly from 2001 through 2015. As noted above, DHS had never revoked, or otherwise called into question BCRC's license until October of 2015, when DHS advised that the BCRC's license would no longer be renewed and that the license that was issued for 2016 was revoked. The BCRC appealed that decision by DHS which is currently pending before the Bureau of Hearings and Appeals. During the

^[1] This applies to children who do not have other means for residence, such as family, upon their release.

pendency of the license litigation, DHS has agreed to permit the BCRC to operate pursuant to its previous license with DHS' oversight.

As the BCRC is a licensed facility by DHS, it has been ICE's determination that children can reside at the BCRC longer than twenty (20) days without violating the *Flores* Agreement. Moreover, despite the continued chatter by various self-interested groups, it is indisputable that the BCRC is not a secure facility. All exit doors are unlocked, and residents can leave the facility, if they so choose. In fact, unlocked egress is required by Section 3800.121(b) of the regulations under which the BCRC is licensed. DHS has never cited the BCRC for locked egress doors. Clearly if this often cited "example" that the BCRC is a "secure facility" was true, DHS would have acted, that has not happened because the baseless allegations are not true. Further, the facility doors are locked from the outside for resident safety to prevent anyone off the street from entering. This is especially important as some of the residents have sworn that they have been victimized by gang and domestic violence. Clearly in today's world maintaining locks on the doors to prevent the general public from entering the building unannounced, **as is done with every school in the Commonwealth**, is a reasonable measure to take to ensure the safety of the residents at the BCRC.

Further, the BCRC does not detain families. Instead, it provides an avenue for families to remain together while they await their immigration proceedings in order to avoid separating families. The BCRC provides families access to their attorneys and ensures that they attend all immigration hearings remotely. Further, the BCRC provides education services to children, including services to help them learn English so that, if ICE allows the families to stay, the children will be equipped to integrate in school systems and communities.

Lastly, and what is wholly overlooked by the "Review" and by all reports, articles and other media reports on the BCRC, the BCRC does not determine whether a person, child or family is permitted to be out in the community, placed in a residential center, such as the BCRC or detained while they await their immigration proceedings. That decision is wholly determined by the United States Department of Homeland Security.

While Berks County and the BCRC are aware that some families are unhappy with ICE's determination that they are to reside at the BCRC pending their immigration proceedings, Berks County and the BCRC strive to ensure that their stay is safe and that they are provided the medical, educational, legal and social services they need while awaiting their immigration proceedings. Berks County and the BCRC are disappointed in your "Review", both because of its gross mischaracterizations and untruths and also because your office failed to obtain a first-hand analysis or review of operations, either by complying with the Federal Government's sensible visitation requirements or by talking to any individuals who themselves have first-hand knowledge of the Center, including Acting DHS Secretary Teresa Miller and the DHS Officials who inspect the Center on a monthly basis.

Berks County and its officials remain proud of the services they provide to immigrant families at the BCRC and as stated herein, respectfully reject the baseless conclusions contained in your "Review."

Respectfully submitted,



Matthew J. Connell

MJC/jfb

Cc: *(Via Facsimile Only)*

The Honorable Bob Casey, Jr.
The Honorable Pat Toomey
The Honorable Tom Wolfe
The Honorable Jim Cox
The Honorable Senator David Argall
The Honorable Jerry Knowles
The Honorable Barry J. Jozwiak
The Honorable Judith Schwank
The Honorable David M. Maloney, Sr.
The Honorable Katie Muth
The Honorable Bob Mensch
The Honorable Mark M. Gillen
The Honorable Ryan E. Mackenzie
The Honorable Thomas R. Caltagirone
The Honorable Gary Day
The Honorable Mark Rozzi
The Honorable Madeleine Dean
The Honorable Mary Gay Scanlon
The Honorable Daniel Meuser
Teresa D. Miller, Secretary of Human Services
The Honorable Chrissy Houlahan *(Via E-Mail Only)*