

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

HAYES WILLIAMS, et al.

Plaintiffs,

v. Civ. No. 71-98-B

JOHN McKEITHEN, et al.

Defendants,

UNITED STATES OF AMERICA,

Amicus Curiae.

IN RE: JUVENILE FACILITIES Civ. No. CH 97-MS-001-B

IN RE: TALLULAH CORRECTIONAL Civ. No. CH 97-0665-B-M1

CENTER FOR YOUTH

IN RE: JETSON CORRECTIONAL Civ. No. CH 97-0666-B-M1

CENTER FOR YOUTH

IN RE: SWANSON CORRECTIONAL Civ. No. CH 97-0667-B-M1

CENTER FOR YOUTH

IN RE: LOUISIANA TRAINING Civ. No. CH 97-0668-B-M1

INSTITUTE - BRIDGE CITY

IN RE: JENA JUVENILE JUSTICE Civ. No. CH 98-0804-B-M1

CENTER

BRIAN B., et al.

Plaintiffs, Civ. No. 98-886-B-M1

v.

RICHARD STALDER, et al.,

Defendants.

THE UNITED STATES OF AMERICA, Civ. No. 98-947-B-1

Williams v. McKeithen



PC-LA-001-020

Plaintiff,

v.

THE STATE OF LOUISIANA,

et al.,

Defendants.

A.A., et al.,

Plaintiffs, Civ. No. 00-246-C-M1

v.

WACKENHUT CORRECTIONS CORP.,

et al.,

Defendants.

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SETTLEMENT AGREEMENT FOR MEDICAL, DENTAL, MENTAL HEALTH, REHABILITATION AND JUVENILE JUSTICE ISSUES

I. INTRODUCTION

1. This Agreement is entered among the following: the United States Department of Justice as identified in ¶ 10 (the "DOJ"), the private plaintiffs as identified in ¶ 14 (the "Plaintiffs"), and the State, as defined in ¶ 19 below. This Agreement settles and resolves four lawsuits (the "Lawsuits") concerning the juvenile justice, medical, dental, mental health, and rehabilitative services in the State of Louisiana's secure juvenile facilities. The four Lawsuits settled by this Agreement are: (1) Williams v. McKeithen, Civ. No. 71-98 (including the following sub-dockets opened in that action: In Re: Juvenile Facilities, Civ. No. CH 97-MS-001-B; In Re: Tallulah Correctional Center for Youth, Civ. No. CH 97-0665-B-M1; In Re: Jetson Correctional Center for Youth, Civ. No. CH 97-0666-B-M1; In Re: Swanson Correctional Center for Youth, Civ. No. CH 97-0667-B-M1; In Re: Louisiana Training Institute - Bridge City, Civ. No. CH 97-0668-B-M1; and In Re: Jena Juvenile Justice Center, Civ. No. CH 98-0804-B-M1); (2) Brian B. v. Stalder, Civ. No. 98-0886-B-1; (3) A.A. v. Wackenhut Corrections Corporation, Civ.

No. 00-246-CMI; and (4) United States v. Louisiana, Civ. No. 98-0947-B-1. In order to resolve the juvenile justice, medical, dental, mental health, and rehabilitation issues in this litigation, the parties have entered into this Agreement, which, if complied with within the time frames specified below, will result in the dismissal of the Lawsuits, except as provided in ¶ 9 below. The terms of this Agreement shall apply to the secure juvenile facilities operated by or on behalf of the State and any other secure juvenile facility opened during the life of the Agreement. All parties agree and recognize that the obligations contained in this Agreement and any remedies flowing therefrom are limited to conditions within the secure juvenile facilities and do not follow the juvenile after his/her final discharge from the facility. This provision shall not prevent the DPSC from continuing its current practice of providing short-term medications. This Agreement shall not increase or decrease any rights that juveniles held in secure facilities, on parole, or on probation supervision may or may not have upon their release from secure facilities.

2. As part of this Agreement, the Department of Public Safety and Corrections ("DPSC") shall revise as necessary its policies and procedures to ensure that they are consistent with the provisions of this Agreement.

3. The State denies any allegations upon which the Lawsuits are based. The State has entered this Agreement in order to avoid the cost and uncertainty of litigation.

4. The United States' Jena Agreement and the Private Plaintiffs' Jena Agreement, both entered on or about April 13, 2000, are terminated and are of no further effect. The State agrees not to house juveniles at the Jena Juvenile Justice Center in Jena, Louisiana during the term of this Agreement.

5. Immediately upon execution of this Agreement, the parties shall jointly move the Court for an Order to conditionally dismiss the Lawsuits except as provided in ¶ 9 below. Immediately upon execution of this Agreement, the parties shall jointly move the Court for an Order terminating and rescinding all existing, orders, judgments or decrees that purport to address conditions of confinement in Louisiana's secure juvenile facilities, except as set forth in this paragraph:

a. Consent orders. The effect of the following consent orders is stayed until either: (a) final dismissal of these actions, at which time all consent orders shall be terminated and shall have no prospective effect; or (b) 120 days following entry of an order reopening these actions:

April, 1996 Order (Bridge City Correctional Center),

November 14, 1996 Order (Swanson Correctional Center for Youth-Monroe),

April, 1998 Order (Jetson Correctional Center for Youth), and

November 15, 1994 Order (Tallulah Correctional Center for Youth), as modified by orders dated February 21, 1995, November 19, 1996, December 22, 1995, November 12, 1997, November 20, 1997, December 16, 1997, December 23, 1997 and March 10, 1998.

b. Jurisdictional orders. The substantive effect of the following orders may have been superceded, modified or rescinded; however, these orders may continue to be cited and relied upon by the parties solely for the purpose of establishing this Court's jurisdiction, for the purpose of establishing class counsel or prevailing party status, and for the purpose of supporting the "Attorney Fee Claims":

June 10, 1975 Judgment adopting Special Master's report

August 6, 1980 Original judgment on attorney's fees/prevaling parties

January 24, 1983 Injunction to stop accepting juvenile until population limits set

February 7, 1983 Motion to set population limits on juvenile facilities

December 7, 1983 Stipulation and Consent Decree for adult facilities

April 24, 1984 Juvenile consent decree

November 26, 1986 Extension of consent decree

January 6, 1988 Extension of consent decree

October 27, 1988 Extension of consent decree

January 30, 1991 Class certification order

June 25, 1990 Original appointment of Nordyke and Denlinger

June 25, 1991 Ruling setting attorney fee rates

June 30, 1993 Extension of Consent Decrees and other Judgments

December 22, 1994 Order concerning TCCY

June 23, 1995 Order denying Motion by Transamerica Development

September 26, 1996 Order granting motion to terminate consent decrees for adult facilities except LSP and the Juvenile Facilities

April 1, 1997 Order granting motion by to release adult institutions except LSP and the juvenile facilities

September 24, 1998 Motion and Order Approving Settlement and terminating consent decree and supervision over LSP but preserving claims regarding Juvenile Facilities

December 9, 1998 Minute Entry concerning class certification in Brian B.

April 21, 1999 Order granting motion for partial dismissal of LSP

c. Surviving Orders. The following surviving orders are not stayed; however, all surviving orders shall automatically terminate upon final dismissal of these actions (unless previously modified or terminated):

June 21, 1989 Original appointment of Court expert

August 19, 1994 Order pertaining to the appointment of the Court Expert

September 26, 1996 Order appointing Expert John Whitley

The Court shall retain jurisdiction over the claims in the Lawsuits until the final judgment of dismissal is entered.

6. The Motion to Conditionally Dismiss shall include a request for the Court to order a "fairness" hearing under Rule 23 of the Federal Rules of Civil Procedure as soon as notice can be given, pursuant to that Rule. This Agreement shall be void if the Court does not approve the settlement at that fairness hearing. The parties agree to ask the Court to hold in abeyance Plaintiffs' motion to certify a class in Brian B. v. Stalder and A.A. v. Wackenhut. If the Lawsuits are reopened, Plaintiffs may reurge these motions. In connection with the re-urging of these motions, the State agrees to permit Plaintiffs to name replacement class representatives in Williams, Brian B. and/or A.A. and to waive the requirements for exhaustion of administrative remedies, provided that Plaintiffs have given the State written notice of the claims to be asserted, at least ten days prior to reurging of the motion.

7. The Motion to Conditionally Dismiss shall include a request that the Court preserve the substance of any unasserted cross claims and third party demands that the State may have against other defendants in any of the Lawsuits until such time as a final judgment of dismissal is entered.

8. This Agreement shall be effective on September 1, 2000. The State's obligations under this Agreement shall arise on June

1, 2001, except to the extent specific provisions establish a different deadline.

9. This Agreement compromises and settles all claims asserted in the Lawsuits except:

a. Claims pertaining to the validity, applicability and constitutionality of the administrative remedy procedure (ARP). Plaintiffs stipulate to the entry of an order dismissing all claims and allegations related to ARPs in the Lawsuits, without prejudice to their right to reassert those claims either in new actions or in the Lawsuits if the Lawsuits are reopened in accordance with this Agreement.

b. Claims pertaining to education issues. Claims relating to education issues are the subject of a separate Settlement Agreement entered on or about November 1, 1999.

c. Claims for attorneys fees. This Agreement does not purport to address Plaintiffs' claims for attorneys fees in the Lawsuits.

II. DEFINITIONS

10. The term "DOJ" shall refer to the United States Department of Justice.

11. The terms "facilities" and "secure juvenile facilities" refer to the Jetson Correctional Center for Youth (JCCY), the Swanson Correctional Center for Youth - Monroe (SCCY), the Bridge City Correctional Center for Youth (BCCY), the Swanson Correctional Center for Youth - Madison (SCCY-M) (formerly known as the Tallulah Correctional Center for Youth), the Juvenile Reception and Diagnostic Center ("JRDC"), and any other facility used for the housing of juveniles owned or operated on behalf of the State during the operation of this Agreement, but excluding juvenile detention facilities.

12. The term "intake" refers to the day that the individual arrives at the reception and diagnostic center for admission into the secure juvenile facilities.

13. The term "juvenile" refers to any juvenile who has been adjudicated delinquent and is residing at any facility during the operation of this Agreement.

14. The term "Plaintiffs" refers to the non-governmental agency private plaintiffs in Williams v. McKeithen, Civ. No. 71-98 (M.D. La.); Brian B. v. Stalder, Civ. No. 98-0886-B-1; A.A. v. Wackenhut Corrections Corporation, Civ. No. 00-246-C-M1; and the suits entitled In Re: Juvenile Facilities, Civ. No. CH 97-MS-001-B; In Re: Tallulah Correctional Center for Youth, Civ. No. CH 97-0665-B-M1; In Re: Jetson Correctional Center for Youth, Civ. No. CH 97-0666-B-M1; In Re: Swanson Correctional Center for Youth, Civ. No. CH 97-0667-B-M1; In Re: Louisiana Training Institute - Bridge City, Civ. No. CH 97-0668-B-M1; and In Re: Jena Juvenile Justice Center, Civ. No. CH 98-0804-B-M1.

15. The term "serious mental illness" shall include disorders of mood and cognition (with the exception of mental retardation) that significantly interfere with functioning in at least one essential sphere of the juvenile's life, e.g.: psychotic disorders, mood disorders, the aggressively mentally-ill, and juveniles who exhibit self-mutilating or suicidal behavior.

16. The term "mental retardation" refers to significant sub-average intellectual functioning with an Intelligence Quotient (IQ) of 70 or below with concurrent deficits or impairments in present adaptive functioning in at least two of the following areas: communication, self care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety, with onset before age eighteen.

17. The term "Provider" shall refer to a department, agency or division of Louisiana state government with particular expertise in the provision of medical, dental, and mental health care contracted by DPSC to provide medical, dental, and mental health care to juveniles.

18. The term "serious injury" means any injury that threatens a juvenile's life or limb, or one that requires urgent treatment by a doctor, or severely restricts the juvenile's usual activities, or requires follow-up by a doctor.

19. The term "State" shall refer to the Governor, the Secretary of the DPSC, the Secretary of the Department of Health and Hospitals and all Departments and Agencies of the State of Louisiana, and their employees, agents, contractors, and successors, who are wholly or partially responsible for the care of juveniles confined in the juvenile facilities, with the understanding that the Governor's obligations under this Agreement have been delegated to the Secretary of the DPSC.

As used in this Agreement, the term "State" shall not include or mean the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College ("LSU") or any of the institutions under its management or supervision. Notwithstanding any other language or provision contained in this Agreement, this Agreement shall not be construed to create any obligations flowing from Provider or LSU to Plaintiffs or DOJ. As used in this Agreement, the "State" shall not include the City of Tallulah or LaSalle Parish Hospital District Number 2.

III JUVENILE JUSTICE

A. Protection from Abuse and Violence

20. The State shall establish and implement policies and procedures for the purposes of providing juveniles with safe and humane living conditions, protection from physical, sexual, and mental abuse by facility staff, and from juvenile-on-juvenile violence and sexual abuse, and other forms of victimization (such as "strong-arming").

21. The State shall continue to advise all staff and juveniles on a regular basis that violence will not be tolerated and that the following conduct by either staff or juveniles is strictly prohibited in all of the facilities and will result in disciplinary sanctions and referral for criminal prosecution, where warranted: (a) sexual abuse, (b) physical abuse, (c) emotional abuse, (d) corporal punishment, and (e) staff permitting, enticing, or inducing juveniles to assault each other. The State shall also immediately inform juveniles and staff that those who report alleged abuse will be protected from retaliation.

22. Within two months of the effective date of this Agreement, the State shall require all mandatory child abuse reporters at the facility to acknowledge their obligation in accordance with State law to report suspected child abuse and inform all mandatory reporters of the office and telephone number to which such suspected abuse should be reported. The State's obligation under this section will be discharged upon obtaining employees' signatures acknowledging their understanding. "Acknowledgment" training will be provided annually to all mandatory child abuse reporters.

If the Louisiana Department of Social Services contacts the State regarding an allegation of abuse, the State will insure that the allegation has been, or is being, investigated.

23. The State shall ensure immediately that all juveniles have adequate means to report abuse, including at a minimum, providing the juveniles with direct and confidential access to the Project Zero Tolerance ("PZT") Hotline. The State shall ensure that all calls to the hotline are reviewed at a minimum twice daily by supervisory investigators.

Within two months of the effective date of this Agreement, the State shall ensure that there are at least two fully operational telephones in each of the housing units, at least one operational telephone in each counselor's office, and at least one operational telephone in the infirmary that juveniles may use to place a PZT call. The State shall ensure that a maintenance order is placed within one business work day for every juvenile telephone that is in need of repair and will make best efforts to ensure that the phone is repaired as soon as possible.

24. Within one month of the effective date of this Agreement, the State shall ensure that: (a) every juvenile who reports to a facility infirmary with an injury or pain shall be questioned by a health care staff, outside the hearing of officers or other juveniles, regarding the cause of the injury or pain; and (b) if in the course of the juvenile's infirmary visit abuse is alleged or health care staff suspects abuse, the health care staff shall call the PZT Hotline following delivery of necessary medical care and adequately document the matter in the juvenile's medical record, fill out an incident report, and log the PZT call in the infirmary log.

25. Within three months of the effective date of this Agreement, the State shall ensure that any allegation or incident involving neglect, abuse, excessive use of force, use of any type of chemical restraint, or incident/accident resulting in serious injury is adequately reviewed, investigated, and documented in a timely manner. If a full investigation (see ¶ 26 a - i) is not warranted, then the reasons why a full investigation is not conducted shall be documented in writing. In cases where a juvenile withdraws an allegation, the investigators shall record the investigation on the log, conduct a preliminary investigation to determine the circumstances and reasons for the withdrawal, and in cases where it is warranted, complete the investigation of the abuse allegation. In no case shall an investigator do an investigation on an incident in which he or she was personally involved. Whenever practicable, PZT Investigators will interview juveniles outside of school hours; however, a juvenile may be removed from school by a PZT investigator as part of a PZT investigation, and the State shall not be required to comply with all academic and vocational program participation requirements for that juvenile for that day.

A letter confirming the outcome of the investigation shall be sent to parents/guardians or other close family members when

those persons have identified themselves at the time of referral and have provided a mailing address.

26. The State shall promulgate and implement system-wide policies for the investigation of allegations of neglect, abuse, excessive use of force, and incidents and/or accidents resulting in serious injury. The policies shall identify the types of actions that normally would be taken in such an investigation including:

- a. Taking photographs of all visible injuries;
- b. Securing, examining and photographing all physical evidence;
- c. Interviewing the alleged victim and perpetrator in individual, private, in-person interviews with a record made of the substance of the interview (written statements by staff or juveniles shall not be substituted for personal interviews);
- d. Identifying and interviewing privately, separately and in-person, all possible witnesses, including other juveniles and staff in the building or unit at the time of the incident;
- e. Examining the juvenile's and staff member's institutional, personnel and other records, including any prior allegations of abuse against the staff person whether substantiated or not;
- f. Staff and juvenile witnesses to the alleged abuse are not, at any time after an incident, questioned or interviewed by staff who due to their assignments and/or relationship with the alleged perpetrator have or appear to have a conflict of interest in investigating the allegation;
- g. Whenever there is reason to believe that a juvenile may have been subjected to physical sexual abuse, the juvenile is examined by non-DPSC health care personnel with special training and experience in conducting such assessments;
- h. For all investigations not completed within ten working days, notification detailing the need for additional time and an estimate of the additional time needed shall be provided to the supervisory investigators; and
- i. The investigation makes an explicit determination of whether any facility staff knew of, but did not report, the alleged abuse or provided false information during the investigation.

27. Every PZT investigation shall result in a written report. The report contents will be appropriate to the extent of investigation required to issue a finding. The report shall explicitly and separately set forth the following as appropriate to the investigation:

- a. each allegation of wrongdoing investigated;
- b. the name(s) of all alleged victims and perpetrators;
- c. the names of all witnesses;
- d. the names of all persons interviewed during the investigation;
- e. all documents reviewed during the investigation;
- f. whether videotapes were examined and, if not, why not;
- g. all other sources of evidence considered;
- h. all PZT investigations and their results, involving the alleged victim(s) and perpetrator(s);
- i. the investigator's findings;
- j. the investigator's reasons for his or her conclusion.

A copy of the summary/conclusion of the investigation of a substantiated allegation will be placed into the file of the juvenile who is the subject of the investigation.

28. The State shall employ trained, independent investigators at each facility with adequate experience and training in investigations to accomplish these tasks. The investigators shall prepare comprehensive written investigation reports, setting forth their complete investigative findings and the basis of their findings. The reports shall be simultaneously forwarded to the facilities' wardens and supervising PZT investigators at Headquarters. These investigators shall report to the wardens of the facilities. If the warden is personally involved in a particular incident, then a PZT investigator assigned from DPSC Headquarters shall conduct the investigation.

29. The State shall employ at least the following number of FTE investigators within 12 months of the effective date of the Agreement:

JCCY 3

SCCY 2

BCCY 1.5

SCCY-M 3

In addition, the State shall employ two supervisory investigators who shall supervise and assist the investigators and who shall monitor all calls made to the PZT Hotline. The supervisory investigators shall report to the Office of the Secretary and shall implement policies and procedures for the investigation of allegations of neglect, abuse, violence, excessive use of force, and serious injury system-wide.

30. Within three months of the effective date of this Agreement, the State shall ensure that:

a. all employees or contractors against whom physical abuse or sexual misconduct is substantiated shall be appropriately processed through a performance appraisal action or disciplinary action.

Where significant physical abuse or sexual misconduct is substantiated, or where there is a pattern of substantiated abusive behavior, the employee or contractor shall be terminated and shall not knowingly be employed at another secure juvenile facility;

b. allegations of criminal sexual misconduct and physical abuse by staff resulting in lacerations requiring sutures, fractures, serious injuries, or death are referred for evaluation of the appropriateness of criminal prosecution to state authorities, the United States Attorney's Office in the district in which the facility is located, and the Criminal Section of the Civil Rights Division of the Department of Justice; and

c. Any staff member under investigation for physical abuse or sexual misconduct shall be separated from any contact with juveniles or placed on leave if the State has a reasonable basis to believe that abuse or sexual misconduct warranting termination of employment may have occurred.

31. The State shall keep records of the results of every PZT investigation at the facility and in a central registry maintained by the State. These records shall be maintained in a manner that permits investigators and other appropriate personnel to easily access every PZT investigation involving a particular staff member or juvenile. A copy of the summary/conclusion portion of every PZT investigation substantiating misconduct by staff shall be permanently placed in the staff member's personnel record.

32. Within nine months of effective date of this Agreement, the State shall establish the Multiple Allegation Database (MAD). This database will be used to screen for staff with multiple allegations to determine those whose behavior may need to be modified.

a. The MAD shall collect and record the staff's complete name, the date of each allegation of abuse or misconduct against the staff, the date each alleged event occurred, the name of the staff or juvenile making the allegation of abuse or misconduct against the staff, the identifying number of the investigation done in response to the allegation, the outcome of the

investigation, and the discipline, training, or counseling imposed or mandated as a result of the investigation, if any.

b. The MAD shall be maintained during the staff's employment and for five years after the staff leaves employment.

c. The Youth Programs Compliance Division shall review staff with three or more allegations of abuse or misconduct relating to safety or welfare of juveniles within a two-year period and, if warranted, take appropriate follow-up action (such as meeting with the staff, recommending remedial training, counseling, transfer, re-assignment, or disciplinary action).

33. As part of each PZT investigation, investigators shall examine the PZT investigation history of the parties involved in the current investigation. This shall include reference to the central PZT registry maintained by the State.

34. The State shall document in the personnel record of every person hired after the entry of this Agreement that the facility has consulted the facility records and the central PZT registry to determine whether the candidate has ever been the subject of a substantiated PZT investigation at any facility in the State and to review any other complaint history.

35. No facility may knowingly hire any individual who has had an allegation of abuse substantiated against him or her that resulted in termination of employment or resignation to avoid termination. In addition, the MAD shall be checked as part of the pre-employment review process. And, to the extent possible, the MAD shall be updated within 180 days of creation to include all cases of substantiated abuse that resulted in termination or resignation to avoid disciplinary action within the previous 365 days.

36. Within four months of the effective date of this Agreement, the State shall confirm that criminal background checks, as described herein, have been completed on all existing staff and the State will complete criminal background checks on all prospective employees and existing employees whose background check does not conform to the requirements of this paragraph. A background check shall include checking with the National Crime Information Center and the Louisiana Computerized Criminal History system. The State shall complete the above checks on all prospective employees before they have any contact with juveniles. Additionally, finger prints of all employees, existing and prospective, shall be submitted to the State Police in accordance with the Louisiana Child Protection Act. The State shall take appropriate action to protect the welfare and safety of the juveniles based upon the information obtained from the checks. By April 1, 2002, the State shall provide the United States with information identifying all correctional officers employed on March 15, 2002 in a manner sufficient for the United States to review each officer's arrest and conviction records through the National Crime Information Center. During the Private Plaintiffs' and the United States' compliance tour, the State shall provide to the United States evidence of the specific personnel action taken regarding any employees identified by the United States with criminal convictions or arrest records.

37. Within 12 months of the effective date of this Agreement, the State shall install round-the-clock closed circuit video cameras in the following areas of Louisiana's juvenile facilities: common areas of administrative segregation/single cell housing units, common areas of medical care areas, dining halls, dormitory sleeping areas, and dormitory day rooms. Cameras will be positioned in order to eliminate and/or reduce blind spots. The system shall record video from each camera at a rate of not less than 7.5 frames per second. All tapes shall be retained for a period of 50 days, except that any tape recording of an incident that is the subject of a (1) PZT investigation, (2) referral for prosecution or actual criminal prosecution, (3) civil lawsuit, or (4) request by counsel for an investigation to be conducted or for the tape to be retained shall be maintained indefinitely. PZT investigators shall review at least 12 hours of random videotape footage per month per institution.

38. The State shall not use corporal punishment on juveniles.

B. Staffing/Capacity

39. The State agrees that the juvenile facilities shall be subject to the following population limitations as of the effective date of this Agreement:

Swanson Correctional Center for Youth - Madison Unit 512

Jetson Correctional Center for Youth 600 Swanson Correctional Center for Youth - Monroe 370 * Bridge City Correctional Center for Youth 180

* This capacity may be temporarily exceeded if needed to accommodate the closure of the Jena Juvenile Justice Center.

a. The State agrees that, within 3 months of the effective date of this Agreement, the capacity of the individual housing units within each of the juvenile facilities will be limited in accordance with the schedule in ¶¶ 40-43.

b. The State may exceed the capacities of residential dorms by two float beds on a temporary basis (up to four days) in order to accommodate transfers or other movements of juveniles within the facility. The State will not, however, increase the capacity of a residential dormitory - even on a temporary basis - if such an increase would violate good correctional practice or would violate State Fire Code limitations. The use of float beds under this provision shall not result in an increase of the overall population limit for any facility, as previously set forth in this paragraph.

c. Within 12 months of the effective date of this Agreement, the State shall post correctional officers and/or other direct care workers in housing units as set forth in ¶¶ 40-43. Correctional officers assigned to residential units shall accompany the juveniles housed in those units on a roughly proportional basis throughout the day.

d. Whenever three direct care staff are assigned to a residential unit, at least two of those staff members must be correctional officers.

40. Swanson Correctional Center for Youth - Madison

Dormitory or Cellblock	Capacity	Staff 24 hour	Staff 3 to 11
Alpha	36	2	1
Bravo	36	2	1
Charlie	36	2	1
Delta	36	2	1
Echo	-	-	-
Foxtrot	36	2	1
Golf	36	2	1
Hotel	36	2	1
India	36	2	1
Montana A	32	2	1
Montana B	32	2	1
Java A	20	2*	
Java B	20	2*	
Java C	20	2*	
Java D	20	2*	
Kentucky A	20**	2*	
Kentucky B	20**	2*	
Kentucky C	20**	2*	
Kentucky D	20**	2*	
Louisiana A	20	2*	
Louisiana B	20	2*	
Louisiana C	20	2*	
Louisiana D	20	2*	
TOTAL	512		

- Except 10 p.m. - 6 a.m., then 1 correctional officer per quad with 1 rover per building.

** Administrative Segregation beds - not included in total capacity

- a. No staffing is required for individual quads of Java, Kentucky or Louisiana if quad is not occupied.
- b. Echo is removed from the capacity count and will be a recreational building.
- c. If the population of any dormitory is reduced to 25 or below, then the 3 p.m. - 11 p.m. swing shift may be eliminated.
- d. On weekends, one full-time staff member (from the above chart) who will receive training appropriate to his or her duties will structure leisure activities for each dorm or cellblock.

41. Swanson Correctional Center for Youth - Monroe

Dormitory or Cellblock	Capacity	Staff 24 hour	Staff 3 to 11
Holly A	36	2	1/3
Holly B	36	2	1/3
Holly C	36	2	1
Holly D	36	2	1/3
Cypress A	16*	1**	
Cypress B	16	2**	
APD	30	3	
Mimosa	36	2	1
Pecan	36	2	1
Willow	36	2	1
Red Bud	36	2	1
McKoin	36	2	1
TOTAL	370		

- Administrative Segregation beds - not included in total capacity.

** Cypress A & B share an additional rover 16 hours per day.

- a. If the population of any dormitory except the APD is reduced to 25 or below, then the 3 p.m. - 11 p.m. swing shift may be eliminated.
- b. On weekends, one full-time staff member (from the above chart) who will receive training appropriate to his or her duties will structure leisure activities for each dorm or cellblock except that Holly A, B, and D shall be considered one housing unit for purposes of this paragraph.
- c. When Cypress A converts to the mental health unit, an additional 24-hour post will be added and the 16 hour rover post will be eliminated. The overall capacity will then increase from 370 to 386 beds.

42. Bridge City Correctional Center for Youth

Dormitory or Cellblock	Capacity	Staff 24 hour	Staff 3 to 11
Open Dorm	20	2	
Brown	50	3	
Kennedy	30	2	1

Lincoln	40	2	1
King	40	2	1
TOTAL	180		

a. If Brown Dormitory is reduced to 36 or below, staffing may be reduced to two 24-hour posts and one 3 p.m. - 11 p.m. post.

b. On weekends, one full-time staff member (from the above chart) who will receive training appropriate to his or her duties will structure leisure activities for each dorm.

43. Jetson Correctional Center for Youth

Dormitory or Cellblock	Capacity	Staff 24 hour	Staff 3 to 11
Rosebud	52	3	
Ivy Leaf	52	3	
Ivy Leaf	8 **	1	
Oakwood	40	2	1
Willowwood	40	2	1
Maplewood	40	2	1
Elmwood	40	2	1
Magnolia	40	2	1
Evergreen	40	2	1
Walnut	42	2	1
Pinecrest	40	2	1
Alpha	50	3	
Bravo	50	3	
Hunt	50	3	
Delta A	12**	1*	
Delta B	12	1*	
Delta C	12	1*	
TOTAL	600		

* Plus 2 rovers 6 a.m. - 10 p.m.

Plus 1 rover 10 p.m. - 6 a.m.

** Administrative Segregation beds- not included in total capacity.

a. If the population of any dormitory is reduced to 25 or below, then the 3 p.m. - 11 p.m. swing shift may be eliminated.

b. If the population of Rosebud or Ivyleaf is reduced to 36, then one of the three 24-hour posts may be eliminated but one 3 p.m. - 11 p.m. staff member shall be added.

c. On weekends one full-time staff member (from the above chart) who will receive training appropriate to his or her duties will structure leisure activities for each dorm and cellblock.

44. Except as provided below, the State shall not permit correctional officers working in juvenile housing units to work more than 120 hours in any 14-day period, nor more than 5 consecutive days. During an emergency, the Warden may initiate a

variance to this paragraph. The definition of emergency shall not include problems associated with under-staffing.

45. Within three months of the effective date of this Agreement, the State shall develop a plan, timetable and performance objectives for reducing turnover and vacancy rates for direct care staff. The State shall make their best efforts to reduce the annualized turnover rate of direct care staff in each facility to below 100%, and the State shall make their best efforts to maintain the number of vacant positions in each facility at no more than 15% of budgeted positions within six months of the effective date of this Agreement. The State shall make their best efforts to reduce the annualized turnover rate of direct care staff in each facility to below 50%, and the State shall make their best efforts to maintain the number of vacant positions in each facility to no more than 5% of the budgeted positions, within one year of the effective date of this Agreement.

A. Direct Care Staff Training

46. Within 23 months of the effective date this Agreement, the State shall ensure that all staff who have direct contact with juveniles are adequately trained and can demonstrate competence in the following areas:

- a. stages of adolescent development;
- b. communication skills, including specific instruction on verbal de-escalation techniques;
- c. behavior management and the management of aggressive behavior;
- d. basic training relating to juveniles with mental health issues, including recognizing signs of mental retardation, developmental disabilities and mental illness and appropriate methods of interaction with such juveniles; grief and loss among juveniles; and measuring and monitoring behavior changes;
- e. crisis prevention and intervention, including the prevention and intervention in suicidal behavior and self-mutilation;
- f. basic Constitutional and legal rights of juveniles in juvenile facilities;
- g. report writing;
- h. basic training relating to medical care, including basic medical terminology; recognizing and responding to seizure disorders; common side effects of prescription and non-prescription medication; and confidentiality of medical information;
- i. the physical and emotional needs of pregnant residents (for staff working with female juveniles);
- j. universal precautions to prevent infection with TB and AIDS;
- k. certification in first aid and cardiopulmonary resuscitation;
- l. accommodations needed for mentally ill and physically or developmentally disabled juveniles;
- m. fire safety and evacuation procedures and conducting of regular emergency evacuation drills;
- n. use of force policy; and
- o. Project Zero Tolerance and the grievance system.

47. Within 23 months of the effective date of this Agreement, all direct care staff and all case workers shall be taught effective, non-punitive ways to manage juveniles. Case workers shall have a working knowledge of the rehabilitative and/or mental health treatment plans of the juveniles in their care. Direct care staff shall be provided enough information by caseworkers regarding treatment and/or rehabilitative issues of the juveniles in their caseload to facilitate the direct care staff's supervision of the juveniles.

48. Within 23 months of the effective date of this Agreement, the State shall ensure that all staff who have regular and routine contact with juveniles are adequately trained concerning the standards for physical management of juveniles and what

constitutes abuse.

- a. Employees will take all reasonable steps to minimize situations requiring a use of force and to minimize the amount of force used in those situations. When possible, actions other than use of force, such as staff presence, verbal directions and warning, crisis intervention techniques, and passively removing a juvenile from an area of group activity without the use of physical handling, will be used;
- b. Force will be used only as a last resort to control the juveniles;
- c. The amount of force used will be proportional to the threat to which it is a response and cease when the resistance ceases;
- d. Force may be used only:
 - i. To prevent an escape;
 - ii. To prevent an act which could result in death or severe bodily harm to the juvenile or another person;
 - iii. To defend one's self or others against a physical assault;
 - iv. To separate participants in a fight;
 - v. To prevent substantial damage to property; and
 - vi. When necessary, to enforce legal orders and instructions.
- e. Whenever possible, force will not be used against juveniles with mental illness or mental retardation before appropriate medical, mental health, or counseling personnel can be called to the scene.
- f. The first action taken to gain control will be direct, verbal instructions to cease the behavior, unless the employee perceives that life or health will be jeopardized, or that there is a substantial threat to security.
- g. When determining the need to use force, factors to be considered include but are not limited to: lack of appropriate response to repeated direct orders and other efforts to temper the situation, severity of the situation and/or behavior, threat to self or others, and disruption to the unit or program.

The State shall ensure that within twenty-three months of the effective date of this Agreement and presentation to the Plaintiffs, the DOJ and the Court Expert of the training course material, all staff who have contact with juveniles shall attend a competency-based training course in restraint methods that will include passive restraint methods. Failure of existing staff to successfully complete the program will result in adverse performance appraisal action and the training will be rescheduled. The State will use the performance appraisal to remove staff who repeatedly fail to meet the requirements of this paragraph. Newly recruited or hired staff must successfully complete the training prior to having any contact with juveniles. The training program shall be tailored to adolescent correctional populations, rather than adult correctional populations, and will include communication techniques, basic counseling, conflict resolution, therapeutic interventions, and the physical and emotional needs of adolescents in addition to other accepted physical management techniques. The material for the course shall be presented to the Court Expert, the DOJ and Plaintiffs for review prior to adoption.

49. All new correctional officers shall receive a minimum of 120 hours of pre-service training. All other new staff shall receive a minimum of 40 hours of pre-service training. All staff with regular or daily contact with juveniles, including correctional officers, shall receive an additional 40 hours of training each year. Staff with minimal contact with juveniles such as clerical/office staff shall receive an additional 16 hours of training each year. Pre-service training and annual training will include topics as described in ¶ 46. Under no circumstances shall newly recruited or hired direct care workers be assigned to supervise juveniles until they have successfully completed competency based testing in all of the areas of training set forth in ¶ 48. This shall not apply to supervised on-the-job training. Correctional officers who transfer from adult institutions to juvenile institutions must complete the components of training related to juveniles prior to assuming their duties. Failure of existing staff to successfully complete the program will result in adverse performance appraisal action and the training will be rescheduled. The State will use the performance appraisal system to remove staff who repeatedly fail to meet the requirements of this paragraph. The State shall meet the requirements of this paragraph within twenty-three (23)

months of the effective date of this Agreement.

B. Positive Behavior Management/Discipline

50. The State shall develop and implement within 23 months of the effective date of this Agreement a uniform positive behavior management system for juveniles in the facilities. The system shall be designed to provide incentives for positive behaviors and shall define specific disciplinary consequences for specific negative behaviors. The system shall be explained orally and in writing to all juveniles during the intake and orientation process. The explanation will include discussion of the adverse effects on early release consideration that Schedule B disciplinary reports can have.

51. Within 23 months of the effective date of this Agreement, staff shall be instructed and trained to address minor behavior problems through informal counseling and the use of the positive behavior management system (including through the withdrawal of privileges).

52. Upon receipt of a Schedule B disciplinary report, a juvenile shall have an opportunity to meet with a designated staff member to discuss the disciplinary report. The designated staff member shall offer to aid the juvenile in any disciplinary hearing on the disciplinary report and shall provide such assistance if asked.

53. Every juvenile who receives a Schedule B disciplinary report shall receive a disciplinary hearing pursuant to disciplinary procedures as promulgated by the DISCIPLINARY RULES AND PROCEDURES FOR JUVENILE OFFENDERS, First Edition, 1993 as amended by memo of November 19, 1996, except as modified by this document. The policies and procedures shall include:

a. Written notice describing the alleged violation(s);

b. *Impartial hearings before a disciplinary committee consisting of two employees representing different programs of the institution. The disciplinary committee shall not include any staff person who was involved in the issuance of the disciplinary report. The entire hearing shall be held in private and tape recorded and shall result in written findings of fact and disposition. The tape shall be kept indefinitely;*

c. Right to an appeal.

C. Classification

54. The State shall issue and enforce classification criteria regarding housing assignments. The criteria shall include applicable risk factors based on age, gender, maturity, size, offense history, institutional behavior and/or program participation, offense, education, mental health history and any special needs of the juveniles.

55. Staffings shall be used to develop reports to courts of continuing jurisdiction, updating of the case plan, and (except for STOP/LITE/juveniles and juveniles sentenced under provisions of Louisiana Children's Code Article 897.1) determining if a juvenile has met the guidelines for or should otherwise be considered for a recommendation for reassignment, release, or discharge from a secure setting. Staffing determinations/recommendations shall be based upon guidelines which primarily consider treatment protocols and/or continued treatment provided through community/non secure programs, custody level, progress in institutional educational, vocational treatment programs and/or approved educational/vocational and exit plans.

Staffings shall be held in private and shall normally be attended only by those staff involved in the staffing. Other staff such as the case worker's supervisor, Warden or other administrators may attend as deemed necessary for supervision/observation purposes. Each staffing shall be attended by the case worker and at least two of the following individuals: one of the juvenile's teachers (who shall be the juvenile's special education teacher if the juvenile is receiving special education services), the school's guidance counselor/school psychologist/school social worker, a security staff member who supervises the juvenile in the juvenile's living unit; a mental health professional providing individualized services to the juvenile; or a member of the medical staff who is familiar with the juvenile's medical care if the juvenile is receiving on-going medical treatment (e.g., for chronic health care needs). If not represented at the staffing, written comments or reports shall to be used in the staffing to ensure that education, medical, mental health and security activities are considered. The juvenile shall be encouraged to attend and participate in the discussion. If a juvenile is not making progress, the treatment team shall discuss strategies for addressing the impediments to progress and shall modify the treatment plan accordingly.

56. Any decision that results in an extension of time a juvenile must spend in a short term program or results in removal from

a short term program shall be personally reviewed by the facility warden, deputy warden or assistant warden who shall review the relevant documentation prior to determining whether to approve the decision for the extension. Notice and reasons for the extension will be provided to the court of jurisdiction and the juvenile's last known attorney of record.

57. Within 23 months of the effective date of this Agreement, the DPSC shall develop and implement guidelines for the placement of juveniles in specialized behavior management units and such guidelines shall take into account the medical and mental health status of the juvenile, and shall provide, at a minimum:

- a. For the criteria by which a juvenile can be initially transferred to such a unit, which shall include a hearing;
- b. For documentation of all reasonable less restrictive alternatives attempted before the decision was made to place a juvenile in such a unit, unless the severity of the offense indicates otherwise;
- c. For the development of a written, individualized and detailed program plan that shall set forth measurable short-term goals and concrete criteria for the juvenile's removal from the unit and be provided to the juvenile. The State shall attempt to complete the program plan within 72 hours of placement, exclusive of weekends and holidays;
- d. Appropriate programming for special needs juveniles placed in these units;
- e. That the warden of a facility approve the decision to transfer a juvenile to such a unit. Where such assignment results in a transfer to a different facility, it must be approved by both wardens, where applicable, or by the Assistant Secretary of the Office of Youth Development if the wardens do not agree.
- f. DPSC shall provide to the Provider a list of juveniles transferred to a specialized behavior unit.

D. Access to Courts

58. The State shall establish and implement policies and procedures to assure that:

- a. juveniles have meaningful access to telephones for privileged communications with their attorneys.
- b. juveniles have meaningful and confidential attorney-client communications through the mail. No privileged mail shall be opened except by the intended recipient - except that correspondence may be opened for contraband if it is opened in the presence of the juvenile.
- c. The State shall provide adequate paper, pens/pencils, envelopes and postage to indigent juveniles for legal communications.
- d. A juvenile's right to confidential communications with attorneys is protected.

59. Within four months of the effective date of this Agreement, the State shall fund three new staff attorney positions and three new paralegal positions for the Louisiana Indigent Defense Assistance Board, which positions shall be dedicated to representing juveniles in secure custody in connection with appeals of their adjudications and modifications of their disposition. These attorneys and paralegals may also assist juveniles in secure facilities by referring those juveniles to other attorneys for possible representation in pursuing claims arising out of their conditions of confinement.

60. The State shall cooperate with attorneys representing juveniles in secure facilities in making those juveniles' institutional records available in connection with any appeal or modification of their dispositions.

E. Chemical Agents

61. Upon execution of this Agreement, the only chemical agent that may be kept or used shall be 100% OC spray. Only the Warden, Deputy Warden or Assistant Warden, or when they are not present at the facility, the highest ranking officer at the facility, shall be permitted to authorize the use of the spray. The authorizing Warden or officer must be present at the use of the spray. They may not delegate this authority to any other person. Only employees specifically trained in the use of chemical spray shall be permitted to use the spray. The chemical spray shall not be intentionally sprayed in the face of any

juvenile. Employees shall be trained to not intentionally spray juveniles in the face. The State shall ensure that the Warden, Deputy Warden or Assistant Wardens are trained in the correct use of these sprays to prevent excessive exposure, the hazards associated with such sprays, and the first aid response to exposure situations. Within two months of the effective date of the Agreement, all use of chemical agents shall be videotaped, with sound recording, and the tape of the incident shall be maintained for the duration of this Agreement for inspection by the Plaintiffs, the DOJ, and the Court Expert. The State shall ensure that the chemical spray is only used under the following terms:

- a. Chemical agents shall not be used except under the conditions set forth below and with prior approval, after personal observation of the situation, from the Warden, Deputy Warden or Assistant Warden if one of these officials is at the facility. If the Warden, Deputy or Assistant Warden is not at the facility, prior approval may be given, after personal observation of the situation, by the highest ranking security officer on duty at the facility. However, such approval shall not be required in the case of a large-scale disturbance (such as an attempted mass escape) that poses an imminent danger to the public, staff or other juveniles, so long as in such an event the Warden, Deputy or Assistant Warden is notified as soon as practicable;
- b. Chemical agents shall not be carried on the person of any individual. Chemical agents shall not be stored in any cellblock or living area, but shall be securely stored in a separate location. Chemical agents shall not be removed from this secure storage area unless (1) for use in staff training (2) for product disposal or (3) as authorized pursuant to subsection (a) in response to a situation described in subsection (c), provided however that the authorizing official need not make a personal observation of the situation prior to authorizing the removal of the chemical agents from the secure area.
- c. Chemical agents shall only be authorized when:
 - i. A juvenile is posing a direct and immediate threat of injury to staff or another juvenile;
 - ii. The juvenile is creating a sustained disturbance that jeopardizes the effective monitoring and supervision of the unit to the extent that the safety of juveniles or staff is endangered, which persists despite efforts to de-escalate without the use of chemical agents, and the use of chemical agents is the only means to avoid a physical confrontation that would likely result in injury to juveniles or staff; or
 - iii. The use is necessary to prevent an escape.

The State shall ensure that exposed juveniles are seen by medical staff whenever spray is used. The State shall ensure that juveniles with known chronic respiratory conditions (including asthma) are not subjected to chemical spray. However, this shall not prohibit the use of chemical spray when it is necessary to prevent or quell a large scale disturbance where such juveniles are present. In no event shall staff use a chemical spray as punishment, discipline, retaliation, for the purpose of inflicting pain, for staff's convenience, or after handcuffs have been applied.

62. Every usage of chemical spray shall be documented in a chemical agent report and every removal shall be documented in a log maintained for this purpose. The chemical agent report shall describe the behavior of the juvenile with sufficient particularity to enable a reviewer to determine independently whether the above requirements of ¶ 61 have been complied with (i.e., the documentation shall not simply restate, paraphrase or refer to the above conditions warranting use of chemical spray).

63. A copy of the Accident and Injury Report ("A&I") and UOR shall be placed in the file of the juvenile against whom the chemical restraint was used.

G. Mechanical Restraints

64. Within two months of the effective date of this Agreement, the State shall not use mechanical restraints except under the following circumstances. The use of mechanical restraints shall be limited to the minimum period of time necessary to enable the juvenile to gain control of his behavior. When a handcuff belt is not used, handcuffs shall be applied behind the back in a manner to minimize the risk of injury to the juvenile and the staff person responsible for supervising the juvenile.

The State shall not use mechanical restraints except under the conditions set forth below:

- a. For transportation of juveniles outside the facility, the State may use handcuffs, leg irons, and/or handcuff belts;

- b. For movement of juveniles within the facility, no mechanical restraints shall be used except under the following conditions. Handcuffs and/or a handcuff belt may be used if the facility has documented that the juvenile poses a current escape risk or has engaged in a recent pattern of assaultive behavior toward staff or other juveniles, as determined and authorized by a ranking security shift supervisor. Leg irons may only be used for transportation within the facility if the conditions of subparagraph (d) are met;
- c. For movement of juveniles within the facility to transport a juvenile from general population to a restrictive housing area after a fight or other serious incident, handcuffs and/or a handcuff belt may be used;
- d. For control of a juvenile who, after less restrictive measures have not been successful, continues to engage in aggressive or assaultive behavior that is a clear and present danger to the juvenile, another juvenile, staff, or the security of the facility, a handcuff belt, and/or leg irons may be used. In this instance, such use of mechanical restraints shall require continuous one-on-one physical supervision and must be approved by the ranking supervisor (Captain or higher) on duty at the facility. The staff person shall ensure that the physical needs of the juvenile are met promptly;
- e. For intra-facility movement of juveniles in administrative segregation for disciplinary reasons, handcuffs and/or a handcuff belt, may be used.

Although a routine medical examination after the use of mechanical restraint is not required, immediate medical treatment shall be provided if there is a visual indication of an injury or if the juvenile identifies a specific medical complaint.

No other forms of mechanical restraints may be used (including 4 or 5 point restraints and the handcuff "black-box"). This, however, does not apply to medical or mental health restraints ordered by a medical or mental health professional.

65. Every use of a mechanical restraint, other than as authorized under ¶ 64(a) and (e), shall be documented. The use of mechanical restraints shall be documented on a UOR or in a log maintained for this purpose. Documentation to reflect compliance with ¶ 64 shall describe the behavior of the juvenile with sufficient particularity to enable a reviewer to determine independently whether the above requirements of ¶ 64 have been complied with (i.e., the documentation shall not simply restate, paraphrase or refer to the above conditions warranting use of mechanical restraints).

66. The State shall promulgate a policy setting forth which staff are permitted to carry mechanical restraints and where all other mechanical restraints are to be stored.

67. Every facility shall maintain inventory log books for all mechanical restraints. One log book shall be kept at each location where mechanical restraints are stored. The log book shall contain the following information for mechanical restraint devices in the facility:

- a. A unique identifying number recorded in the log book and on the device (such as a serial number);
- b. For every time the device is removed from its storage location:
 - i. The date and time of its removal;
 - ii. The name of the person removing the device;
 - iii. The name of the person authorizing its removal and a brief statement of the reason (e.g., transportation outside the facility);
 - iv. The date and time the device was returned; and
- v. A statement of whether the mechanical restraint was used while the device was checked out.

G. Living Conditions

68. The State shall establish and implement policies and procedures assuring adequate sanitation in the kitchen and eating areas, as well as all living areas. Such policies and procedures shall include:

- a. The provision of cleaning supplies on a daily basis in order that the living and sleeping areas may be cleaned;
- b. Regular, daily cleaning of the shower and toilet area of each dormitory and cellblock;
- c. Thorough daily cleaning, using accepted institutional methods, of the kitchen and eating areas.

69. Within twelve months of the effective date of this Agreement, female staff shall not regularly or routinely view male juveniles toileting or showering and male staff shall not regularly or routinely view female juveniles toileting or showering unless the affected shower and toilet areas screen the genital areas of juveniles showering and using the toilet.

70. The State shall provide adequate personal hygiene items to juveniles, including sufficient soap, shampoo, hair brushes or combs, toothbrushes, toothpaste and deodorant for daily hygiene needs.

71. The State shall establish and implement policies and procedures assuring that each juvenile has sufficient and appropriately cleaned clothing.

72. The State shall make best efforts to insure that all living units at SCCY-M are climate controlled by October 31, 2000, and will give notice with an explanation if the project is not completed on time.

73. Upon the effective date of the Agreement, the State shall provide for at least one hour of outdoor exercise, weather permitting, including weekends and holidays to each juvenile except when:

- a. contra-indicated for medical reasons; or
- b. a juvenile in administrative segregation continues to present an immediate danger to others.

Utilization of provision (b) shall require the approval of the Warden/Deputy Warden, or Assistant Warden. In the absence of the Warden/Deputy Warden or Assistant Warden, application of provision (b) may be authorized only by the highest ranking officer at the institution.

Within 12 months of the effective date of this Agreement, each facility shall provide adequate recreational equipment and activities adapted for special needs juveniles.

Each facility shall provide adequate recreational equipment. Adequate indoor recreational opportunities shall be provided in the event of inclement weather.

The State shall maintain information in logbooks in dormitories, cellblocks, school and the infirmary to record outdoor exercise activities.

H. Cell Restriction

74. Locking a juvenile in a room for prolonged periods of time, except during sleeping hours (cell restriction), shall occur only in three contexts -- administrative segregation, protective custody, and removal from regular programming. Use of cell restriction in these contexts shall be governed by the requirements set forth below, provided, however, that all staff training to fully implement parts (a)(iv), (a)(ix), and c(v), may not be completed until 23 months after the effective date of this Agreement.

a. Administrative Segregation

i. Juveniles can be placed in the administrative segregation unit only when their continued presence in general population poses a threat to the safety of the juvenile, staff or other juveniles or is a substantial threat to the security of the institution. This includes activities that are destabilizing or highly disruptive to programming.

ii. Juveniles living in dormitories may only be placed in administrative segregation pending a hearing on their disciplinary charge. Juveniles engaging in suicidal or self-mutilating behavior shall not be held in administrative segregation for behaviors resulting from their conditions.

iii. The State shall ensure that only a staff member of the rank of Lieutenant or higher places a juvenile in administrative segregation. The staff placing a juvenile in administrative segregation shall obtain the approval of the Warden or the Warden's designee as soon as possible.

iv. Staff shall make visual contact with each juvenile in administrative segregation at least every 15 minutes (or more, depending upon the juvenile's emotional state) and otherwise monitor the condition of each juvenile. Staff shall record essential information about each juvenile in administrative segregation. Staff shall alert mental health staff if a juvenile begins to exhibit symptoms of a deterioration in emotional state while in cell restriction in accordance with the guidelines set forth in subparagraph 74(a)(ix).

v. For juveniles held in administrative segregation, disciplinary hearings shall be held every day. A juvenile's disciplinary hearing shall be held within 24 hours or at the first scheduled hearing after the disciplinary writeup. Juveniles may not be subjected to cell restriction as a penalty resulting from a disciplinary hearing.

vi. Juveniles in administrative segregation may be held in cell restriction until calm. Staff shall make all efforts to assist juveniles in administrative segregation to regain control of their behavior. If the juvenile is calm but the security shift supervisor believes that the juvenile will likely be disruptive in programming, he may be excluded from programming. If a juvenile's stay in administrative segregation exceeds 24 hours due to the investigation of a serious incident, the juvenile will be permitted to participate in the 7 ½ hour programming schedule unless he is a danger to others. The daily time out of cells shall not be contingent upon any planned or scheduled programming available to the juvenile.

vii. Programming for juveniles in administrative segregation may only be ended if the juvenile engages in the behaviors listed in subparagraph 74(c)(iii).

viii. A juvenile in administrative segregation shall be routinely provided with reading and writing materials unless his current behavior indicates that possession of such materials would be a danger to the health of the juvenile or others.

ix. Juveniles with mental retardation or serious mental illness shall be assessed and treatment rendered if clinically indicated within three hours of being placed in administrative segregation (if the juvenile remains in administrative segregation). The assessment shall be conducted by a licensed qualified mental health professional ("QMHP") on-call, on-site at the facility.

After regular business hours, weekends, and holidays, the on-site nurse will be notified immediately, who will perform the assessment and contact the on-call QMHP via telephone. If indicated, the on-call QMHP will go the facility for a face-to-face assessment and, if deemed indicated by the QMHP, confer with the psychiatrist on-call.

Based upon the assessment, clinically indicated treatment will be rendered. On-call nurses will be trained to recognize the signs and symptoms of mental illness. In situations when a juvenile is determined to be seriously mentally ill, and a danger to self or others, the juvenile will be placed in a "crisis" bed designated at each facility. Admission to and discharge from crisis beds are by physician orders only. Respite beds will also be designated for those juveniles in need of immediate supervision and intervention secondary to serious mental health needs, although not a level of danger to self or others. Admission to and discharge from respite beds are by physician orders only. In these situations for mentally retarded juveniles and seriously mentally ill juveniles, the mental health treatment team will revise and/or develop a treatment plan, if needed. The treatment plan will consist of written statements which specify a particular course of therapeutic interventions and the roles of the qualified health care personnel.

Crisis and respite beds will be established at each of the juvenile institutions within 23 months of the effective date of this Agreement.

b. Protective Custody

i. Juveniles in protective custody shall be visited at least once each day by a mental health professional and shall be clinically assessed and treated as deemed appropriate. On weekends, these functions may be performed by a registered nurse with mental health training.

ii. Juveniles in protective custody shall be permitted to be out of their cells for at least nine hours a day and participate in programming (including recreation) each day.

iii. Programming for juveniles in protective custody may only be ended if the juvenile engages in the behaviors listed in ¶ 74

(c)(iii).

iv. Protective custody shall be used as a temporary housing measure in order to allow investigation and/or counseling to determine the factors which resulted in a juvenile's placement in protective custody and shall end when a safe and appropriate housing assignment is available.

c. Removal from Regular Programming

i. The State may not assign a juvenile to cellblock housing without a hearing.

ii. A juvenile who is housed in a cellblock may be removed from programming and placed in his assigned cell only in accordance with ¶74(c)(iii) and shall have opportunities to rejoin programming in accordance with ¶74(c)(iv). For juveniles who have not been removed from programming in accordance with ¶74(c)(iii) the daily time out of cells shall be a minimum of 9 hours and shall occur regardless of whether there is any planned or scheduled programming available to the juvenile.

iii. Program participation may be ended only if the juvenile engages in:

- a) Repeated failure to follow orders, where the failure to comply is destabilizing;
- b) Repeated interference with staff or other juveniles' duties;
- c) Improper sexual behaviors;
- d) Fighting;
- e) Substantial destruction of property; or
- f) Violent conduct that creates an imminent danger to other juveniles or staff.

The decision to remove a juvenile from programming shall be approved by a ranking security staff member Lieutenant or higher and documented in a log.

iv. If a juvenile is removed from programming before noon, the juvenile shall be evaluated by a ranking security shift supervisor before evening recreation to determine whether the juvenile can be permitted to participate in evening recreation. The juvenile shall be permitted to participate in evening recreation unless the ranking security shift supervisor determines that, based on documented interim behavior, the juvenile is likely to engage in conduct described in ¶74(c)(iii) and documents the basis for his belief in a log maintained for this purpose; provided, however, that every juvenile shall be permitted an opportunity to participate in programming at the beginning of each day.

v. Juveniles with mental retardation or serious mental illness and who are assigned to a cellblock, who have been removed from regular programming shall be assessed and treated, when deemed clinically appropriate, as soon as possible after they have been denied the opportunity to participate in three consecutive opportunities for programming. For example, a juvenile who is not permitted to participate in afternoon, evening, and the following morning's programming shall be reviewed as soon as possible following the denial of the juvenile's opportunity to participate in the morning programming. Such review shall be in accordance with the protocols established in ¶74(a)(ix). Subsequent to such review and assessment, a licensed QMHP may recommend release of the juvenile from cell restriction to a respite bed or another location if the juvenile is not currently a danger to others.

75. Within three months of the effective of this Agreement, when a juvenile is placed on cell restriction pending a disciplinary hearing, a copy of the disciplinary report reflecting this action will be placed into the juvenile's file.

IV. MEDICAL, DENTAL, AND MENTAL HEALTH

76. To assist the State in achieving compliance with the terms of this Agreement, effective July 1, 2000, the State shall enter into a three-year contractual relationship with Provider. The Provider shall be agreed to by all parties. During the first year of the three-year contract, the Provider will begin to furnish during the first year, medical, mental health, and dental services for

JCCY and JRDC, and quality assurance and monitoring services for the other secure juvenile facilities operated in Louisiana. Provider shall also furnish adolescent behavioral and mental health training throughout Louisiana's secure juvenile system, beginning in year two. The Provider shall also develop a plan for a comprehensive medical, mental health, and dental program at all of Louisiana's secure juvenile facilities. Provider shall provide comprehensive medical, mental health, and dental services at all of Louisiana's secure juvenile facilities by the end of the second year of the three-year contract. The contract shall be subject to cancellation within the three-year term only if the Legislature fails to approve the necessary funding.

77. The DPSC, acting with and through the Provider, shall develop policies and procedures addressing access to, and delivery of, medical, mental health, and dental services for the juveniles confined in the secure juvenile facilities. These policies and procedures shall meet the standards and requirements of Provider and the terms of this Agreement.

78. The DPSC, acting with and through the Provider, shall assume responsibility for the administration of the delivery of medical, mental health, and dental services at JCCY and JRDC during the first year of the contract. These services shall be provided generally in compliance with the proposal set forth in Attachment A.

79. During year one of the contract, the parties agree that Attachment B would result in medical, mental health, and dental staffing which is adequate for JCCY and JRDC. The parties recognize that Attachment B was designed to reflect a phase-in partial year staffing pattern. If the Provider deviates from Attachment B, the State must nonetheless provide medical, mental health, and dental staffing which is adequate.

The parties agree that Attachment C would result in medical, mental health, and dental staffing which is adequate for JCCY and JRDC. If the Provider deviates from Attachment C, the State must nonetheless provide medical, mental health, and dental staffing which is adequate.

In year one, the current level of medical, mental health and dental services at BCCY, SCCY, and SCCY-M shall not be reduced.

80. Provider shall develop and implement a quality assurance program throughout Louisiana's juvenile facilities which shall comply with the terms of this Agreement. Provider shall develop and implement a quality assurance program that shall continuously evaluate the medical, mental health, and dental services programs at all the facilities, identify problems, make recommendations for corrective action and, in collaboration with DPSC, determine whether the recommendations have been followed. The program should include but not be limited to establishment of standards, monitoring of performance, and analysis of deficits. The quality assurance program shall use data provided by DPSC and other sources and shall be based on random sampling. All of the functions will be commenced at all secure juvenile facilities by the beginning of year two of the three year contract. Provider's quality assurance program shall include, but not be limited to, the components listed below:

- a. Monitoring compliance with medical, mental health, and dental policies and procedures;
- b. Monitoring compliance with the medical, mental health, and dental components of this Agreement;
- c. Inspecting a random sample of the medical, mental health, and dental records;
- d. Interviewing a random sample of staff, administrators and juveniles at each facility;
- e. Monitoring each facility's efforts to prevent suicide;
- f. Starting during year three, monitoring the behavior modification program (BMP) to: 1) assess the efficacy of the program and make recommendations for enhancements as deemed appropriate and 2) assess the effectiveness of the training provided the correctional officers including that which is specifically tailored to managing juveniles with serious mental illness, mental retardation, or behavior disorders;
- g. Monitoring the treatment of juveniles with serious mental illness or mental retardation in any high security unit;
- h. Monitoring the adequacy of medical, mental health and dental documentation at each facility;
- i. Performing death reviews;

j. Monitoring serious injuries or hospitalizations resulting from a serious injury or serious illness;

k. Monitoring suicide attempts and self-mutilations;

l. Monitoring medical emergencies;

m. Monitoring outcomes for juveniles treated by Provider at JCCY and JRDC during year two of the three year contract and, in ensuing years, at all facilities; and

n. Monitoring whether juveniles' individualized intervention plans are being implemented.

81. The Provider shall provide all the medical, mental health and dental care for JCCY and the JRDC. The parties agree that Attachment D, E, and F would result in medical, mental health, and dental care which is adequate for JCCY and JRDC. If the Provider deviates from Attachment D, E, or F, the State must nonetheless provide medical, mental health, and dental care which is adequate.

82. The Provider shall plan and implement a system-wide program to supplement the training of all DPSC staff who have direct contact with juveniles, including correctional staff and counselors. The training shall include instruction in adolescent behavior and in identification and response to mental illness and mental retardation. The parties agree that Attachment G would result in training which is adequate. If the Provider deviates from Attachment G, the State must nonetheless provide training in adolescent behavior and in identification and response to mental illness and mental retardation which is adequate and the State shall notify Plaintiffs and the DOJ of all such deviations. Provider shall also supplement the training of all facility investigators concerning investigatory techniques used in child abuse investigations.

83. By August 1, 2001, Provider shall provide adequate medical, dental, and mental health professionals and staff in order to comply with all relevant State and Federal laws and regulations for the juvenile population of JCCY and the intake operations of JRDC. By July 1, 2002, Provider shall provide adequate medical, dental, and mental health professionals and staff in order to comply with all relevant state and federal laws and regulations for the juvenile population of all other juvenile facilities.

84. Within 3 months of the effective date of this Agreement, Provider shall survey the suicide hazards in any area in the juvenile facilities in which juveniles with suicidal or self-mutilating behaviors shall be housed and make recommendations to DPSC to correct the hazards. The State shall either remove any hazards identified by Provider within one month after the inspection or provide written reasons why the hazards will not be removed. Copies of the reasons shall be provided to the Court Expert and Plaintiffs, along with a description of alternative safety precautions that DPSC will make, if any.

85. Juveniles identified with serious medical needs shall be transferred to JCCY as soon as possible, unless security concerns prevent such a transfer. Juveniles with serious mental illnesses shall be transferred to either SCCY or JCCY as soon as possible, unless security concerns prevent such a transfer. DPSC will provide Provider with information on juveniles who have been prescribed more than one psychotropic medication or who have chronic medical conditions.

86. During year one at JCCY and JRDC only and in ensuing years at all facilities, decisions regarding the medical, mental health, and dental care of a juvenile shall be made by Provider. If DPSC determines that a decision by Provider cannot be implemented, DPSC shall provide the reason in writing to Provider, the Court Expert, DOJ, and the Plaintiffs.

87. Provider shall screen and assess all juveniles at intake and make recommendations concerning the needs of each juvenile to be met by the juvenile's individualized intervention plan. DPSC shall develop an individualized intervention plan based, among other things, on Provider's recommendations. Provider's recommendations shall also be provided to the State Director of Education if the assessment includes indicators for a possible special education placement.

88. Based on the outcomes of the screenings and assessments discussed above, within thirty days of intake, Provider shall develop a specific, individualized, goal and outcome-oriented mental health treatment plan for all seriously mentally ill juveniles. Provider shall begin implementation of the treatment plans for these juveniles at JCCY by the end of year one and, in ensuing years, at the other secure facilities. The plan shall address all psychiatric and psychological needs of the juvenile and shall include competency-based treatment goals and objectives. The juvenile's family shall be given the opportunity and shall be encouraged to be involved in the treatment, unless the facility documents with particularity why such participation is likely to be harmful to the juvenile. Individual behavior treatment plans shall be developed and implemented, where the Provider deems it appropriate. The treatment team responsible for implementing the treatment plans shall meet at least every 90 days to assess the efficacy of the plan and make revisions where indicated.

Juveniles removed from school for medical, dental or mental health consultations, examinations or appointments shall be exempt on that day from the provisions of the education settlement regarding specific academic and vocational program participation when applicable.

89. During year one at JCCY and JRDC only and in ensuing years at all facilities, Provider shall develop and ensure implementation of appropriate protocols as referred to in Attachments D, E, and F. During year one, the protocols shall be distributed to other facilities as they are developed.

90. If Provider determines that a juvenile's mental health needs cannot be met in DPSC, Provider shall advise DPSC and DPSC has an affirmative obligation to contact the Court with jurisdiction over the juvenile and provide that information to the Court and last known counsel of record in a timely manner.

91. Medical/mental health restraints shall not be used unless specifically ordered by a physician or psychiatrist. Soft or leather restraints, rather than metal mechanical restraints, shall be utilized for this purpose. There shall be no standing orders for medical/mental health restraints. This does not apply to any order by a physician or psychiatrist that is issued in response to an individual juvenile's current medical or mental health condition. Medical/mental health restraints shall be used only in the infirmary under constant supervision and conducted according to current accepted professional standards on medical restraints.

92. Suicide watch shall only be conducted with adequate staff supervision. The infirmary will be used on a priority basis for suicide watch unless the medical needs of another juvenile take priority as determined by a physician. The second priority will be individual rooms that are suicide resistant and are equipped with video surveillance cameras. In the event there is a need for additional beds, these will be jointly identified by DPSC and the Provider.

93. Provider shall make best efforts to hire board eligible or board certified child and adolescent psychiatrists to fill psychiatric staffing positions. In the event that board certified and board eligible child and adolescent psychiatrists cannot be found, psychiatrists with adolescent experience shall be hired, whenever possible. These psychiatrists shall be supervised by board certified or board eligible child and adolescent psychiatrists.

94. Within 3 months of the effective date of this Agreement, DPSC and Provider shall develop and implement procedures for reporting to the Warden and to the Youth Programs Compliance Division any problems with abuse or neglect that they uncover during their duties. Provider staff shall comply with their obligations as mandatory reporters of child abuse as discussed in ¶ 22 of this Agreement.

95. Provider shall not use medical students to fulfill any of their responsibilities under this Agreement. It is not anticipated that Provider will use first-year residents on-site to fulfill any of their responsibilities under this Agreement. Any pediatric second-year resident used on-site shall have on-site staff physician supervision.

96. Juveniles at JRDC who are scheduled for placement in boot camp will be identified to Provider and Provider shall make recommendations to DPSC on the juvenile's suitability for this program, with reference to any physical and mental limitations of the juvenile. DPSC shall implement the recommendations or if they cannot implement the recommendations, DPSC has an affirmative obligation to return to the Court having jurisdiction over the juvenile to inform the Court and the juvenile's last known counsel of record that DPSC cannot implement the recommendations.

97. For all juveniles who are receiving services from Provider and who are being released, Provider shall provide after-care planning relevant to the services provided to that juvenile by Provider. This planning will be provided during year one at JCCY and JRDC only and in ensuing years at all facilities.

98. By the end of year one at JCCY and JRDC only and by the end of year two at all facilities, Provider's nursing staff shall perform daily sick call in all high security housing units. Provider shall ensure that access to medical care shall not be within the decision-making authority of correctional staff.

99. During year two, Provider shall train all existing and new nursing staff concerning when to refer a medical condition to the facility physician.

100. During year two, Provider shall train all staff having contact with juveniles to recognize and respond appropriately to common medical conditions, including, in particular, preservation and transportation of avulsed teeth.

101. Provider shall provide an assessment and timely treatment, when they deem it appropriate, to juveniles who have been identified to Provider as having recently experienced significant trauma either by being sexually exploited by other juveniles or staff or by having physical confrontations with other juveniles or staff. DPSC will provide information as agreed upon with Provider to identify juveniles who may have suffered such trauma.

102. Provider shall develop a crisis bed and a respite bed at each facility in accordance with Provider's facilities plan at JCCY and JRDC and by the end of year two of the three- year contract at all other secure juvenile facilities.

103. By year three, the training provided by Provider will include training for those identified staff who issue disciplinary reports and/or who participate in disciplinary courts and who, therefore, should be trained to make reasonable accommodations for the needs of juveniles with serious mental illness and mental retardation.

104. Correctional staff - and not medical staff of either the Provider or DPSC (including EMT's) - will actually initiate and prepare any disciplinary report for malingering. No juvenile will be disciplined or written up for malingering based on the juvenile's access to the medical care system through emergency or regular sick call, regularly scheduled clinics or physicians' clinics until after the physician has evaluated the patient and determined that the juvenile's complaint or complaints had little or no merit. DPSC's DISCIPLINARY RULES AND PROCEDURES FOR JUVENILE OFFENDERS, First Edition, 1993 shall be revised to be consistent with this provision.

105. Juveniles shall not receive disciplinary reports for refusing to take mental health tests or for refusing to take psychotropic medications.

106. The State shall not discipline juveniles for suicidal behaviors. The State shall not discipline juveniles for self-mutilating behaviors, where those behaviors result from a mental health disorder, mental illness or anxiety or fear over the juvenile's safety. No juvenile shall be disciplined for self-mutilation unless a psychiatrist or psychologist diagnoses malingering based on reasons other than anxiety or fear over the juvenile's safety. In this context, self-mutilation does not include tattooing, body piercing, or similar conduct. Obvious self-mutilations will not result in disciplinary writeups.

107. The State shall ensure that each living unit has a Hoffman 911 tool and that all staff are trained on its location and use.

108. Juveniles shall have a written release plan except in cases where release cannot be reasonably anticipated. The plan must address living arrangements, work or school plans, other needs relevant to the juvenile, and where applicable, follow-up care for medical or mental health needs.

109. Based on the outcomes of the screenings and assessments discussed above or other legitimate sources, juveniles with the highest need for substance abuse treatment shall either be scheduled for assignment to a therapeutic environment or other stand-alone or integrated program designed for substance abuse counseling and treatment. All reasonable efforts shall be made to make assignments to these programs as soon as possible, once a juvenile is identified. Parents/legal guardians and family members shall be given the opportunity and shall be encouraged to be involved in the treatment, unless the facility documents with particularity why such participation is likely to be harmful to the juvenile. All other juveniles shall be provided substance abuse education as part of their intervention plan. Substance abuse education and intervention programs shall be modified to accommodate the needs of juveniles with learning or developmental disabilities.

110. Based on the screenings and assessments discussed above, the State shall develop and implement an individualized intervention plan for each juvenile that addresses areas such as education, life skills, medical, and other intervention needs of the juvenile. Implementation of the plan shall begin upon assignment of the juvenile following transfer from JRDC. Under normal circumstances and absent unusual testing or evaluation requirements, transfer should occur by 30 days of intake. The individualized intervention plan shall include meaningful and specific short-term and long-term intervention goals. The juvenile's family shall be given the opportunity and shall be encouraged to be involved in the intervention plan, unless the facility documents with particularity why such participation is likely to be harmful to the juvenile. The intervention team responsible for implementing the intervention plans shall meet at least every third month to assess the efficacy of the plan and make revisions where indicated. DPSC will ensure that counseling services are provided, sufficient to satisfy the requirements of juveniles' individualized education plans.

111. For each juvenile receiving psychotropic medications, direct care, counseling, and educational staff shall observe, monitor and record data that will be available to the treatment team in order to assess the effect of a particular medication. A member of the juveniles's treatment team shall communicate with direct care, counseling, and educational staff, and make efforts to communicate with families to review treatment and intervention progress and data collected by staff to assess the

efficacy of treatment and intervention, so that the mental health providers can make revisions when clinically indicated.

112. Case managers shall be notified of disciplinary infractions, problem behaviors (including being removed from programming three consecutive times), and incidents of violence involving juveniles on their respective caseloads. The case managers shall utilize this information to implement appropriate interventions, to determine that underlying causes of behavioral problems are being addressed in counseling, and/or to make referrals to the Provider.

113. Each facility shall develop and implement an adequate intervention program which shall be determined by the needs of individual juveniles. The intervention program shall provide counseling and programming as needed as recommended by the treatment team. Counseling may be provided by qualified staff with appropriate background and training.

114. Each facility shall create and maintain daily schedules in each assigned housing unit or special program (such as STOP, LITE, etc.) that shall set forth the planned program and operational activities for all juveniles in the assigned unit or program for every hour of every day of the week. Such schedules will include time for permissible leisure activities. Shift supervisors shall document on a UOR the cancellation of any major activity scheduled for that shift.

115. As part of the treatment and intervention plan of each juvenile, the State shall encourage family reunification where reunification is appropriate. Each juvenile shall have:

- a. An opportunity to make telephone calls to his or her home as arranged by the juvenile's case worker at State expense when the juvenile's case worker determines that the call promotes the goals of the juvenile's intervention plan. These calls are in addition to the juvenile's opportunities to make collect telephone calls on a daily basis.
- b. Access to adequate paper, pen or pencil and envelopes for three letters a week to correspond with their family. Indigent juveniles will be provided postage and other juveniles may purchase stamps in the canteen. Staff will encourage juveniles to write to their parents, guardians, and families where appropriate;
- c. Visitation opportunities available a minimum of three times a month for a minimum of three hours each visit. Each facility shall advise parents and/or guardians that special visits may be approved by the Warden on a case-by-case basis for those who are not able to visit on regular visiting days. Visitation shall not be suspended as a disciplinary sanction unless the disciplinary infraction occurred during a visit. When appropriate, mental health staff shall take advantage of times before or after visits by families to meet to discuss juveniles' mental health histories.

Juveniles approved for special visits shall be exempt on that day from the provisions of the education settlement regarding specific academic and vocational program participation when applicable.

116. Initial institutional assignment will be driven by such factors as the needs of the juvenile, location of the program(s) beneficial to the juvenile, location of the juvenile's home, availability of space, gender, gang affiliation and other factors.

V. QUALITY ASSURANCE

117. The State shall create a Youth Programs Compliance Division (YPCD). The State shall recruit and hire a Director of the YPCD, who shall be highly qualified for the position. The Director shall begin employment within nine months of the effective date of this Agreement. The State shall provide the Director with staff as outlined in this Agreement and sufficient resources to perform the tasks required by this Agreement, including:

- a. Monitoring compliance with DPSC policies in all facilities, with emphasis on policies relating to issues addressed in this Agreement;
- b. Conducting audits and other quality assurance activities as described in ¶ 118;
- c. Monitoring compliance with the juvenile justice components of the Agreement;
- d. Coordinating quality assurance activities related to this Agreement performed by various DPSC offices to prevent unnecessary duplication of efforts;
- e. Monitoring the ARP program;

f. Monitoring the work of the PZT investigators, required by ¶ 29.

118. Within twelve months of the effective date of this Agreement, the Director of YPCD shall create and implement a written quality assurance program, as defined in ¶ 117 with the following elaboration and supplementation:

a. The comprehensive audits required by ¶ 117(b), shall include, at a minimum:

i. Inspection of a minimum random sampling of institutional and educational records, unit logs, accident and incident reports, and use of force reports;

ii. Random interviews with staff, administrators and juveniles at each facility;

iii. Random contacts with the parents or other care givers of juveniles confined in the facilities;

iv. Inspection of the physical plant;

v. Random contact with juvenile court judges, public defenders and other officials having regular contact with the facility or its residents;

vi. Review of a sample of the disciplinary hearing tapes and security videotapes. On-site observation of disciplinary hearings may be conducted in lieu of the tape review;

vii. Determination of compliance with DPSC policies and the requirements of this Agreement relating to: staffing levels and juvenile supervision, use of force, disciplinary practices, positive behavior management programs, grievance procedures, use of chemical and mechanical restraints, fire safety, adequacy of juvenile recreation and exercise, sanitation, juvenile access to hygiene items and clothing, juvenile-on-juvenile violence, implementation of classification criteria, conditions in special management or other high security units, and the adequacy of all facility documentation; and

viii. A written report recording the findings of the audit.

b. Additional unannounced, periodic site visits at each facility.

c. Review of the reports, UOR's and/or other documentation of significant incidents (as defined by the Director of YPCD), which shall include, at a minimum: deaths; serious injuries; hospitalizations resulting from a serious illness; suicides and serious suicide attempts; escapes or other serious breaches of security; and medical emergencies. A review that results in significant findings shall result in an immediate written report to the Secretary of DPSC (with copies to the Assistant Secretaries, applicable Warden and PZT Supervisory Investigators as appropriate) and shall include a detailed description of the findings and recommendations;

d. Policies and procedures for auditing chemical spray canisters and reliably determining whether the canister has been discharged. Facility supervisory staff and YPCD auditors shall routinely conduct such audits. If it appears that a canister has been used without required documentation, YPCD shall be notified and shall request that the PZT Investigator conduct an investigation. The YPCD shall notify the Warden and the appropriate PZT Supervisory Investigator of the incident and the investigation request;

e. Requirements that when, through audits, review of investigations, or other quality assurance activities, the YPCD finds substantial non-compliance with the requirements of DPSC policies or this Agreement, the Secretary of the DPSC, Assistant Secretaries and the Warden shall be advised in writing of the details of the non-compliance and a plan of correction shall be developed by the Warden. The YPCD will monitor the plan and report findings to the Secretary and Assistant Secretaries as appropriate;

f. Collection and analysis of data, particularly emphasizing detection of patterns of incidents, problems and issues. This shall include, at a minimum, collection and analysis of data regarding:

i. allegations of abuse and substantiated abuse, including analysis of whether a disproportionate number of allegations of abuse are related to individual staff members, particular shifts or time periods, particular units or locations within units, or arise during particular activities;

- ii. the subject matter and quantity of grievances;
- iii. the number and type of disciplinary reports issued, in relation to the effectiveness and adequacy of the facility's positive behavior management system; and
- iv. the number and percentage of juveniles who achieve minimum custody level; the number and percentage of juveniles who achieve the requirements for modification of disposition; the number and percentage of juveniles who are recommended for modification of disposition; the number and percentage who receive modification of disposition; the number of juveniles in each short-term program who are held beyond their minimum release date and the amount of time each juvenile is held beyond their minimum release date.

g. Each institution shall designate staff to perform the following functions:

- i. Designated staff members shall help juveniles informally resolve complaints, file grievances and shall review and record all grievances. If a grievance is filed, the Warden will designate a staff member to conduct fact-finding of all applicable information and return the grievance to the Warden for rendering the institutional response. A designated staff member shall retain copies of all responses to grievances and shall monitor the grievance procedure to ensure timely responses to all grievances. Designated staff members shall be available to assist juveniles who wish to pursue their grievance to the Secretary's level; and
- ii. Designated staff members shall be available to meet with every juvenile receiving a Class B disciplinary report prior to the disciplinary hearing and to assist the juvenile at his request in any disciplinary hearing if the report is contested.

119. YPCD staff shall have complete and unfettered access to all facilities, records, staff and residents. All DPSC and facility staff shall be informed of their obligation to cooperate in all YPCD operations.

120. The State shall provide YPCD staff as follows:

- a. four YPCD auditors to perform the on-site audits required by ¶¶ 117-118;
- b. two central office YPCD employees to perform data collection and analysis;
- c. two administrative support staff for the central YPCD office;
- d. facility-based PZT investigators: 3 for JCCY; 2 for SCCY; 3 for SCCY - M; and 1.5 for BCCY; and
- e. at least one facility-based administrative support staff for each facility to assist the PZT investigators.

If these numbers should prove to be insufficient to perform the duties required by this Agreement, the State shall take reasonable actions to assist the staff of YPCD and request additional position(s), supplies and/or equipment through the budgetary process.

121. Within four months of the effective date of this Agreement, the State shall appoint two independent auditors, acceptable to all parties, to perform quality assurance checks on investigations. If the parties are unable to agree on the selection of auditors, then the parties shall solicit the participation of the Court in selecting the auditors from among the candidates proposed by the parties. The cost of the auditors shall be shared equally (50/50) by the DPSC and the DOJ.

- a. The State shall provide the auditors with full access to the files compiled for all completed investigations and the Multiple Allegations Database described in ¶ 32.
- b. The auditors shall sign assurances that they will maintain the confidentiality of all records that they review.
- c. The month following appointment of the auditors pursuant to this paragraph, the DPSC shall furnish the auditors a monthly report from the central database of investigations generated pursuant to ¶ 31 of this Agreement conducted during the previous month.

- i. For the first monthly audit, the auditors shall randomly select up to 30% of the investigations completed at each institution during the previous month for review and evaluation from the central database.
 - ii. For the remaining eleven months of audits, the auditors shall select up to 30% of the investigations completed system wide from the executive summaries of all investigations completed during the previous month. As part of each month's 30% sample, the auditors may select the 30% randomly, or alternatively, the auditors have the discretion to select all or some of the investigations to be audited solely by the following criteria: 1) investigations completed at a particular institution, and/or 2) by a particular investigator, and/or 3) a particular type of investigation (such as all rape investigations; all investigations involving incidents in which the juvenile was seriously injured; all investigations involving incidents that were not recorded on videotape etc.).
 - iii. In auditing their 30% monthly sample, the auditors may review up to four additional investigations completed during the preceding month to the extent deemed necessary in order to adequately audit any individual investigations, provided however that the auditors may not include these investigations in their questions pursuant to ¶ 121(d).
- d. The DPSC investigators shall comply with any reasonable request for information from the auditors.
- e. The auditors shall issue a monthly report to the parties and to the Court Expert describing their review and analysis.
- i. If the auditors determine that individual investigations are incomplete or otherwise not in compliance with the requirements of ¶¶ 25, 26, and 27 of this Agreement, the auditor shall identify those investigations. The auditors shall specifically identify the deficiencies and shall provide written instructions for completing the investigations properly. The State shall resubmit completed investigations to the auditors within 30 days.

ii. If resubmitted investigations do not address the deficiencies to the satisfaction of the auditors and it was within the capacity of the DPSC to remedy the deficiency, then, in furtherance of this review function, the auditors may conduct such on-site interviews or review the documents, including tapes, as the auditors, at their sole discretion, may deem appropriate. At all times, the auditors are to serve in an auditing capacity and are not to substitute themselves as investigators.

VI. COMPLIANCE AND MONITORING

122. Not later than March 1, 2001, the State shall submit to DOJ and Plaintiffs, a draft comprehensive plan for providing medical, mental health and dental services at all of the secure juvenile facilities, including a staffing proposal for all of the facilities for the two year period beginning July 1, 2001 (the "Systems Proposal").

123. DOJ and Plaintiffs shall submit any comments on the Systems Proposal to the State, in writing, not later than April 1, 2001. The parties shall meet promptly thereafter and attempt in good faith to resolve any disputes regarding the Systems Proposal not later than May 1, 2001.

a. If the parties agree on the substance of the Systems Proposal by May 1, 2001, then the DPSC shall request that funding for the first year of the Systems Proposal be included in the 2001-2002 fiscal year executive budget. If funding for the first year of the Systems Proposal is not included in the final approved State budget as of July 1, 2001, then, on or before August 1, 2001, the Plaintiffs, acting collectively, and/or the DOJ may move to reopen/reactivate the medical/mental health and dental claims in the Lawsuits.

b. If the DOJ or Plaintiffs do not accept the Systems Proposal, then, the Plaintiffs, acting collectively, or the DOJ shall have the right to move to reopen/reactivate the Lawsuits for the purpose of litigating the medical and mental health claims in the Lawsuits. If a motion to reopen/reactivate the Lawsuits is not filed on or before May 15, 2001, then the Systems Proposal shall be deemed accepted and approved by all parties.

124. Dr. Trupin, Dr. McPherson, and Dr. Peck shall serve as the Medical/Mental Health Experts under this Agreement. In the event that any one or more of these individuals is unable or unwilling to serve as a Medical/Mental Health Expert, then the Plaintiffs, DPSC and DOJ jointly shall select a pediatrician (or a physician who is not a pediatrician, if all parties agree), psychiatrist, and/or psychologist to replace that individual or those individuals. If the parties are unable to agree on the selection of the replacement Medical/Mental Health Expert, then the DPSC and the DOJ shall each nominate a replacement and shall solicit the participation of the Court in selecting the replacement from the individuals nominated by the DOJ and DPSC. The reasonable fees and expenses of the Medical/Mental Health Experts shall be shared equally by the State and the DOJ.

125. Each of the Medical/Mental Health Experts shall conduct only one compliance tour of each secure juvenile facility. The purpose of these tours shall be to assess the State's substantial compliance with the terms of this Agreement and the Systems Proposal. It is the parties' intent that the Medical/Mental Health Experts conduct their tours as a group and attempt to reach consensus on issues common to their fields of expertise. Unless the parties agree, after consultation with the experts, to a different procedure, each site tour shall be conducted between 8:30 a.m. and 9:00 p.m. within a single three day period, and documents shall be requested only during normal business hours. During these site tours, the Medical/Mental Health Experts shall have reasonable access to all facilities, staff and documents relating to the areas of their compliance tours. The State will make facility and Provider personnel available to all Medical/Mental Health Experts. The Medical/Mental Health Experts shall have the right to conduct confidential interviews with juveniles. The State shall have the right to have a non-attorney representative present during any interviews with staff, Provider personnel, or contractors. The Medical/Mental Health Experts may make reasonable and timely requests for copies of documents either before, during, or after the tours and DPSC agrees to provide these documents to the experts within a reasonable time frame. The experts will use their best efforts to minimize the number of documents requested.

126. The Medical/Mental Health Experts shall conduct their compliance tours of all of Louisiana's secure juvenile facilities at times mutually agreed upon by the parties and shall generate and submit written reports of their findings. The Medical/Mental Health Experts will meet with the Provider, warden and other staff of each facility at the conclusion of each tour in order to discuss their findings. All site tours shall be conducted and all reports shall be submitted during the period between August 1, 2002 and December 2, 2002. Medical/Mental Health Experts will submit their reports as promptly as possible following each tour, but in no event more than 60 days after each tour. These reports shall be distributed only to counsel for the DOJ, Plaintiffs, and the State, and to the Court Expert. Upon receipt of the reports, the State shall have 15 days in which it may respond to any findings or describe any remedial action that it may contemplate. The reports shall not be filed in the record of these proceedings or otherwise publicly released unless Plaintiffs, acting collectively, or DOJ deem it necessary to attach such reports to a motion to reopen the Lawsuits, or unless the Court orders these Lawsuits to be reopened/reactivated.

127. In addition to the Medical/Mental Health compliance tour of each of the secure juvenile facilities described in ¶¶ 125 and 126, the parties agree that Dr. Trupin and Dr. Peck shall visit the Jetson Correctional Center for Youth upon the conclusion of the first year of this Agreement. The visit shall be scheduled at a time mutually agreed by Dr. Trupin, Dr. Peck, the Provider, and the Court Expert. The purpose of the visit will be to provide Dr. Trupin and Dr. Peck an opportunity to review the progress that has been made in implementing the medical, dental and mental health provisions during the first year of this Agreement. The parties anticipate that the visit will last no more than two days, but Dr. Trupin, Dr. Peck and the Provider may extend the length of the visit if they deem it appropriate. No written report of the visit will be prepared, but Dr. Trupin and Dr. Peck will advise the State, the Provider, Plaintiffs, DOJ, and the Court Expert of areas in which they believe that the State and/or the Provider have not yet achieved compliance with the medical, dental and mental health provisions of this Agreement. The exit interview conducted by each expert will be tape recorded and the tapes made available to the State, Plaintiffs, the DOJ, and the Court Expert. All documents and information obtained during these technical assistance tours may be offered into evidence if Plaintiffs or the DOJ move to re-open the Lawsuits, subject to the entry of appropriate orders to protect the confidentiality of juvenile records and subject to any evidentiary objections to admissibility that may be asserted by the State. The exit interview tape recordings may be used for impeachment purposes.

128. Compliance with the juvenile justice provisions of this Agreement shall be monitored by one expert selected by the DOJ and one expert selected by the State (the "Juvenile Justice Experts"). The Juvenile Justice Experts shall conduct only one compliance tour of each of Louisiana's four secure facilities. The purpose of these tours shall be to assess the State's substantial compliance with the juvenile justice provisions of this Agreement. It is the parties' intent that the Juvenile Justice Experts conduct their tours together with the Court Expert and attempt to reach consensus on juvenile justice issues. Unless the parties agree after consultation with the experts to a different procedure, each site tour shall be conducted between 8:30 a.m. and 9:00 p.m. within a single three-day period, and documents shall be requested only during normal business hours. During these site tours, the Juvenile Justice Experts and two DOJ or Plaintiffs' attorneys shall have reasonable access to all facilities and documents relating to the areas of their compliance tours. The State will make facility and Provider personnel available to all Juvenile Justice Experts. One attorney for the State and one attorney for the DOJ or Plaintiffs each shall be present as observers only during any interviews with juveniles, staff, Provider personnel or contractors. The Juvenile Justice Experts may make reasonable and timely requests for copies of documents either before, during, or after the tours and DPSC agrees to provide these documents to the experts within a reasonable time frame. The experts will use their best efforts to minimize the number of documents requested and will not request the production of documents already produced in accordance with this Agreement.

129. The Juvenile Justice Experts shall conduct the compliance tours of each secure juvenile facility at times mutually agreed upon by the parties and shall generate and submit written reports of their findings. One DOJ or Plaintiffs' attorney and one State attorney may accompany each of the Juvenile Justice Experts on the compliance tour, provided, however, that no more

than two DOJ or Plaintiffs' attorneys and no more than 2 State attorneys would be present at the facility during the tour. All site tours shall be conducted and all reports shall be submitted during the period between August 1, 2002 and December 2, 2002; provided, however, that juvenile justice tours shall not be conducted concurrently with the medical/mental health compliance tours. These reports shall be distributed only to counsel for the DOJ, Plaintiffs, the State, and to the Court Expert. Upon receipt of the reports, the State shall have 15 days in which it may respond to any findings or describe any remedial action that it may contemplate. The reports shall not be filed in the record of these proceedings or otherwise publicly released unless Plaintiffs, acting collectively, or DOJ deem it necessary to attach such reports to a motion to reopen the Lawsuits, or unless the Court orders these Lawsuits to be reopened/reactivated.

130. In addition to the Juvenile Justice compliance tour of each of the secure juvenile facilities described in ¶¶ 128 and 129, the parties agree that Paul DeMuro, the State's juvenile justice expert, and the Court Expert shall visit each secure juvenile facility upon the conclusion of the first year of this Agreement. The visit shall be scheduled at a time mutually agreed by the parties and the Court Expert. The purpose of the visit will be to provide Mr. DeMuro and the State's expert an opportunity to review the progress that has been made in implementing the juvenile justice provisions during the first year of this Agreement. The parties anticipate that visits to each facility will last no more than two days, but Paul DeMuro and the State's expert may agree to extend the length of the visits if they deem it appropriate. No written report of the visits will be prepared by Paul DeMuro and the State's expert. However, each expert will advise the State, Plaintiffs, the DOJ, and the Court Expert of areas in which he or she believes that the State has not yet achieved compliance with the juvenile justice provisions of this Agreement. The exit interview conducted by each expert will be tape recorded and the tapes made available to the State, Plaintiffs, the DOJ and the Court Expert. All documents and information obtained during these technical assistance tours may be offered into evidence if Plaintiffs or the DOJ move to re-open the Lawsuits, subject to the entry of appropriate orders to protect the confidentiality of juvenile records and subject to any evidentiary objections to admissibility that may be asserted by the State. The exit interview tape recordings may be used for impeachment purposes.

131. If the DOJ or Plaintiffs have cause to believe that the State's non-compliance with this Agreement threatens the immediate health and safety of juveniles, then the DOJ or Plaintiffs shall immediately notify the Court Expert and the State of the specific provisions of this Agreement that they believe have been violated and the facts upon which this allegation is based. The State shall have a reasonable opportunity to investigate and respond to the allegations. If the DOJ or Plaintiffs are not satisfied with the State's response, then the parties commit to meet and attempt to resolve the dispute informally with the assistance of the Court Expert in an expeditious manner. If the DOJ or Plaintiffs still believe that the State's noncompliance threatens the immediate health and safety of juveniles, then the Plaintiffs, acting collectively, or DOJ shall have the right to move the Court to reopen or reinstate this litigation to the extent necessary for the Plaintiffs, acting collectively, or DOJ to investigate whether the State's noncompliance threatens the immediate health and safety of juveniles and to seek emergency judicial relief, if necessary, for the conditions that threaten the immediate health and safety of the juveniles. If Plaintiffs, acting collectively, or DOJ seek emergency judicial relief, they have the burden to prove that the conditions violate the federal constitutional or federal statutory rights of the juveniles.

132. The parties consent and agree to entry of a final judgment dismissing with prejudice all allegations in the Lawsuits relating to juvenile justice, medical, mental health and dental issues at all of Louisiana's secure juvenile facilities at any time on or after January 21, 2003 unless the Plaintiffs, acting collectively, or DOJ, has moved for an order reopening and reactivating the Lawsuits prior to January 21, 2003.

133. Compliance with the terms of this Agreement and the Systems Proposal also shall be monitored by the Court Expert in *Williams v. McKeithen*. The State shall bear all costs incurred by the Court Expert, including, but not limited to that expert's fees and expenses (e.g. for site visits, administrative costs, report writing, and telephone calls made for consultation).

134. In order to monitor compliance with this Agreement, the Court Expert shall have reasonable access to all facilities, residents, staff and documents. The Court Expert shall have the right to conduct confidential interviews with staff and residents.

135. Until the termination of this Agreement, the State shall, at its own expense, provide the Court Expert, the DOJ and one of the law firms representing the Plaintiffs with the following documents for each of the secure juvenile facilities, on a quarterly basis:

1. C-005-001 and C-005-003 reports, together with all attachments described in DPSC regulations;
2. All Use of Force reports, with applicable accident and injury reports;
3. All Chemical Agent reports;

4. Comprehensive audits prepared by the Youth Program Compliance Division pursuant to ¶ 118(a) of this Agreement;
5. Comprehensive audits prepared by the Provider pursuant to ¶ 80 of this Agreement;
6. A list of correctional officers identified during the preceding quarter with three or more allegations within a two year period as provided in ¶ 32(c).
7. The headquarters central PZT logs for the preceding quarter.
8. Current medical, mental health, and dental staff positions and vacancies at all secure juvenile facilities.

The State will also provide the DOJ copies of all of the PZT reports (including all attachments, videos, and any other documents) which are selected by the auditors for review under ¶ 121.

Each quarterly report shall be distributed not later than thirty (30) days after the end of the quarter. The first quarterly report shall include only the information in subparagraphs (a), (b), (c), (g), and (h) above. The first quarterly report shall cover the period from October 1, 2000 through December, 31, 2000 and shall be distributed not later than January 31, 2001. Subsequent reports will be distributed in the same manner each quarter. The State shall continue to report certain incidents to Keith Nordyke and the Court Expert in accordance with the practice generally described in correspondence dated November 3, 1999.

136. Upon the effective date of this Agreement, the State shall make the following documents available for inspection by attorneys for the Plaintiffs during normal business hours, subject to reasonable limitations and notices:

- a. All ARPs and grievances submitted by juveniles;
- b. All juvenile disciplinary reports;
- c. All PZT reports (including all attachments, videos, and any other documents referenced in the PZT reports);
- d. Infirmary logs;
- e. Trip logs to hospitals;
- f. Juvenile Master case records and medical, dental and mental health records;
- g. Mechanical restraint logs;
- h. Recreation logs; and
- i. Chemical agent logs.

137. The State shall make reasonable efforts to promptly provide any document related to compliance with this Agreement reasonably requested by the Court Expert or by Plaintiffs or DOJ, but in any event shall provide such documents within ten business days of the requests. This shall not include, however, documents or portions of documents that are subject to attorney client or work product privilege. In producing documents to Plaintiffs or DOJ pursuant to this paragraph or paragraph 136, the State shall bear the cost of providing up to 2000 pages of copies of documents to the Plaintiffs collectively per year. Any documents requested beyond this amount shall, at the option of the State, be made available for inspection and copying by the party, or shall be copied by the State at a cost of 5 cents per page to be paid by the requesting party.

138. For purposes of this paragraph, the substantive provisions of this Agreement shall be divided into six categories: (1) medical and dental, (2) mental health and rehabilitative services, (3) staffing and capacity, (4) juvenile justice quality assurance, (5) access to courts, and (6) all other juvenile justice provisions (including protection from abuse and violence, direct care staff training, positive behavior management/discipline, classification, chemical agents, mechanical restraints, living conditions, and cell restriction).

If the Plaintiffs, acting collectively, or DOJ believe that the State has failed to substantially comply with one or more of these six categories during the term of this Agreement, then they shall so notify the State in writing. The parties shall conduct good-faith negotiations to resolve the dispute and may agree in writing to adopt a plan of correction or otherwise modify the Agreement. If the parties are unable to reach agreement within 30 days of the Plaintiffs' or DOJ informing the State of their allegations of non-compliance, then the Plaintiffs, acting collectively, or DOJ may file a motion with the Court to reopen the Lawsuits with respect to that category or categories. The State shall respond to the motion within 20 days. If the Court enters an order to reopen any one of these categories, then the provisions of that category are terminable at the discretion of the State.

Notwithstanding the foregoing, a motion to reopen this Agreement solely for the purpose of seeking emergency judicial relief under ¶ 131, above, will not, in and of itself, terminate the State's obligations under the remaining provisions of the Agreement.

This Agreement shall, in any event, terminate and shall be of no further effect whatsoever after January 21, 2003, regardless of the State's compliance or non-compliance with the terms of this Agreement or the Systems Proposal, and regardless of whether the Lawsuits have or have not been reopened/reactivated.

139. The parties agree to meet and attempt resolution of any issues involved in the Lawsuits prior to any new litigation and prior to any new filings in the Lawsuits. The parties acknowledge that the Court has historically facilitated informal discussions between and among the parties in efforts to achieve agreement regarding controversies that demand resolution, and the State and the Plaintiffs will agree, to the extent possible, to seek the Court's assistance in facilitating informal resolution to such controversies.

140. This Agreement and the Systems Proposal shall not be construed to create an obligation to an individual juvenile, and failure to comply with this Agreement and the Systems Proposal shall not be deemed a breach of any civil duty to a juvenile.

141. Nordyke and Denlinger and Juvenile Justice Project of Louisiana ("JJPL") shall be permitted to interview juveniles in all secure facilities for purposes of monitoring this Agreement. The DPSC may impose reasonable limitations on such interviews; however, attorney contacts with juveniles for purposes of monitoring the Agreement shall not be governed by DPSC Regulation C-01-004. The State shall pay reasonable attorneys fees and expenses to class counsel in monitoring this Agreement, as set forth below. Class counsel are Nordyke and Denlinger and JJPL. Nordyke and Denlinger shall submit detailed billing statements for all fees and expenses on a monthly basis. JJPL waives fees for monitoring unless and until the Lawsuits are reopened in accordance with this Agreement; provided, however, that JJPL may seek recovery of fees for time spent in connection with a successful motion to reopen, and JJPL reserves the right to seek recovery of attorney fees and expenses that are incurred after the Lawsuits are reopened. JJPL and the State shall enter a separate agreement to address reimbursement of expenses incurred by JJPL in monitoring this Agreement. The fees paid for monitoring this Agreement shall be as determined by the Court. Either party may seek relief from the Court, including but not limited to seeking the Court's assistance in facilitating informal resolution to disputes and/or filing appropriate motions to resolve any disputes concerning the payment of fees and expenses. Plaintiffs are not required to reopen or restore the Lawsuits to the Court's docket in order to seek such relief.

Class counsel reserve the right to seek recovery of fees for other tasks (other than monitoring) in the event the Lawsuits are reopened, provided, however, that the State reserves the right to challenge their entitlement to any such fees, and the reasonableness of such fees.

Class counsel will have 15 days from the granting of the State's motion for final dismissal to submit for payment their final invoice for any remaining fees and expenses. Within 15 days of receipt of the final invoice, the State shall pay all undisputed items. If the State disputes any item, then any party shall have 60 days from the granting of that motion to seek relief from the Court.

This done and signed on the dates below written.

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