

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF
JUSTICE AND THE STATE OF INDIANA CONCERNING THE LOGANSPO
INTAKE/DIAGNOSTIC FACILITY AND THE SOUTH BEND JUVENILE
CORRECTIONAL FACILITY

I. INTRODUCTION

- A. On February 10, 2004, the United States notified State of Indiana officials in the administration of Joseph E. Kernan, Governor of Indiana, of its intent to investigate conditions of confinement at the Logansport Juvenile Intake/Diagnostic Facility in Logansport, Indiana ("Logansport"), the South Bend Juvenile Correctional Facility in South Bend, Indiana ("South Bend"), and the Plainfield Juvenile Correctional Facility in Plainfield, Indiana ("Plainfield"), pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997 ("CRIPA"), and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141 ("Section 14141").
- B. In May 2004, the United States toured Logansport with a consultant in the field of mental health care, and toured South Bend with consultants in the fields of juvenile justice, mental health care, and education. In June and July 2004, the United States toured Plainfield with consultants in the fields of juvenile justice, mental health care, education, and sanitation.
- C. On November 2, 2004, Mitchell E. Daniels, Jr. was elected Governor of Indiana. He was sworn into office on January 10, 2005. State officials in the new administration were notified of the investigation in January 2005.
- D. Beginning January 11, 2005, the newly appointed Commissioner of the Indiana Department of Correction, J. David Donahue, began his own independent review of operations at juvenile facilities throughout the state, and on his own initiative, began implementing changes to improve the quality of confinement, training of staff, and medical care and educational services provided in each of these facilities.
- E. Throughout the course of the investigation, the United States received complete cooperation from the State. The State permitted access to the facilities and provided requested documents.
- F. On September 9, 2005, the United States issued findings letters pursuant to 42 U.S.C. 1997(a)(1), which concluded that conditions at Logansport, South Bend, and Plainfield in 2004 violated the constitutional and federal statutory rights of juveniles confined in the facilities.
- G. On October 10, 2005, the Indiana Department of Correction closed the Plainfield facility for use by juveniles and began a transition process to reopen the facility as an adult re-entry unit; the juveniles housed at Plainfield

were either released as their obligations were satisfied before Plainfield closed or transferred to various juvenile facilities throughout the DOC system.

- H. On December 14, 2005, in a letter attached hereto as Exhibit A, IDOC Commissioner J. David Donahue detailed the responsive measures he voluntarily implemented in all juvenile facilities in the IDOC system prior to the execution of this Agreement, including implementation of Indiana Department of Education approved processes for developing and monitoring each student's IEP, provision of comprehensive mental health services to meet the needs of youth, and implementation of a revised and updated grievance process for all offenders.
- I. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 14141. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
- J. The parties to this Agreement are the United States, represented by the United States Department of Justice, and the State of Indiana, represented by Mitchell E. Daniels, Jr., Governor of Indiana, J. David Donahue, Commissioner of the Indiana Department of Correction, Stephen Carter, Attorney General of Indiana, acting through Deputy Attorney General, Richard Bramer, and their successors, contractors, and agents. The State shall ensure that all State agencies and departments take any actions necessary to comply with the provisions of this Agreement.
- K. The State of Indiana enters into this Agreement because it is firmly committed to remedying the deficiencies identified in the United States' letter of findings and providing legally adequate conditions, by instituting the substantive provisions required by this Agreement.
- L. This Agreement does not constitute an admission of liability by the State.
- M. This Agreement is not intended to have any preclusive effect except between the parties. Should the issue of the preclusive effect of this Agreement be raised in any proceeding other than this civil action, the parties agree to certify that this Agreement was intended to have no such preclusive effect.
- N. This Agreement shall not be used against the State in any proceeding other than a proceeding between the United States and the State.

- O. Nothing in this Agreement shall prevent the State from modifying, moving, or closing Logansport or South Bend, or developing alternative community placements for the youth currently in these facilities.
- P. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the State or its officials, employees, or agents for their conduct; accordingly, the Agreement does not alter legal standards governing any such claims, including those under Indiana law.

II. DEFINITIONS

- A. "Logansport" means the Logansport Juvenile Intake/Diagnostic Facility in Logansport, Indiana and any facility(ies) that may replace or supplement that facility.
- B. "DOJ" means the United States Department of Justice, which represents the United States of America in this matter.
- C. "Effective Date" means the date the Agreement is filed with the Court.
- D. "The facilities" means Logansport and South Bend, collectively.
- E. "IEP" means Individualized Education Program as defined by the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-1490, and the regulations promulgated thereunder.
- F. "IDOC" means the Indiana Department of Correction.
- G. "ILP" means Individual Learning Plan as defined by the No Child Left Behind Act of 2001 (Public Law 107-110) and the regulations promulgated thereunder.
- H. "Include" or "including" means include, but not limited to or including, but not limited to.
- I. "Implement" means to give practical effect and to achieve actual fulfillment by concrete measures, including appropriate training of relevant staff.

- J. "Progress" means adequate yearly progress as defined by the No Child Left Behind Act of 2001(Public Law 107-110) and the regulations promulgated thereunder.
- K. "Qualified mental health professional" means a mental health care provider licensed and sufficiently trained pursuant to the laws of the State of Indiana to provide the services he or she undertakes to provide.
- L. "State" means the State of Indiana and IDOC, and their successors, contractors, and agents.
- M. "South Bend" means the South Bend Juvenile Correctional Facility in South Bend, Indiana and any facility(ies) that may replace or supplement that facility.
- N. "Train" means sufficiently instruct in the skills addressed, including ongoing assessment of the level of aptitude for instructional material that is required for compliance with the laws of the State of Indiana.
- O. "Youth" means any juvenile or juveniles residing at the facilities during the operation of this Agreement.

III. CARE REQUIRED BY THE CONSTITUTION AND FEDERAL STATUTE

The purpose of this Agreement is to protect the constitutional rights of youth committed to the facilities. The terms and requirements of this Agreement shall be interpreted to be consistent with the measures necessary to protect the constitutional rights of the youth.

IV. THE STATE'S VOLUNTARY MEASURES TO ENSURE THE PROTECTION OF THE CONSTITUTIONAL RIGHTS OF ALL JUVENILES IN ITS CUSTODY

The State recognizes that the Department of Justice's investigation was confined to the facilities identified in the DOJ's September 9, 2005 findings. In recognition of those deficiencies and in the interest of adequately protecting the constitutional rights of all juveniles confined in the IDOC system, the State voluntarily agrees to implement the substantive remedial measures contained throughout this document, where appropriate, at all juvenile facilities operated by IDOC. The State further agrees to provide periodic, voluntary reports to DOJ regarding the progress of those improvements at facilities that are not the subject of this Agreement, including regular reports resulting from a partnership with IDOC and the Indiana Juvenile Justice Task Force. To facilitate comprehensive monitoring of IDOC's compliance with this provision, the State will provide full access to all of its juvenile facilities at the

request of those monitors identified through a process agreed upon with the Indiana Juvenile Justice Task Force.

V. SUBSTANTIVE PROVISIONS

A. MENTAL HEALTH CARE

The following substantive provisions are intended to address the findings of the United States in connection with its investigation of, and apply only to, South Bend and Logansport.

1. The State shall ensure that adequate mental health care and treatment services are provided to youth in the facilities.
2. The State shall develop and implement policies and procedures, and practices to ensure that all youth admitted to the facilities are comprehensively screened by qualified mental health professionals in a timely manner utilizing reliable and valid measures. All youth committed to the State's care shall receive a comprehensive mental health screen. Additional mental health services will be available by qualified mental health professionals to all youth needing such care. Available Mental Health Staff will include psychiatrists, psychologists, licensed clinical social workers, and licensed mental health counselors. Staffing patterns will be consistently assessed to assure appropriate numbers of staff at all facilities.
3. The State shall ensure that youth whose mental health screens indicate the possible need for mental health services receive timely, comprehensive, and appropriate assessments by qualified mental health professionals. Assessments shall be updated as new diagnostic and treatment information becomes available. An initial mental health screening will occur within the first 24 hours of entry to a juvenile facility. The screening will include an initial intake, medication review, and needs assessment. A follow-up mental health assessment and, if indicated, a psychiatric referral will occur within the first seven days of entry to a juvenile facility.
4. The State shall develop and implement policies and procedures to assure appropriate action when an intake screening indicates that a youth is taking, or prior to admission may have been prescribed, psychotropic medications. This shall include appropriate steps to contact the prescribing psychiatrist when necessary and referral to the facility's psychiatrist for evaluation. A psychiatrist will be available to intake staff on a

twenty-four hour basis. Psychiatric referrals shall be made based on the intake assessment and whenever the youth has been treated with psychotropic medication within the past sixty days.

5. Each youth in need of psychiatric services, including monitoring of the use or discontinuation of psychotropic medications, shall be under the care of a licensed psychiatrist. The State shall maintain in its employ, and/or by contract, sufficient psychiatric services to fulfill the following functions:
 - a. Conduct needed psychiatric evaluations prior to placing a youth on, or discontinuing, psychotropic medications;
 - b. Monitor, as appropriate but at least monthly, all youth prescribed psychotropic medications for the efficacy and the side effects thereof. The psychiatrist shall consult with facility medical, counseling, and security staff;
 - c. Monitor youth whose psychotropic medications have been discontinued, and provide timely follow-up assessments to determine whether a return to treatment with psychotropic medications is appropriate;
 - d. Collaborate with treatment teams regarding youth under the psychiatrist's care;
 - e. Provide individual counseling and psychotherapy when needed, in coordination with facility psychologists;
 - f. Evaluate and treat in a timely manner all youths referred as possibly needing psychiatric services; and
 - g. Provide adequate documentation of treatment in the facility medical records.

B. PROTECTION FROM HARM

The following substantive provisions are intended to address the findings of the United States in connection with its investigation of, and apply only to, South Bend.

1. The State shall, at all times, provide youth in the facility with reasonably safe conditions of confinement.
2. The State shall take reasonable measures, including those required by Indiana Code 16-21-8-5 and 31-33-5-4, to

protect youth in the facilities from physical harm and sexual abuse while those youth are in the State's custody.

3. The State shall take reasonable measures to provide safe and appropriate housing for youth, including sex offenders.
4. The State shall ensure that there are sufficient numbers of adequately trained direct care and supervisory staff to supervise youth safely and to protect youth from harm.
5. The State shall implement comprehensive policies, procedures, and practices governing uses of force, ensuring that excessive force is not used on youth, taking into account the safety of staff, youth residents, and visitors.
6. The State shall develop and implement an adequate system for management review and, when deemed appropriate by management, investigation by senior management of uses of force, alleged child abuse, youth-on-youth violence, and alleged sexual contacts.
7. The State shall provide appropriate competency-based training to staff in behavior management, de-escalation techniques, appropriate communication with youth, and crisis intervention before staff may work in direct contact with youth.
8. The State shall implement policies, procedures, and practices to ensure that South Bend has a functional and responsive grievance system that ensures that youth have a reasonably safe environment.

C. SPECIAL EDUCATION

The following substantive provisions are intended to address the findings of the United States in connection with its investigation of, and apply only to, South Bend.

1. The State shall, at all times, provide all qualified youth with adequate special education in compliance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, *et seq.*, and regulations promulgated thereunder, and this Agreement.
2. The State shall designate a Director of Education to oversee the special education programs at South Bend. The Director shall meet minimum standards as specified by the State. The State shall provide the Director with sufficient staff and resources to perform the tasks

required by this Agreement, including:

- a. Overseeing the special education programming at South Bend, including the development and implementation of policies, procedural manuals, and training programs;
 - b. Monitoring whether special education staffing and resources are sufficient to provide adequate special education services to youth at South Bend and to ensure compliance with this Agreement;
 - c. Developing and implementing a quality assurance program for special education services;
 - d. Developing and implementing an adequate vocational education program for youth with disabilities;
 - e. Developing and implementing a curriculum for special education instruction at South Bend;
 - f. Ensuring that special education teachers are appropriately licensed to teach assigned courses by requiring that all licensed teachers at the facility obtain certification in special education by the Indiana Department of Education within 180 days of the date of this Agreement;
 - g. Ensuring that all teachers at the facility obtain the status of "highly qualified" within their instructional area from the Indiana Department of Education by July 1, 2006;
 - h. Ensuring that all teachers at the facility develop and implement appropriate lesson plans for each student;
 - i. Ensuring that the appropriate facility supervisors at the facility regularly perform classroom observations; and
 - j. Ensuring that teachers at the facility who do not develop and implement appropriate lesson plans for each student are subjected to appropriate and regular performance reviews which may result in termination of employment.
3. The State shall ensure that all students who qualify for special education services receive such services within a reasonable time following intake.
 4. The State shall develop and implement an education

staffing plan to ensure adequate staff to comply with the terms of this Agreement. This plan shall provide for:

- a. Sufficient access to instructional services by certified special education teachers and staff to provide all youth with the opportunity to attend school full-time and to obtain adequate educational services, and to provide teachers with sufficient time to plan lessons, grade assignments, and participate in special education meetings;
 - b. Sufficient psychologist services to provide psychologist participation in the development of IEPs, administration of psycho-educational assessments, consultation with teachers and staff, and individual counseling related specifically to issues in youth's IEPs; and
 - c. Sufficient services of speech and language professionals, audiologists, and other specialized professionals to meet the related services needs specified in the IEPs.
5. Consistent with federal regulations, the State shall provide prompt and adequate screening of youth for special education needs and shall identify youth who are receiving special education in their home school districts or who may be eligible to receive special education services but have not been so identified in the past. Such services shall include:
- a. Guidelines for interviewing youth upon admission to determine past receipt of special education services;
 - b. Protocols developed in conjunction with local school districts and the State Department of Education for expedited reporting of special education status of students entering South Bend, conducting adequate testing of youths' substantive educational knowledge, and performing necessary vision and hearing tests;
 - c. Procedures identifying criteria under which staff or teachers must refer a student for evaluation for special education eligibility, including identifying criteria under which youth whose behavior has led to repeated exclusion from class must be referred for evaluation;
 - d. Policies describing the required activities of Student Support Team pre-referral and support team

functions;

- e. Policies describing the requirements for comprehensive evaluation procedures to determine eligibility for special education services; and
- f. Policies describing the criteria for multi-disciplinary team decision-making regarding eligibility for special education.

6. Individual Education Programs

- a. The State shall, in a reasonable time period, create and/or implement an Individual Education Program (IEP), as defined in 34 C.F.R. 300.340, for each youth who qualifies for an IEP. As part of satisfying this requirement, the State shall conduct required annual reviews of IEPs, adequately document the provision of special education services, and comply with the requirements regarding parent, surrogate, and student participation in the IEP process. The State shall hold team meetings once per week or more often, if necessary, to develop or review IEPs for qualified special education students in accordance with federal regulations.
- b. In developing or modifying the IEP, the State shall ensure that the IEP reflects the individualized needs of the youth and that services are provided accordingly. When the nature or severity of a youth's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, the State shall provide an appropriate alternate education setting.
- c. The State shall ensure that each developed or modified IEP include documentation of the team's consideration of the youth's need for related services and transition services. Nothing in this Agreement shall require the State to provide educational services to the youth after discharge from South Bend.
- d. The State shall assess each child for necessary related services, address these needs in the IEP, and provide these services as often as determined necessary by the IEP team.
- e. The State shall ensure that teachers follow each student's IEP and, as applicable, his ILP and that each student shall demonstrate progress toward the

benchmarks delineated within that individual student's IEP and, as applicable, his ILP.

- f. The State shall ensure that teachers who do not follow each student's IEP and, as applicable, his ILP are subjected to appropriate and regular performance reviews that may result in termination of employment.
 - g. The State shall ensure that teachers whose student(s) do(es) not demonstrate progress toward(s) the benchmarks delineated within each student's IEP and, as applicable, his ILP shall be subjected to appropriate and regular performance reviews that may result in termination of employment.
7. The State shall develop and implement adequate vocational education services for youth with disabilities.
8. Training and Quality Assurance
- a. The Director shall design and implement annual in-service training requirements for special education staff of not less than four days per year, to enhance their ability to implement their duties under the provisions of this Agreement.
 - b. The Director shall be charged with quality assurance of all special education services at South Bend. The State shall develop and implement a written quality assurance and student performance assessment program. This program shall include a system of on-going review of at least a representative sample of IEPs developed or modified at South Bend to monitor quality and assure compliance with the requirements of school policies and the IDEA.
 - c. The Director shall ensure that all special education teachers take the required steps to keep their educator licenses current and appropriate to the courses they are required to teach.
 - d. The Director shall ensure that an appropriate and regular employment evaluation process is in place to evaluate teachers whose students do not meet reasonable student performance goals.

VI. COMPLIANCE AND QUALITY ASSURANCE

- A. The State shall maintain, revise and/or develop policies, procedures, protocols, training curricula, and practices as necessary to make them compliant with the provisions

of this Agreement. The State shall revise and/or develop as necessary other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement.

- B. Written State policies, procedures and protocols that address the provisions of this Agreement regarding the following topics shall be submitted to DOJ for review within ninety calendar days of the execution of this Agreement: use of force/crisis management; minimum staffing ratios; investigations; housing of sex offenders; grievances; mental health screening and assessment; psychotropic medication management and monitoring; and special education services. DOJ shall approve and/or suggest revisions to these policies, procedures, and protocols within thirty days of receipt, unless a longer period is agreed upon by the parties.
- C. The State shall develop and implement quality assurance programs for protection from harm, mental health care, and special education services.
- D. The State shall develop and implement policies and procedures as necessary to address problems that are uncovered during the course of its quality assurance activities. The State shall develop and implement corrective action plans to address these problems.

VII. DOJ MONITORING AND ENFORCEMENT

- A. DOJ shall have full and complete access to the facilities including facility records, staff, staff records, youth, youth records, meetings, meeting notes, and any such other information necessary for DOJ to fully evaluate the State's compliance with the requirements of this Agreement. DOJ shall make periodic site visits to the facilities with appropriate notice to counsel for the State, and shall also have the right to conduct unannounced visits to the facilities. DOJ shall have the right to conduct confidential interviews with staff, youth, and former residents. DOJ shall routinely report its evaluation of the State's compliance with the requirements of this Agreement. Neither the evaluations nor any confidential information or documents obtained pursuant to this paragraph shall be disseminated to any person not a party (or an employee or contractor of a party) to this Agreement, including the media, unless consented to by the parties or otherwise required by law. DOJ shall adhere to the requirements of federal law governing disclosure of confidential information by a government agency, department or employee including the Privacy Act, 5 U.S.C. § 552a, and the Freedom of

- Information Act ("FOIA"), 5 U.S.C. § 552. In the event of a request for materials pursuant to FOIA, DOJ shall notify the State of all such requests prior to the release of all materials and agrees to assert all applicable exemptions in protecting materials in this matter. Such information may, however, be used in any proceedings to enforce the requirements of this Agreement.
- B. DOJ shall, at its discretion, hire subject-matter consultants to assist in compliance review, including on-site tours. DOJ shall consult with the State prior to the selection of the subject-matter consultants and will give the State the opportunity to propose alternative subject-matter consultants prior to their selection, if necessary. DOJ will work with the State to address any concerns that the State may have regarding subject-matter consultants.
 - C. Within a reasonable time following receipt of written questions from the DOJ concerning the State's compliance with this Agreement, IDOC shall provide the DOJ with written answers and any requested documents regarding the State's compliance with the requirements of this Agreement.
 - D. The State shall maintain sufficient records to document its compliance with all of the requirements of this Agreement. The State shall also maintain (as long as this Agreement remains in effect) any and all records required by or developed under this Agreement.
 - E. The State agrees that, within sixty days of the date of this Agreement, the State will provide the DOJ with a status report, including any supporting documentation, delineating all steps taken during the reporting period to comply with each substantive provision of this Agreement. The report shall also include a status report regarding: 1) youth arriving at the facilities with prescriptions for psychotropic medications and a summary of the evaluation, monitoring, and medication status of each youth; 2) progress reports on the hiring of personnel and summary of current staffing ratios; 3) incidents involving uses of force; 4) incidents involving assaults on youth; 5) a summary of submission and resolution of grievances; 6) a summary of completion and implementation of all IEPs; 7) copies of all quality assurance reports and analyses over the preceding sixty days. Thereafter, for the duration of the first year of this Agreement, the State will send a status report every sixty days to the DOJ. Thereafter, for the duration of the second year of this Agreement, the State will send a

status report every ninety days to the DOJ. Thereafter, for the duration of the third year of this Agreement, the State will send a status report every one hundred twenty days to the DOJ.

VIII. IMPLEMENTATION AND TERMINATION

- A. The State shall provide information and training so that all current and future employees at the facilities understand and implement the terms of this Agreement.
- B. The State shall implement all measures reasonably necessary to achieve substantial compliance with this Agreement.
- C. This Agreement shall constitute the entire integrated Agreement of the parties. With the exception of DOJ's findings letter referenced in Section I.F of the Introduction hereof, and any DOJ technical assistance recommendations, no prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in this litigation or in any other proceeding.
- D. This Agreement is enforceable only by the parties and is binding upon the parties, by and through their officials, agents, employees, and successors.
- E. Upon execution of this Agreement, the DOJ shall file a complaint in the United States District Court for the Southern District of Indiana, and file contemporaneously a Joint Motion for Conditional Dismissal of the complaint pursuant to Federal Rule of Civil Procedure 41(a)(2). A copy of this Agreement shall be attached to the Joint Motion for Conditional Dismissal and that motion shall:
(1) request that the court dismiss the complaint upon the passage of three (3) years from the date of its filing or the State's earlier substantial compliance with the terms of this Agreement; (2) request that the court place the case on its inactive docket; and (3) retain jurisdiction over the case until three (3) years have passed or an earlier final dismissal is entered. The parties expressly declare that this provision shall not be interpreted to provide for active judicial supervision.
- F. If the DOJ believes that the State has failed to fulfill a significant obligation under this Agreement, the DOJ will, prior to instituting judicial action to enforce the terms of this Agreement, give written notice of the failure to the State. The State shall have sixty days from the date of such notice to cure the failure, or such

additional time as is reasonable due to the nature of the issue and agreed upon by the parties, and provide the DOJ with sufficient proof of its cure. At the end of the sixty day period, or such additional time as is reasonable due to the nature of the issue and agreed upon by the parties, in the event that the DOJ determines that the failure has not been cured, the DOJ may institute judicial action without further notice. However, in case of an emergency posing an immediate threat to the health or safety of youths, the United States will notify the State, and the cure period described herein will be truncated to forty-eight (48) hours, before instituting judicial action. The DOJ commits to work in good faith with the State to avoid enforcement actions.

- G. If the United States institutes judicial enforcement of this Agreement, the State reserves the right to raise as a defense exigent circumstances in the State, including, but not limited to: economic recession, necessary diversion of resources and personnel in the event of widespread threat to public health, or act of war.
- H. Nothing in this Agreement shall be construed as an acknowledgment or admission by the United States that any defense raised by the State relieves the State of its obligation under this Agreement.
- I. This Agreement resolves the United States' current investigation of the Logansport, South Bend, and Plainfield pursuant to CRIPA and Section 14141. The United States shall not seek additional measures or requirements in enforcing this Agreement.
- J. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or any provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions in this Agreement.
- K. To the extent that the State's implementation of any provision of this Agreement requires the exercise of professional judgment, the standard articulated in *Youngberg v. Romeo*, 457 U.S. 307 (1982), shall be applied.
- L. The State shall appoint an Agreement Coordinator to coordinate and oversee compliance with this Agreement.
- M. This Agreement shall terminate definitively and unconditionally no later than three years from the effective date.

1. The Agreement may end on a section-by-section, and facility-by-facility basis earlier than three years from the effective date if the State has substantially complied with the provisions of that section of the Agreement at a facility for at least twelve months.
 2. The burden shall be on the State to demonstrate that it has complied substantially with the Agreement. A finding of substantial compliance may not be unreasonably withheld.
 3. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained noncompliance shall not constitute substantial compliance.
 4. The parties agree that the standards against which substantial compliance will be monitored are those that are constitutionally required and required by Federal statute. The State's unilateral implementation of best practices will not modify the standard.
- N. The parties agree to defend the provisions of this Agreement. The parties shall notify each other of any court challenge to this Agreement. In the event any provision of this Agreement is challenged in any local or state court, removal to a federal court may be sought.
- O. If any unforeseen circumstance occurs which causes a failure to timely carry out any requirements of this Agreement, the State shall notify the DOJ in writing within a reasonable time after the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform under this Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The State shall implement all reasonable measures to avoid or minimize any such failure.
- P. No person reporting conditions which may constitute a violation of laws or the Constitution of the United States or this Agreement shall be subjected to retaliation in any manner for so reporting. See 42 U.S.C. 1997d.
- Q. All subheadings in this Agreement are written for convenience of locating individual provisions. If

questions arise as to the meanings of individual provisions, the parties shall follow the text of each provision.

- R. In the event any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

FOR THE UNITED STATES:

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Commissioner
Indiana Department of Correction

For Form and Legality:

/s/ Stephen Carter (for)
STEPHEN CARTER,
Attorney General

Date: February 8, 2006