

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT
OF JUSTICE AND THE MARION SUPERIOR COURT CONCERNING THE
MARION SUPERIOR COURT JUVENILE DETENTION CENTER

I. INTRODUCTION

- A. On July 18, 2006, the United States notified officials in Marion County of its intent to investigate conditions of confinement at the Marion Superior Court Juvenile Detention Center ("MSCJDC"), 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 accordance with State law, the Marion Superior Court ("Court") is responsible for administering MSCJDC.
- C. In December 2006 and February 2007, the United States toured MSCJDC with consultants in the fields of protection from harm, custodial sexual misconduct, special education, and environmental health and safety.
- D. Throughout the course of the investigation, the United States received complete cooperation from the Court. The Court permitted complete access to MSCJDC and provided all requested documents.
- E. On August 6, 2007, the United States issued a findings letters pursuant to 42 U.S.C. § 1997(a)(1), which concluded that conditions at the MSCJDC violated the constitutional and federal statutory rights of youth confined in the facility.
- F. The U.S. District 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).
- G. The parties to this Agreement are the United States of America, represented by the United States Department of Justice; and the Marion Superior Court, represented by members of its Executive Committee in their official capacities: Robert R. Altice, Jr., Gary L. Miller, Tanya Walton Pratt, and Gerald S. Zore, and their successors, contractors, and agents. The Court shall ensure that all subordinate agencies and departments take any actions necessary to comply with the provisions of this Agreement.
- H. The Court enters into this Agreement because it is firmly committed to remedying the deficiencies identified in the United States' letter of findings, and in providing legally adequate conditions, by instituting the substantive provisions required by this Agreement.

- I. This Agreement does not constitute an admission of liability by the Court.
- J. 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.
- K. This Agreement shall not be used against the Court in any proceeding other than a proceeding between the United States and the Court.
- L. 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 Court 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.
- M. Unless otherwise specified herein, the Court shall come into compliance with each provision of this Agreement within 12 months of the effective date.

II. DEFINITIONS

- A. "Court" means the Marion Superior Court in Indianapolis, Indiana, their successors, contractors, and agents.
- 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. "Facility" means the Marion Superior Court Juvenile Detention Center in Indianapolis, Indiana.
- 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. "Isolation" means the confinement of a youth alone in a locked cell during waking hours for any purpose for a period longer than 15 minutes.
- G. "Include" or "including" means include, but not limited to or including, but not limited to.
- H. "Implement" means to give practical effect and to achieve actual fulfillment by concrete measures, including appropriate training of relevant staff.
- I. "MSCJDC" means the Marion Superior Court Juvenile Detention Center in Indianapolis, Indiana and any facility(ies) that may replace or supplement that facility.
- J. "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.
- K. "Section" means an entire substantive provision (Protection from Harm, Environmental Health and Safety, or Special Education) of this Agreement.
- L. "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.
- M. "Youth" means any juvenile or juveniles residing at the MSCJDC 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 and federal statutory rights of youth confined at the MSCJDC. The terms and requirements of this Agreement shall be interpreted to be consistent with the measures necessary to protect the constitutional and federal statutory rights of the youth.

IV. SUBSTANTIVE PROVISIONS

A. PROTECTION FROM HARM

The following substantive provisions are intended to address the findings of the United States in connection with its investigation of the MSCJDC.

1. Reasonably Safe Conditions The Court shall, at all times, provide youth in the facility with reasonably safe conditions of confinement.
2. Staffing The Court shall ensure that there are sufficient numbers of adequately trained direct care and supervisory staff at all times to supervise youth safely and to ensure access to all programs and services.
3. Training The Court shall develop and implement a curriculum for appropriate competency-based staff training in behavior management, de-escalation techniques, use of force, appropriate communication with youth, crisis intervention, child abuse reporting, and suicide prevention. All staff shall complete initial training and be certified before staff may work independently with youth. Staff shall also receive an adequate amount of annual in-service training to include, at a minimum, use of force, suicide prevention, and child abuse reporting.
4. Programming The Court shall provide sufficient programming to minimize unstructured youth idle time during waking hours. The Court shall provide appropriate structured rehabilitative programming to youth who reside at the MSCJDC for more than 30 days.
5. Behavior Management Program The Court shall develop and implement an effective behavior management program to reward positive and pro-social behavior and to deter aggressive and assaultive behavior throughout the day, including during school sessions.
6. Classification The Court shall develop, validate, and implement an objective housing classification system that places youth appropriately and safely within the facility, and provides for reclassification in appropriate circumstances.

7. Isolation The Court shall develop and implement policies, procedures and practices for isolation to be used only when appropriate and in an appropriate manner, and to document fully its use. Youth in isolation shall be supervised in frequent and not predictable intervals, and such supervision shall be fully documented. Isolated youth shall have access to medical care, mental health care, and school instructional material.

8. Due Process The Court shall provide youth confined in isolation for more than 24 hours with due process, including a hearing by an impartial official. The Court shall develop and implement a due process procedure for disciplinary matters.

9. Suicide Risk Assessment Within three months of the effective date, timely suicide risk assessments, using reliable assessment instruments, shall be conducted at the MSCJDC:
 - a. for all youth who screen positive for suicide risk upon admission or who exhibit behavior or language which may indicate suicidal ideation, and
 - b. when determining whether to place a youth on suicide precautions or change the level of suicide precautions.

Suicide risk assessments shall be conducted by a qualified mental health professional. Youth shall not be removed from suicide precautions by anyone other than a qualified mental health professional.

10. Reduction in Suicide Watch Level The Court shall develop and implement policies and procedures establishing a "step-down" level of observation whereby youth on suicide precautions are gradually released from the more restrictive levels of supervision to less restrictive levels for an appropriate period of time as established by qualified mental health professionals prior to the youth's discharge from suicide precautions.

11. Mental Health Intervention Within three months of the effective date, youth at the MSCJDC who demonstrate suicidal ideation or attempt self harm shall receive timely and appropriate mental health care by qualified mental health professionals.

12. Suicide Watch Supervision Within three months of the effective date, the Court shall sufficiently supervise newly-arrived youth, and youth identified as being at heightened risk of self harm to maintain their safety during both waking and sleeping hours. Such supervision shall be frequent and not in predictable intervals.
13. Documentation of Suicide Precautions The following information shall be thoroughly and correctly documented, and provided to all staff at the MSCJDC who need to know such information:
 - a. the times youth are placed on and removed from precautions;
 - b. the levels of precautions on which youth are maintained;
 - c. the housing location of youth on precautions;
 - d. the conditions of the precautions; and
 - e. the times and circumstances of all observations by staff monitoring the youth.
14. Environmental Suicide Hazards Within three months of the effective date, the Court shall take all reasonable measures to assure that personal items and all housing for youth at heightened risk of self harm, including holding rooms, isolation rooms, and housing for youth on suicide precautions, are free of identifiable hazards that would allow youth to hang themselves or commit other acts of self harm. With respect to any measures that may involve modification of, or improvements to, the physical structure of the MSCJDC, the Court shall solicit the cooperation and active participation of the Indianapolis-Marion County Building Authority as may be required to satisfy the requirements of this provision.
15. Access to Emergency Equipment Within three months of the effective date, all housing units shall be equipped with appropriate equipment to intervene in an attempted suicide by hanging.
16. Suicide Attempt Review Appropriate staff shall review all completed suicides and serious suicide attempts at the MSCJDC for policy and training implications.

17. Child Abuse Reporting The Court shall develop policies, practices, and procedures to define those circumstances in which staff must report allegations of child abuse or neglect to the appropriate external agencies in accordance with Indiana State law. Such referrals shall not be pre-screened based on MSCJDC personnel's subjective impressions of credibility. Staff who are the subject of an allegation of child abuse shall be removed from direct youth supervision pending the outcome of the referral or investigation.
18. Internal Investigations The Court shall develop and implement an adequate internal system for management review and, when appropriate, investigation by senior management of uses of force, alleged child abuse, youth-on-youth violence, and alleged sexual contacts. The Court shall establish specific and objective criteria for determining which incidents shall be internally investigated.
19. Grievances The Court shall implement policies, procedures, and practices to ensure that MSCJDC has a functional, responsive, and confidential grievance system, available to all youth, that ensures that youth have an avenue to report abuse, staff misconduct, or unfair treatment.

B. ENVIRONMENTAL HEALTH AND SAFETY

1. Fire Safety Within three months of the effective date, the Court shall develop and implement an adequate fire safety program, to include conducting and documenting adequate fire drills, providing all employees with keys to the fire alarm boxes, and identifying and eliminating fire hazards.
2. Chemical Safety The Court shall develop and implement adequate chemical safety measures.
3. General Safety The Court shall develop and implement adequate measures to identify and eliminate safety hazards.
4. General Sanitation The Court shall develop and implement adequate measures to provide for youth sanitation and health, including adequately cleaning, drying and transporting youths' clothes, and adequately cleaning and disinfecting

mattresses, pillows, gym pads, and housing areas. These measures shall also ensure appropriate hygiene practices to minimize the risk of disease transmission.

5. Insect Control The Court shall perform regular and periodic insect control measures.

C. SPECIAL EDUCATION

1. Provision of Required Special Education The Court shall provide all eligible youth confined at the facility special education services as required by the IDEA, §§ 1400-1490, and regulations promulgated thereunder. The Court understands that an adequate number of special education teachers is an essential prerequisite to providing appropriate special education services.
2. Screening and Identification Qualified professionals shall provide prompt and adequate screening of facility youth for special education needs, including identifying youth who are receiving special education in their home school districts and those eligible to receive special education services who have not been so identified in the past.
3. Individualized Education Programs The Court shall timely develop, revise as appropriate and/or implement an adequate IEP, as defined in 34 C.F.R. § 300.320, for each youth who qualifies for an IEP.
4. Access to Educational Services The Court shall provide all eligible youth access to free and appropriate public education that meets the standard of the State education agency.
5. Indianapolis Public Schools With respect to provisions regarding special education, the Court shall take all reasonable measures to secure the cooperation and active participation of the Board of Commissioners of the City of Indianapolis as may be required to satisfy these provisions.

V. COMPLIANCE AND QUALITY ASSURANCE

- A. The Court 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 Court 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 Court 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; grievances; and special education services.
- C. The Court shall reasonably develop and implement a quality assurance program for protection from harm, environmental health and safety, and special education services, to ensure that systemic reforms implemented pursuant to this Agreement continue after the Agreement is terminated.
- D. The Court shall develop and implement policies and procedures as necessary to address problems that are uncovered during the course of its quality assurance activities. The Court shall develop and implement corrective action plans to address these problems.

VI. DOJ MONITORING AND ENFORCEMENT

- A. DOJ shall have full and complete access to the MSCJDC including facility records, staff, staff records, youth, youth records, meetings, meeting notes, and any such other information necessary for DOJ to fully evaluate the Court's compliance with the requirements of this Agreement, however, this provision shall not apply to those records and communications that are protected by the attorney-client privilege or the work product privilege. DOJ shall make periodic site visits to the MSCJDC with appropriate notice to counsel for the Court, and shall also have the right to conduct unannounced visits to the MSCJDC. DOJ shall have the right to conduct confidential interviews with staff, youth, and former residents. DOJ shall routinely report its evaluation of the Court'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, the DOJ shall notify the Court 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.
- C. Within a reasonable time following receipt of written questions or requests for documents from the DOJ concerning the Court's compliance with this Agreement, the Court shall provide the DOJ with written answers and any requested documents.
- D. The Court shall maintain sufficient records to document its compliance with all of the requirements of this Agreement. The Court shall also maintain (as long as this Agreement remains in effect) any and all records required by or developed under this Agreement.
- E. The Court agrees that, for the first year of this agreement, the Court will provide the DOJ, every ninety days, with a status report, including any supporting documentation, enumerating 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) progress reports on the hiring of personnel and summary of current staffing ratios; 2) incidents involving assaults on youth, suicides or attempted suicides, and serious self-harm; 3) a summary of submission and resolution of grievances; 4) a log of all uses of isolation greater than 24 hours; 5) a log of all child abuse and mistreatment referrals to an external agency; 6) a summary of completion and implementation of all IEPs; and 7) copies of all quality assurance reports and analyses over the preceding sixty days. Thereafter, for the second and third year of this Agreement, the Court will send a status report every one hundred eighty days to the DOJ.

VII. IMPLEMENTATION AND TERMINATION

- A. The Court shall provide information and training to ensure that all current and future employees at the

MSCJDC understand and implement the terms of this Agreement.

- B. The Court 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.E 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 Court'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 Court has failed to fulfill a significant obligation under this Agreement, the DOJ will, prior to instituting judicial action to enforce this Agreement, give written notice of the failure to the Court. The Court 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 described above, 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 Court, 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 Court to avoid enforcement actions.

- G. This Agreement resolves the United States' current investigation of the MSCJDC pursuant to CRIPA and Section 14141. The United States shall not seek additional measures or requirements in enforcing this Agreement.
- H. 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.
- I. To the extent that the Court'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.
- J. The Court shall appoint an Agreement Coordinator to coordinate and oversee compliance with this Agreement.
- K. 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 basis earlier than three years from the effective date if the Court has substantially complied with the provisions of that section of the Agreement for at least twelve months.
 - 2. The burden shall be on the Court 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 Court's unilateral implementation of best practices will not modify the standard.
- L. 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.
- M. If any unforeseen circumstance occurs which causes a failure to timely carry out any requirements of this Agreement, the Court shall notify the DOJ in writing within a reasonable time after the Court becomes aware of the unforeseen circumstance and its impact on the Court'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 Court shall implement all reasonable measures to avoid or minimize any such failure.
- N. 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.
- O. All subheadings in this Agreement are written for the convenience of locating individual provisions. If questions arise as to the meanings of individual provisions, the parties shall follow the text of each provision.
- P. 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:

/s/ Grace Chung Becker
GRACE CHUNG BECKER
Acting Assistant
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/s/ Shanetta Y. Cutlar
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Date: April 9, 2008

FOR THE MARION SUPERIOR COURT:

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/s/ Gary L. Miller
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