

September 9, 2005

The Honorable Mitch Daniels  
Governor, State of Indiana  
Office of the Governor  
State House, Room 206  
Indianapolis, IN 46204-2797

Re: Investigation of the South Bend Juvenile  
Correctional Facility, Indiana

Dear Governor Daniels:

I am writing to report the findings of the Civil Rights Division's investigation of conditions at the South Bend Juvenile Correctional Facility ("South Bend") in South Bend, Indiana. On February 10, 2004, we notified you of our intent to conduct investigations of South Bend and two other juvenile correctional facilities, the Logansport Juvenile Diagnostic/Intake Facility ("Logansport") and the Plainfield Juvenile Correctional Facility ("Plainfield"), pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA") and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141").<sup>1</sup> As we noted, both CRIPA and Section 14141 give the Department of Justice authority to seek a remedy for a pattern or practice of conduct that violates the constitutional or federal statutory rights of children in juvenile justice institutions.

On May 12-14, 2004, we conducted an on-site inspection of South Bend. We were accompanied by expert consultants in mental health care, juvenile justice, and special education. We interviewed staff members, youth residents, mental health care providers, teachers, and administrators. Before, during, and after our visit, we reviewed an extensive number of documents, including policies and procedures, incident reports, youth detention records, mental health records, grievances from youth residents, unit logs, orientation materials, staff training materials, and school records. Consistent with our commitment to

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<sup>1</sup> Our findings regarding Logansport and Plainfield are provided by separate letters, but are referenced here.

provide technical assistance and conduct a transparent investigation, at the conclusion of our tour, we conducted an exit conference with facility and Indiana Department of Correction ("IDOC") officials, during which our consultants conveyed their initial impressions and concerns.

At the outset, we commend the staff of South Bend for their helpful, courteous, and professional conduct throughout the course of the investigation. We also wish to express our appreciation for the cooperation of IDOC officials.

Consistent with our statutory obligation under CRIPA, we now write to advise you of the findings of our investigation, the facts supporting them, and the minimum remedial steps that are necessary to address the deficiencies we have identified. As described more fully below, and in the findings letters also issued today in regard to Logansport and Plainfield, we conclude that certain deficiencies at South Bend violate the constitutional and federal statutory rights of the youth residents.

## I. BACKGROUND

South Bend is a 138-bed facility for boys from ages 12 to 18. Although a juvenile correctional facility has existed at the same site since 1980, the current South Bend facility opened in March 2002. South Bend reports that the average length of stay for youths is six months. The residents of South Bend are housed in eight 16-bed dormitory units, which open into two large day rooms. There is also a ten-bed transitional unit for youths who are approaching release from the facility.

South Bend is a minimum security facility housing low-risk to medium-risk juveniles. At the time of our tour of South Bend, approximately 8 percent of its residents were "status offenders."<sup>2</sup>

South Bend utilizes a level program that is mandated by the IDOC as part of its comprehensive case management system. The program consists of several levels that a youth is required to complete in order to qualify for release. A youth's progress through the levels is measured against his "Individual Growth Plan," which is a set of long-term and short-term cognitive and behavioral goals specifically designed for the youth by his

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<sup>2</sup> Status offenders are juveniles adjudged to have committed an act that would not be a crime if committed by an adult (for example, truancy from school or alcohol consumption).

interdisciplinary treatment team, as well as interventions to be utilized to achieve those goals. The youth's treatment team, which includes custody, mental health, and educational professionals, decides when a youth has successfully completed a level. Unanimous approval by the team is required for a youth to move to the next level.

All male juveniles entering the IDOC, including those who ultimately are committed to South Bend, are initially sent to Logansport for a 13-day intake period. According to Logansport officials, during this intake period each youth undergoes a physical examination; dental, vision and hearing screenings; an intellectual and educational assessment; a risk and needs assessment; a substance use assessment; a crimino-psychosocial history; and, if deemed necessary, is referred to a psychiatrist and/or psychologist. See Logansport Findings Letter at 2. At the conclusion of the 13-day intake process, juveniles are classified and transferred to one of seven IDOC operated juvenile treatment facilities (which include South Bend), or to one of four privately-operated facilities.

## II. FINDINGS

We find that South Bend fails to adequately protect the juveniles in its care from harm. We also find constitutional deficiencies in the facility's mental health care. Finally, South Bend fails to provide juveniles with disabilities education services required by the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401.

### A. PROTECTION FROM HARM

As a general matter, the State must provide confined juveniles with reasonably safe conditions of confinement. Youngberg v. Romeo, 457 U.S. 307 (1982); Nelson v. Heyne, 491 F.2d 352 (7th Cir. 1974). Such constitutionally mandated conditions include the right to be free from undue restraint and the use of excessive force by staff. Youngberg, 457 U.S. at 315-16; Nelson, 491 F.2d at 356. Juveniles in state custody also have a constitutional right to be reasonably protected from harm inflicted by third parties. K.H. v. Morgan, 914 F.2d 846, 851 (7th Cir. 1990). Neither the Supreme Court<sup>3</sup> nor the Seventh

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<sup>3</sup> See Ingraham v. Wright, 430 U.S. 651, 669 n.37 (1977) (Although holding that the Eighth Amendment is inapplicable to the paddling of schoolchildren, the Court declines to consider

Circuit<sup>4</sup> has determined definitively whether the Eighth Amendment or the Fourteenth Amendment provides the governing constitutional standard for conditions in juvenile facilities. For purposes of this letter, we need not resolve which standard governs because we find that the conditions at South Bend violate even the more stringent Eighth Amendment standard.

### 1. Youth Violence

Juveniles in institutions have a constitutional right to be reasonably safe from harm inflicted by other juveniles in the facility. K.H. at 851; see also A.M. v. Luzerne Cty. Juvenile Detention Ctr, 372 F.3d 572, 585 n.3 (3<sup>rd</sup> Cir. 2004). We find that there is an unacceptably high rate of youth violence at South Bend. The atmosphere at South Bend is chaotic and dangerous. Youths frequently fight with each other without detection or intervention by staff. Often, staff only become aware of an assault after the fact, when a youth comes forward for medical attention or staff review a video surveillance tape. Moreover, as discussed below, staff members and youths agree that staff members are unable to control the situation due to inadequate staffing. The following are examples of incidents of youth-on-youth assaults, as reported in facility investigative reports:

- On May 9, 2004, a youth attacked another youth in the shower area, breaking the victim's nose. The victim also received stitches to close another wound. No staff reported observing the incident. Initially, the victim reported that he was injured when he slipped in the shower. Only after the facility nurse determined the injury to be the result of a direct blow to the nose did the victim acknowledge that he had been attacked.
- On March 30, 2004, a video surveillance camera filmed a youth beating another youth without detection by staff.

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<sup>3</sup>(...continued)  
whether the Eighth Amendment applies to conditions in juvenile institutions).

<sup>4</sup> In Nelson, the Seventh Circuit held that the State violated the Eighth Amendment rights of confined juveniles by administering abusive corporal punishment and forced tranquilizing medication, but violated their Fourteenth Amendment rights by failing to provide them with minimally acceptable rehabilitative treatment. 491 F.2d at 357; 360.

Only after the victim reported the assault and the tape was reviewed did this incident come to light.

- On March 25, 2004, staff observed one youth hitting another youth in his dormitory bed "constantly," until staff restrained the aggressor and took him to segregation.
- On March 21, 2004, two youths on Treatment Unit East were observed punching each other with closed fists numerous times, leaving bruises and scrapes on one of the two youths.
- On March 2, 2004, two residents of Treatment Unit East were filmed by the dormitory surveillance camera hitting another youth "multiple times in his body with closed fists, and then [running] back to their beds." Later that same evening, the same two residents assaulted the same youth again, hitting him multiple times as he lay in his bed. These attacks went undetected by the staff on duty at the time. A report was not written until more than a week later. The victim sustained bruises across his body.
- On February 25, 2004, a youth in the recreation area emerged from the rest room and began striking a peer "with closed fists numerous times in the face area." The victim was treated for injuries to his face.
- On February 22, 2004, two separate fist fights on Treatment Unit West were reported. In one of the fights, staff observed the aggressor strike the victim with a closed fist several times, leaving him with a bloody nose and other injuries.

Moreover, the actual number of youth assaults is likely much higher than what is reported. During our tour, youths consistently reported that there are numerous incidents of youth-on-youth violence about which staff are unaware. The youths explained that because they sleep in large dormitories with minimal monitoring by staff, there are ample opportunities for fights to occur without staff's knowledge. Moreover, although South Bend recently installed cameras to monitor the dormitories, youths are able to avoid being recorded by fighting in the cameras' "blind spots." Likewise, youths report that because the shower areas are not adequately supervised by staff, youth assaults commonly occur there without staff interference. Thus, in light of the high potential for undetected and unreported youth violence, the amount of violence is likely much higher than what the facility documents.

The most obvious and glaring reason for the frequency of violence among youths in this minimum security facility is that

there are not enough staff to supervise the youths adequately. Constitutional standards require that juvenile facilities have a sufficient number of adequately trained staff members to ensure the safety and security of its juvenile residents. Without an adequate number of officers on duty, existing staff cannot respond in a safe and timely manner when violence and other crises do occur. Moreover, without adequate numbers of qualified staff, correctional officers do not have the time to build the relationships with youths that are necessary to identify when trouble is brewing on their unit and prevent incidents from occurring.

At South Bend, there are rarely more than two staff assigned to supervise as many as 64 youths. This ratio places the youths - as well as staff - at significant risk of serious harm. Moreover, the facility's large day rooms and open sleeping dormitories permit significant numbers of residents to congregate in largely unstructured settings, increasing the potential for serious problems to develop among the youths. Our observations during our tour underscore this point. During one afternoon, we observed a day room filled with youths who did not appear to be engaged in any programming. There was one staff present. He explained that it was "Team Day," *i.e.*, the day youths meet with their treatment team to discuss their progress in the treatment program and, consequently, the youths did not have to attend school. The atmosphere in this day room was particularly chaotic and unstructured; many youths were congregating in groups, some were watching TV, some were sleeping on the floor, and others were sitting idly. Large groups of idle juveniles can be very dangerous when adequate staffing is not provided. Juveniles who are not engaged in structured activities are more likely to engage in mischief which, if adequate staffing is not provided, has the potential to spiral into fighting, assaults and other dangerous activities.

We also repeatedly observed residents in the transition unit without any staff present. When we inquired about this, staff reported that these youths were being monitored via the control room. Camera surveillance can enhance security by providing for a faster response to calls for back-up staff as well as facilitating the identification and prosecution of aggressors. However, cameras cannot ensure a timely response to crises if no staff are present to intervene, nor can they identify potential crises and prevent youth attacks from occurring. It is dangerous and unacceptable for any group of incarcerated juveniles to be without direct staff supervision.

Our findings regarding the inadequate number of staff at South Bend are not likely to surprise its staff or residents. During our tour, staff readily acknowledged that there are not enough of them to safely supervise the youths in their care. As one correctional officer informed us, "We need more people. We can't do what we need to be doing." The residents echoed these sentiments to us. One youth summed the situation up by stating, "With two staff to 64 kids, no way staff can control it."

## **2. Use of Lethal Force**

Juveniles at South Bend have a right to be free from unnecessary restraint and the use of excessive force. Youngberg, 457 U.S. at 315-16; Nelson, 491 F.2d at 356. See also H.C. v. Jarrad, 786 F.2d 1080, 1089 (11<sup>th</sup> Cir. 1986); Milonas v. Williams, 691 F.2d 931, 942 (10<sup>th</sup> Cir. 1982). IDOC's use of physical force policy includes a provision regarding "Lethal Physical Intervention." The provision appears in a section entitled, "Juvenile Facilities Step Definitions," and appears to be the final measure in a series of graduated steps to be taken by staff in the event of an incident that might result in the use of force on a youth. "Lethal Physical Intervention" is not defined in this policy, although a separate definition section of the policy includes "deadly force," which is defined as "any force which creates a substantial risk of serious bodily injury or death or which the person using the force reasonably believes creates a substantial risk of causing serious bodily harm or death." In any case, the policy includes no guidelines or limits as to when the use of lethal force is permissible. A policy that permits the use of lethal force, in any setting but particularly in a juvenile facility, without clear limits and guidelines places juveniles at significant risk of serious harm or death.

## **3. Grievances**

The dysfunctional grievance system at South Bend contributes to the State's failure to ensure a reasonably safe environment. An adequately functioning grievance system ensures that youths have an avenue for bringing serious allegations of abuse and other complaints to the attention of the administration. It also provides an important tool in evaluating the culture at the facility, and alerting the administration about dangers and other problems in the facility's operations.

Our investigation revealed a number of encouraging aspects to South Bend's grievance system. For example, we were pleased to find that South Bend provides grievance forms and locked grievance boxes on the units, and that a grievance specialist

checks the boxes on a daily basis. The residents are aware of the grievance process and know the identity of the grievance process manager. In fact, the youths regularly utilize the grievance system at South Bend.

Nevertheless, we find that South Bend's grievance system to be inadequate. In many other cases, grievance reviewers appeared to ignore the substantive allegations made by the youths, even when the grievance contained serious allegations of deprivations of rights and/or abusive or inappropriate conduct by staff. The following examples are illustrative:

- On May 10, 2004, a youth filed a grievance stating that he had been in the segregation unit for five days and could not get a grievance form. He also wrote that he was not issued a toothbrush or toothpaste for three days. The May 13 response said only, "The forms are replenished on the units weekly."
- A youth filed an undated grievance alleging that a staff member had made sexually graphic comments about his mother and sister, and called him a "fool" and "ignorant." The youth requested that the staff member be told to stop name calling and "putting us students down." The grievance was filed on the wrong form. The April 29, 2004 response stated only, "You must use a Step 1 Grievance. See attached."<sup>5</sup>
- A grievance was filed by another youth on April 11, 2004, alleging that a staff person called a different resident profane names and threatened to have the resident reclassified. The grieving resident suggested that the incident should be "looked into." The April 16 response stated, "You cannot file a grievance for another student."
- On April 5, 2004, a youth filed a grievance alleging that a staff person "has disrespected me by saying shut up and she don't give a f--- what I think [expletive deleted]." The youth suggested that the staff person be "written up." The May 4 response said, "You cannot suggest punishment for staff."

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<sup>5</sup> "Complaint Step 1" refers to a specific form that residents must first submit, notifying the Grievance Specialist of his desire to file Grievance, which is defined in IDOC's policy as "a legible, formalized version of a complaint...that has been signed and dated by a student and the Grievance Specialist."



South Bend's grievance process policy also provides that a youth's access to the grievance process may be denied if it is determined that the youth is "attempting to flood the procedure with frivolous complaints." See Section XX of South Bend's "Offender Grievance Process." Access to the mechanism through which youths can communicate serious allegations and concerns to the administration is a critical element of ensuring that youths' rights are protected. We acknowledge that certain limitations may be imposed on repetitive and frivolous filings. But the mere existence of this provision, without appropriate guidance for staff, may inhibit the filing of grievances and, therefore, undermines the purpose and effectiveness of the process.

#### **B. MENTAL HEALTH CARE**

The Constitution requires that youths in juvenile justice institutions receive adequate mental health care. Youngberg, 457 U.S. at 323, n.30.; Nelson, 491 F.2d at 360; see also K.H., 914 F.2d at 851; A.M., 372 F.3d at 585 n.3. We find that certain aspects of the mental health care at South Bend are constitutionally inadequate. Specifically, we find that South Bend fails to provide adequate psychopharmacological services.

As noted above, youths placed at South Bend first spend thirteen days at Logansport, purportedly for evaluation and assessment. And, as we explain in our letter issued today regarding mental health services at Logansport, when a youth is admitted to Logansport and reports that he is currently receiving psychopharmacological treatment,<sup>6</sup> he is typically permitted to finish whatever medication he has with him at the time of intake. If the youth reports that he is currently receiving psychopharmacological treatment but does not have any medication with him, then Logansport's intake nurse will refer him to the psychiatrist, who will meet with the youth within seven days. In either scenario, however, unless the youth is overtly exhibiting the symptoms the medication purports to treat, medication is automatically discontinued once the youth's personal supply has been exhausted.<sup>7</sup> Logansport's psychiatrist reports that the

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<sup>6</sup> Psychopharmacological treatment refers to the use of psychotropic medications to control symptoms of mental illness.

<sup>7</sup> In interviews during our visit, Logansport's psychiatrist stated that it was his understanding that the discontinuation of psychotropic medications once a youth exhausts his personal supply is mandated by IDOC policy. IDOC's medical director, however, stated that no such policy exists. Thus, the  
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purpose of this discontinuation practice is to institute a "wash-out" period. A wash-out period is a medication-free time during which, in theory, the mental health professional will monitor the youth's behavior and assess whether any psychopharmacological treatment is appropriate.

A wash-out period, if implemented appropriately, can be a useful diagnostic tool for ensuring the appropriate use of psychotropic medications. However, in order to meet generally accepted professional standards of care,<sup>8</sup> a youth who undergoes a wash-out period must be carefully monitored and assessed by a qualified mental health clinician before, during, and after discontinuation of the medication in order to determine whether a return to medication is warranted. Without adequate monitoring and assessment throughout this time, youths are exposed to a number of potential harms. Most obviously, youths whose mental health needs are not adequately identified and treated may suffer mental distress and anguish, as well as an increased risk of suicidality. Additionally, the youths are less likely to be able to successfully complete the rehabilitation program, a requirement for release from the treatment facility. Moreover, juveniles with unmet mental health needs are more likely to demonstrate unacceptable behaviors that elicit punitive responses from staff.

Because residents are transferred out of Logansport shortly following the discontinuation of medication,<sup>9</sup> the bulk of the

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<sup>7</sup>(...continued)  
origin of this practice remains unclear.

<sup>8</sup> In assessing the constitutional adequacy of mental health care practices at South Bend, we must consider whether professional decisions substantially depart from accepted professional judgment. See Youngberg, 457 U.S. at 323; Estate of Cole v. Fromm, 94 F.3d 254, 262-63 (7<sup>th</sup> Cir. 1996) (deriving the standard for assessing the adequacy of mental health care provided to pretrial detainee from Youngberg).

<sup>9</sup> We also find the characterization of IDOC's medication discontinuation policy as a diagnostic wash-out period to be problematic. The fact that youths entering Logansport are permitted to finish whatever quantity of medication they may happen to bring in with them before the prescription is discontinued suggests that the subsequent discontinuation is not driven by medical considerations. Indeed, if the driving force for discontinuing a medication is truly a lack of need for that  
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requisite monitoring and assessment should occur at the treatment facility to which a youth is transferred, in this case, at South Bend. In our review of South Bend's mental health services, however, we found that youths whose medications are discontinued at Logansport are not provided with adequate monitoring and assessment at South Bend to determine whether there is a need to resume the psychopharmacological treatment.

We found that the failure to reassess juveniles after medication is discontinued at Logansport occurs most frequently with youths who had been taking medication to treat Attention Deficit/Hyperactivity Disorder ("ADHD"). ADHD is one of the most common of the psychiatric disorders that appears in childhood and is characterized by problems with inattentiveness, over-activity, impulsivity, or some combination of these symptoms. A youth with untreated ADHD can exhibit a variety of behaviors such as being unable to sit still, talking excessively, interrupting and intruding on others, failing to pay attention in school and on the unit, failing to listen and follow directions, and having difficulty engaging in activities that require sustained cognitive effort. Most medications that are prescribed to treat ADHD are short-acting. That is, within a day or two of discontinuing the medication, a youth will return to his unmedicated baseline status.

Over one third of the juveniles whose mental health records we reviewed had entered South Bend with an order from Logansport for an ADHD evaluation. For 80 percent of these youths, their evaluations were significantly delayed. Some of the youths had to wait for two months to be assessed. Many others were still waiting to be assessed even though they had entered the IDOC several weeks prior to the time of our tour. These delays expose juveniles to the serious and potentially harmful consequences identified above, including unnecessary suffering, risk of suicidality, and interference with a youth's ability to be successful in South Bend's rehabilitation program as well as in school. Moreover, given that South Bend's rehabilitation program focuses on cognitive and behavioral improvements, precisely the areas that treatment for ADHD addresses, delaying ADHD assessments for several months is a particularly troublesome practice.

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<sup>9</sup>(...continued)

medication, then it should be discontinued *regardless* of whether the juvenile brought in a supply of his own. And, in fact, when we asked Logansport's psychiatrist what the rationale is for permitting residents to finish medications they have with them, he stated that it was to avoid the medication going to waste.

**C. SPECIAL EDUCATION SERVICES**

South Bend violates the federal statutory rights of students with disabilities by failing to provide adequate special education in its school program,<sup>10</sup> in violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1401 et seq.<sup>11</sup> At the time of our tour, approximately 40 percent of all South Bend residents had been identified as qualifying for special education services under the IDEA.

At the outset, we note that there are several positive aspects of the educational program at South Bend. For example, we were impressed with the enthusiasm of the teaching staff at South Bend. Additionally, the school publishes a literary magazine which is an excellent vehicle for student expression and recognition. The utilization of university students to tutor South Bend students is a laudable effort to provide positive role models to students. We were also pleased to see that students with disabilities spend most of their school day in general education classes, as envisioned under the IDEA. 34 C.F.R. § 300.550(b)(1)(requiring that "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled"). Nevertheless, we find that South Bend fails to provide special education services to juveniles with disabilities as required under the IDEA.

**1. IEPs**

The IDEA requires that each student with a disability have an Individualized Education Program ("IEP"), and describes the IEP components required to ensure that each student receives adequate special education services. 34 C.F.R. §§ 300.346, 300.347. The IEPs developed at South Bend, however, give us great pause as to whether students with disabilities receive required special education services.

Specifically, we are concerned whether the IEPs developed by South Bend are not sufficiently individualized to meet the unique

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<sup>10</sup> South Bend's school program is called the Council Oaks Jr./Sr. High School.

<sup>11</sup> We note that the IDEA was reauthorized and amended by the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647 (2004), effective July 1, 2005. The IDEA provisions cited herein are substantively the same as those in force at the time of our tour.

needs of each student with a disability, as required under the IDEA. 34 C.F.R. §§ 300.346, 300.347. The vast majority of IEPs we reviewed contained "boilerplate" language regarding the amount of special education services a student needs. For example, all of the 18 randomly-selected IEPs we reviewed provided that either 13 percent or 8.5 percent of the students' instruction should be comprised of direct special education services. If South Bend's IEPs were truly based on the individual needs of the student, it is highly unlikely that such a large percentage of its students with disabilities would require identical levels of direct special education services.

We also found several instances where a youth's direct special education services were dramatically lower than what he had received in his previous educational setting without adequate justification. In two of the IEPs we reviewed, for example, the youths' daily special education services were reduced from 100 percent at their previous schools to 13 percent at South Bend. Two other youths' special education services were reduced from 100 per cent to 8.5 percent daily. These drastic reductions in services without adequate justification, as well as the boilerplate language used in many of its students' IEPs, suggest that South Bend is tailoring IEPs to what is available, rather than to the students' individualized needs.

## **2. Instructional Services for Students with Disabilities**

### **a. Individualized Instruction**

The IDEA requires that students with disabilities receive specially designed instruction in which the content, method, and/or delivery of instruction is adapted as necessary to meet the unique needs of the student, and to ensure his access to the general curriculum. 34 C.F.R. § 300.26(a)(3). For example, a student with disabilities may require a seating change, more time on written assignments, oral testing, specific instructional cues, etc. The general education teacher typically is responsible for implementing the instructional adaptations identified in the IEP. South Bend fails to provide special education students with modified instruction as required by their IEPs. In fact, during our tour, we observed no individualized instructional adaptations or assessment accommodations in any of our classroom observations.

South Bend's provision of insufficiently individualized instructional services to students with disabilities appears to result from several factors. First, some of South Bend's general

education teachers are teaching subjects in which they are not licensed. This further inhibits their ability to provide appropriate individualized instructional adaptations in those subjects. Additionally, the absence of a system for obtaining qualified substitute teachers, coupled with a high rate of teacher absences, further reduces the amount and quality of individualized instruction provided to students with disabilities.

Finally, at the time of our tour, South Bend did not have a principal to administer the school, nor are we aware of any plan in effect to recruit a school principal. The lack of a school principal contributes to the inadequate instructional services provided by the school's education staff. Without a school principal, there is not adequate oversight of the timely provision of adequate and appropriate special education services, or evaluation of teacher performance.

**b. Curriculum**

The IDEA provides that all students with disabilities are guaranteed a free and appropriate public education which meets the standard of the State education agency. 20 U.S.C. §§ 1401(9)(b); 1412(a)(1)(A). See also 34 C.F.R. § 300.600(a)(2)(ii). South Bend fails to provide special education students the curriculum necessary to meet State standards. For instance, it does not offer classes in physical education, health, foreign language or elective courses. All of these are required courses for completion of secondary studies in Indiana public schools.<sup>12</sup>

The IDEA further requires that students with disabilities receive instruction that is specially designed to meet the students' unique needs, including instruction in vocational education<sup>13</sup> when necessary to meet the students' unique needs. 34 C.F.R. § 300.26(a)(2)(iii). No vocational education services are offered to South Bend students. Curiously, in the sample of

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<sup>12</sup> 511 IN. ADMIN. CODE § 6.1-5-4(c).

<sup>13</sup> "Vocational education" means "organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree." 34 C.F.R. § 300.26(b)(5).

IEPs we reviewed, not one student was identified as needing vocational education even though several IEPs identified needs for vocational rehabilitation *after* students leave South Bend. Again, this suggests that these students' IEPs were developed based on the courses available at South Bend, rather than on the students' individual needs.

**c. Access to Instruction**

The IDEA requires that students with disabilities have access to free and appropriate public education services which comport with the standards of the State education agency. 20 U.S.C. §§ 1401(9)(b); 1412(a)(1)(A). See also 34 C.F.R. § 300.600(a)(2)(ii). It is critical that students with disabilities have access to sufficient instructional time in order to access the general education curriculum and achieve academic success. South Bend unacceptably limits access to instructional time in three significant ways.

First, South Bend only provides class instruction four days per week. On Wednesdays, no students attend classes. Instead, multi-disciplinary team conferences are held with certain students to discuss the student's progress in the facility's rehabilitation program. Students who are not attending team conferences that day are sent to "study hall" for the entire day, during which time they receive no instructional services and rarely even have school work to complete. While we appreciate South Bend's dedication to implementation of its rehabilitation program, this progress review cannot be at the expense of required education services to students with disabilities.

Second, South Bend's policy regarding student orientation unnecessarily restricts access to special education services for juveniles with disabilities. Upon arrival at South Bend, all students spend approximately two weeks in "orientation" before they are enrolled in school. During this time, they are given a packet of facility information to review. Once the student is finished with the packet (an exercise that takes no more than a few hours to complete), he essentially sits in study hall with nothing to do for the remainder of the two weeks. Significantly, this two-week delay in school enrollment follows the student's 13-day stay at Logansport, during which time no special education services are provided. Thus, youths with disabilities spend

their four weeks in the IDOC without access to any special education services.<sup>14</sup>

Third, segregated students with disabilities do not have adequate access to special education services. Although educational packets are provided to students in segregation, the materials do not relate to current class work and, consequently, do not allow the student to continue access to appropriate instruction. This practice has the potential to severely limit the progress of students with disabilities.

### **III. REMEDIAL MEASURES**

In order to rectify the identified deficiencies and protect the constitutional rights of juveniles confined at South Bend, IDOC should implement, at a minimum, the following remedial measures:

1. Ensure that youths are adequately protected from physical violence by other youths;
2. Ensure that there is sufficient, adequately trained staff to safely supervise the residents at all times;
3. Develop and implement a use of force policy that provides clear guidelines and appropriate limits on the use of force;
4. Provide adequate training and supervision to correctional staff regarding safe and appropriate use of force and physical restraint;
5. Develop and implement a grievance system that ensures resident access to a functional and responsive grievance process;
6. Provide adequate psychopharmacological treatment to youths. If a wash-out period is implemented for youths who enter Logansport on psychotropic medication, IDOC should:
  - a. Conduct an adequate baseline assessment of the youths and ensure adequate documentation of the baseline;
  - b. Provide adequate monitoring during the wash-out period;

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<sup>14</sup> Given that some youths at South Bend are status offenders who have been incarcerated for truancy, denying access to education services is particularly inappropriate and ironic.



- c. Provide timely follow-up assessments to determine whether a return to treatment with medication is warranted; and
  - d. Ensure that psychopharmacological treatment is promptly resumed when necessary;
7. Develop and implement adequate IEPs to students with disabilities;
  8. Provide individualized instructional services to students with disabilities in accordance with the IDEA;
  9. Ensure students with disabilities have sufficient access to an adequate curriculum; and
  10. Ensure students with disabilities have sufficient access to instructional services.

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As stated above, we appreciate the cooperation we have received from IDOC officials and facility staff throughout this investigation. We hope to be able to continue working with the State in an amicable and cooperative fashion to resolve the deficiencies found in the operation of this facility. Provided that our cooperative relationship continues, we will forward our expert consultants' reports under separate cover. Although the reports are the consultants' work - and do not necessarily reflect the official conclusions of the Department of Justice - the observations, analyses, and recommendations contained in the reports provide further elaboration of the issues discussed in this letter and offer practical assistance in addressing them.

In the unexpected event that we are unable to reach a resolution regarding our concerns, the Attorney General is empowered to institute a lawsuit pursuant to CRIPA to correct the deficiencies of the kind identified in this letter 49 days after appropriate officials have been notified of them. 42 U.S.C. § 1997b(a)(1).

We would prefer, however, to resolve this matter by working cooperatively with you. We have every confidence that we will be able to do so in this case. The lawyers assigned to this matter will be contacting your attorneys to discuss this matter in further detail. If you have any questions regarding this letter, please call Shanetta Y. Cutlar, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-0195.

- 18 -

Sincerely,

/s/ Bradley J. Schlozman

Bradley J. Schlozman  
Acting Assistant Attorney General

cc: The Honorable Steve Carter  
Office of the Indiana Attorney General

J. David Donahue, Commissioner  
Indiana Department of Correction

Dawn Buss, Superintendent  
South Bend Juvenile Correctional Facility

Curtis Correll, Superintendent  
Plainfield Juvenile Correctional Facility

Kellie Whitcomb, Superintendent  
Logansport Juvenile Intake/Diagnostic Facility

The Honorable Joseph S. Van Bokkelen  
United States Attorney  
Northern District of Indiana

The Honorable Susan W. Brooks  
United States Attorney  
Southern District of Indiana

John H. Hager  
Assistant Secretary  
Office of Special Education and Rehabilitative Services  
United States Department of Education

Troy Justeson  
Acting Director  
Office of Special Education Programs  
United States Department of Education