ESSEX COUNTY INMATES et als.,	)	United States District Court
	)	for the District of New Jersey
Plaintiffs	)	
	)	CIVIL NO. 87-871 (HAA)
v.	)	Hon. Harold A. Ackerman. U.S.D.J.
	)	
JOSEPH DIVINCENZO, Essex County	)	Frederick K. Becker, Special Master
Executive, et als.,	)	Bennet D. Zurofsky, Special Master
	)	
Defendants	)	THIRD CONSOLIDATED
	)	CONSENT ORDER

WHEREAS, on or about March 31, 2004, defendants moved plaintiff Essex County inmates held at the former Essex County Jail on Nelson Place in Newark, New Jersey and at the Essex County Jail Annex in North Caldwell, New Jersey, to the new Essex County Correctional Facility (ECCF) on Doremus Avenue in Newark, New Jersey,

WHEREAS, the Second Consolidated Consent Order ("SCCO") and the Medical Consent Order ("MCO") entered on August 8, 1995, were in effect at the time of the closing of the former facilities and the transfer of Essex County inmates into the ECCF,

WHEREAS, the ECCF was constructed and opened to remedy overcrowding and certain related conditions and practices in the former facilities,

WHEREAS, this Third Consolidated Order is intended to modify the remedies and obligations of the SCCO in a manner that takes into account the new structure and facilities of the ECCF,

WHEREAS, the parties agree that this modified Order is appropriate as the least intrusive remedy for currently existing conditions and practices affecting the constitutional rights of plaintiffs that warrant continuing injunctive and declaratory relief, specifically to relieve existing or threatened overcrowding, related deprivations, and associated deficiencies in living conditions, services and programs at the ECCF, as is herein set forth,

WHEREAS, the terms of this Order are intended to apply only until the defendants achieve and maintain timely and substantial compliance as herein defined and adopt policies to prevent recurrence of noncompliance with the provisions of the modified Order,

IT IS THEREFORE AGREED, as follows:

I. STANDARDS FOR POPULATION AND HOUSING

A. ECCF Maximum Capacity

1. Definition: The overall maximum capacity of the ECCF shall be defined as the Operational Capacity for the facility and shall be based on the number of beds available for permanent inmate housing assignments (which shall exclude beds in ECCF segregation and medical units) and the physical facilities in each housing unit as set forth in the chart below.

ECCF Housing Units		Cells	Bunks	Operational Capacity
Building 2- Level 1 (Males)	B	64	128	128
	C	64	128	128
	D (Detention & PC)	64	64	0
	E Left	32	64	64
	E Right	32	64	64
Building 2– Level 3 (Males)	B Left	32	64	64
	B Right	32	64	64
	C Left	32	64	64
	C Right	32	64	64
	D (Detention & PC)	64	64	0
	E Left	32	64	64
	E Right	32	64	64
Building 3– Level 1 (Males)	B	32	64	64
	C	32	64	64
	D	32	64	64
	E	32	64	64
Building 3– Level 3 (Males)	B	32	64	64
	C	32	64	64
	D	32	64	64
	E	32	64	64
Building 4– Level 1 (Males)	B	32	64	64
	C	32	64	64
	D	32	64	64
	E	32	64	64
Building 4- Level 3 (Females)	B	32	64	64
	C	32	64	64
	D	32	64	64
	E	32	64	64
Dorms	1	0	50	50
	2	0	48	48
	3	0	48	48
	4	0	50	50
	5	0	48	48
	6	0	48	48
	7	0	48	48
Medical (Males and Females)			42	0
		1024	2302	2132

2. Capacity Not to be Exceeded: The County shall not admit inmates to the ECCF in excess either of the overall Operational Capacity or the maximum number of bunks per unit reflected above which shall constitute the Housing Unit capacity. The County via fax shall send Plaintiffs' counsel each day a population tally for the ECCF in a format similar to that set forth above.

B. Remedial Action Related to Housing Capacity and Overcrowding

1. Affirmative Steps to be Taken by the County: If the ECCF population exceeds the operational or any housing unit capacity as set forth above, respectively, for male inmates and female inmates, the County shall take affirmative steps that shall provide a reasonable likelihood of prompt additional housing capacity or the availability of alternatives to incarceration necessary to accommodate the number of male and female inmates, respectively, that are reasonably estimated to constitute the plaintiff class for which the County expects to be responsible for five years from the date of this Third Consent Order, to enable the ECCF population not to exceed the ECCF's permissible Operational Capacity.

2. Temporary Housing at the ECCF.

a. *Temporary Beds.* Temporary beds or cots appropriate for a detention facility may only be used after the County has taken the affirmative steps set forth above for remedial action. Temporary beds or cots may be used as set forth in this paragraph notwithstanding other standards for housing and living conditions set forth in this Order.

b. *Five Day Duration Limitation*. When temporary beds are used, the County shall make every effort to assign inmates in a manner to insure that any individual inmate will not be required to sleep on such temporary beds or cots for more than five (5) days. The County shall re-assign inmates on temporary beds to the next available cell or dormitory bunk consistent with classification requirements.

c. *Services Maintained*: Regardless of the population level, the County shall maintain the level of visitation, recreation, medical care, dental care, access to legal research facilities, food services, counseling, and other services to inmates required by this Order or Title 10A, Chapter 31 of the New Jersey Administrative Code. To meet the need for temporary housing, however, the County may not transform any recreation or program area into a housing unit to the detriment of communal space, recreation, programming, or movement. In the event of a public safety threat, however, personal visiting, recreation, and counseling may be suspended up to 72 hours or until the emergent situation is abated.

3. Alternatives to Incarceration: The County shall increase or maintain the number of beds made available for qualifying inmates in alternative programs to relieve overcrowding in the ECCF and to accommodate the recommendations of judges who sentence inmates to alternative programs. The County shall take all necessary action to ensure adequate placement of present and future Essex County inmates as projected by statistical trends to be identified by a study or report to be commissioned by the County as of December 2006. Planned growth must include adequate housing for up to five years at the ECCF site or appropriate programs to provide alternatives to incarceration or detention at facilities other than at the ECCF, including drug and alcohol treatment centers and housing to ensure continuity of treatment for offenders battling addiction.. The County shall advise

plaintiffs' counsel monthly of the number of beds available or planned for Essex County inmates in all such programs.

C. Housing Unit Conditions Related to Capacity:

1. Sleeping Conditions: The dayrooms, processing units or other common areas of the ECCF shall not house inmates overnight. The County shall not place mattresses on the floor for sleeping or use cots without mattresses. All provisions concerning housing capacity and prohibitions on sleeping in common areas, or on floors or on mattresses on floors, apply to female inmates as well as male inmates.

2. Durational Limits in New Admission Quarantine Unit: The County shall make every effort to transfer inmates out of Medical Quarantine within one day of being medically cleared. If any circumstances cause inmates to remain in Medical Quarantine for more than one day after being medically cleared, then such inmates shall be allowed at least one hour of cell per day for recreation.

D. Capacity Notice Requirements

When any cells or bunks cannot be used for more than a 30 day period, the County shall notify Plaintiffs' counsel in writing, and shall identify the cells, the reduced capacity of the particular units, and the number of inmates held daily in the ECCF infirmary and detention areas during the previous 30 day period.

E. Contingency and Accreditation Plans

To avoid the need for proceedings for sanctions and to expedite termination of this Order, the County shall have a contingency plan in place to ensure that the County can comply with the ECCF's maximum capacity and program requirements of this Consent Order even if unforeseen circumstances make compliance more difficult that originally expected. Toward this objective the County shall comply with the recommendations of the inspections conducted by the New Jersey Department of Corrections and shall make good faith efforts to attain accreditation from and adhere to the recommendations of the following bodies: the National Center for Correctional Health Care (NCCHC), the American Correctional Association (ACA) and the National Institute of Corrections (NIC). As part of this undertaking the County shall obtain an inspection by the NIC; when the NIC survey portion of this requirement is completed and while the County is in preparation for submission of materials for ACA accreditation, the County shall immediately make available for review a copy of such report to Plaintiffs' counsel, who.shall not disclose the contents of the report nor use the contents of the report against the County in this proceeding.

F. Remedies and Housing Unit Conditions

The County shall maintain housing unit conditions in accordance with applicable regulatory standards in Chapter 31, Title 10A of the New Jersey Administrative Code, including ratios between inmates and showers, toilets, and living space provided by N.J.A.C. 10A:31-3.7, 3.8. The County has discretion to maintain such ratios by: (a) retrofitting the structure of the ECCF to increase the available number of showers, accessible toilets, and the area of dayroom and recreational space, or (b) phasing out or limiting double bunking in housing areas with a ratio that is higher than provided for in this Agreement.

II. STANDARDS FOR SLEEPING AND LIVING AREAS

A. Living Conditions

The County may use cells at the ECCF to house two inmates, provided that the conditions in the cells and living areas otherwise meet the provisions of this Agreement or applicable state regulations, including requirements for beds, showers, toilets, lavatories, ventilation, lighting, maintenance, housekeeping, and extermination. Inmates shall be out of their cells for the maximum time available, not to be fewer than three (3) hours per day, except for inmates in disciplinary segregation or, in individual cases, at the discretion of the Administrator.

B. Personal Hygiene

Each inmate shall be issued necessary personal hygiene items including toilet paper, soap, shampoo, toothpaste, toothbrush, comb, mirror, individual razors, and shaving cream or powder, and shall have the opportunity to shower and access to feminine hygiene supplies, as provided by standards in the New Jersey Administrative Code 10A:31-12.7 to maintain personal hygiene.

III. SERVICES AND PROGRAMS

A. Recreation

1. Daily Recreation: All inmates in the ECCF shall have the opportunity to use a gymnasium or recreation area for a minimum of one hour each day, seven days per week.

2. Program Director: The County shall have a full-time Director of Recreation at the ECCF. The director shall be responsible for the design, implementation, and maintenance of the recreation schedule and recreation equipment. The Director shall have a college degree in physical education or equivalent year-for-year experience in physical education or instruction or management.

3. Staffing: The County shall hire or reassign sufficient staff to insure that inmates have access to the gymnasium or recreation areas of the ECCF for one hour a day.

4. Equipment: The County shall maintain a sufficient quantity of exercise equipment and supplies to provide a meaningful recreation program that ensures that inmates do not have to remain idle during their recreational period.

5. Repair of Non-Working Equipment: The County shall repair non-working equipment within 2 working days, and shall order any replacements within 5 working days for any equipment which cannot be repaired.

B. Visitation

The County shall operate visitation a minimum of five days per week, which shall include evening and weekend visiting hours. Each inmate shall have an opportunity for at least 30 minutes of visitation time each of three days per week. Children may visit during these times.

C. Law Library

The County shall maintain an electronic law library for use by ECCF inmates. The County

shall insure that one staff person is minimally trained in the use of law books and computers, including legal research software, and is assigned responsibility to update legal materials and assist inmates to find the material they seek. Law library practices otherwise shall be in accordance with the standards of the New Jersey Administrative Code.

D. Religious Services

1. Accommodation of Religious Observance: The County shall adopt procedures to accommodate the practice of religion within the ECCF, including, but not limited to, prayer in congregation and facilitation of individual counseling by members of a religious community, and other practices as allowed by N.J.AC. 10A:31-13.4 and 26.3.

2. Program Director: The County shall hire a Chaplain to provide or coordinate religious services for all religions represented in the ECCF population, as well as related religious education and programming, and to facilitate volunteers and donations. As necessary, the County shall provide a stipend for community leaders to meet any gap in volunteer services.

IV. FOOD SERVICE

A. Food Quality

The County shall provide meals that are nutritionally balanced, varied, and satisfactorily palatable. Food shall be stored, served, prepared, and distributed in a safe, healthful, nutritional and sanitary manner.

B. Dietician Review

A dietician or other qualified individual shall annually review the adequacy of food service, preparation, and storage practices. The dietician shall examine the food being served, including the temperatures at which food is served, and shall review relevant documents. The dietician shall meet with food service personnel, confer with medical staff when appropriate, and have the opportunity to meet with inmates to discuss issues concerning food service. The dietician shall determine whether meals, including special diets, provide a nutritionally balanced, varied, satisfactorily palatable and adequate diet for all inmates and whether food is stored, prepared and served in a safe, healthful, nutritional and sanitary manner. The dietician shall recommend corrective action if necessary.

V. BEDDING, LAUNDRY, AND CLOTHING

The County shall provide adequate amounts of bedding, towels, and properly-fitting clothing and ensure a method for regularly laundering these items as provided by standards in the New Jersey Administrative Code 10A:31-12.1-12.4.

VI. STAFFING

The County shall employ sufficient professional and support staff that in the professional opinion of the administrative head of the facility are needed to perform the administrative functions of the jail, including but not limited to, those functions relating to inmate safety, classification, timely inmate release and for an Internal Affairs Bureau.

VII. SANCTIONS

If the inmate population exceeds the maximum operational capacity at the ECCF, the County shall be sanctioned for each inmate housed in excess of the overall population cap or the housing unit cap. If the County fails to comply with or provide the services, programs or procedures required by this Agreement, the County shall be sanctioned for its continued non-compliance based on the number of inmates adversely affected on a daily basis by the noncompliance. Upon application by plaintiffs, the Special Masters shall determine whether the County has violated the provisions of this Order and, if so, the daily amount of sanctions to be imposed. The parties may request a hearing on the amount of sanction that the Special Masters recommend for violations of services, programs, or procedures.

VIII. JURISDICTION, ACCESS, MONITORING AND DISMISSAL

A. Jurisdiction

The Court shall retain jurisdiction to enforce or interpret this Agreement and shall resolve disputes using as guidance its standards and requirements.

B. Access to Relevant Documents

Upon reasonable notice, plaintiffs' counsel or professional consultants shall have reasonable access to the ECCF and all relevant records in order to ensure compliance with this Agreement.

C. Monitoring and Assessment of Compliance

Within 90 days of the signing of this Order, Plaintiffs' counsel and the County shall meet to review the areas of the Order where the County has achieved and not achieved compliance, at which time the County shall report corrective action to be implemented, along with a schedule to achieve compliance. The County may submit to Plaintiffs Counsel and the Special Masters a certification on each requirement in this Agreement with which it has reached substantial compliance based on personal knowledge or documentation evidencing fulfillment of the identified requirement. Plaintiffs may submit opposing certifications. Within six months of this Order, the parties shall submit to the Special Master their individual assessment of whether substantial compliance has been achieved with the Order and whether final dismissal of this action is warranted. The Special Masters shall provide the Court with their report and recommendation thereafter based on the submissions of the parties or, if necessary, based on testimony if requested by any party.

D. Termination of Order

1. Dismissal After Six Months of Substantial Compliance: Defendants may be dismissed from portions or the entirety of this Order if the defendants achieve and maintain substantial compliance continually for a period of six months and adopt policies and procedures to prevent reoccurrence of non-compliance.

2. Proceedings: Applications for partial or complete dismissal may be made at any time, supported by certifications based on personal knowledge or documentation. Certifications establishing fulfillment of a requirement shall be presumed factually accurate, unless Plaintiff's

counsel presents opposing certifications based on plaintiff class members' personal or direct knowledge or documentation to be rebut the application. Plaintiffs shall have 30 days from any application for dismissal to file a response.

3. Compliance Presumptions: The County shall be presumed to have achieved substantial compliance with the MCO when it attains accreditation for its health care facility and practices from the NCCHC. The County shall be presumed to have achieved substantial compliance with the overcrowding remedies and capacity requirements of this Order when it has maintained the population at the ECCF and other facilities or programs in which Essex County inmates are detained under operational capacity of each facility or program for six months. Upon an application by the County for Dismissal or Termination of this Order, the County defendants shall have the burden of showing the requisite conditions have been achieved or met, and may use studies or reports prepared by the NCCHC, ACA or NIC for that purpose.

4. Access to Relevant Documents for Additional Six Months: For six months after the ultimate dismissal of this action, plaintiffs' counsel shall continue to have the right of access to plaintiff class members, individually or in representative groups, or documentation provided for in this Order, for the purpose of monitoring ongoing compliance with the standards set forth in this Order that may be related to the resumption of conditions or practices implicating violations of plaintiffs' constitutional rights.

The undersigned hereby consent to the form and entry of this Order:

Yvonne Smith Segars, New Jersey Public Defender
Attorney for Plaintiffs

Date: _____ By: _____
T. Gary Mitchell, Deputy Public Defender
Inmate Advocacy Project, New Jersey Public Defender

Date: _____ By: _____
Harry Del Plato, County Counsel
Attorney for Essex County Defendants

IT IS ON THIS _____ DAY, OF _____ 2006, SO ORDERED:

_____
Harold A. Ackerman, U.S.D.J.