

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

HAYES WILLIAMS, et al.)
Plaintiffs,)
)
v.) Civ. No. 71-98-B
)
JOHN McKEITHEN, et al.)
Defendants,)
)
UNITED STATES OF AMERICA,)
Amicus Curiae.)
)
IN RE: JUVENILE FACILITIES) Civ. No. CH 97-MS-001-B
)
IN RE: TALLULAH CORRECTIONAL) Civ. No. CH 97-0665-B-M1
CENTER FOR YOUTH)
)
IN RE: JETSON CORRECTIONAL) Civ. No. CH 97-0666-B-M1
CENTER FOR YOUTH)
)
IN RE: SWANSON CORRECTIONAL) Civ. No. CH 97-0667-B-M1
CENTER FOR YOUTH)
)
IN RE: LOUISIANA TRAINING) Civ. No. CH 97-0668-B-M1
INSTITUTE - BRIDGE CITY)
)
IN RE: JENA JUVENILE JUSTICE) Civ. No. CH 98-0804-B-M1
CENTER)
)
_____)
BRIAN B., et al.)
Plaintiffs,) Civ. No. 98-886-B-M1
)
v.)
)
RICHARD STALDER, et al.,)
Defendants.)
_____)

THE UNITED STATES OF AMERICA,)	Civ. No. 98-947-B-1
Plaintiff,)	
)	
v.)	
)	
THE STATE OF LOUISIANA,)	
<u>et al.</u> ,)	
Defendants.)	
_____)	
A.A., <u>et al.</u> ,)	
Plaintiffs,)	Civ. No. 00-246-C-M1
)	
v.)	
)	
WACKENHUT CORRECTIONS CORP.,)	
<u>et al.</u> ,)	
Defendants.)	
_____)	

2003 Settlement Agreement

On November 1, 1999, the United States Department of Justice (hereinafter "DOJ"), the private plaintiffs, and the State of Louisiana (hereinafter "the State") signed an agreement resolving all claims regarding the provision of educational services at Louisiana's juvenile correctional facilities (hereinafter "the Education Agreement"). On August 31, 2000, the DOJ, the private plaintiffs, and the State signed a second agreement resolving the DOJ and private plaintiffs' claims regarding juvenile justice issues, and medical, dental, mental health, and rehabilitation services, and the private plaintiffs' claim regarding access to courts (hereinafter "the Juvenile Justice Agreement").

The parties agree that, based on their own assessments and the assessments of their experts, the State is in substantial compliance with the Education Agreement. The parties also agree that, based on their own assessments and the assessments of their experts, the State is in substantial compliance with many provisions in the Juvenile Justice Agreement. The DOJ and the private plaintiffs contend, however, that the State is not in substantial compliance with some important provisions in the Juvenile Justice Agreement.

In recognition of the State's substantial compliance with the Education Agreement and with many provisions of the Juvenile Justice Agreement, and in consideration of (1) the State's agreement to modify certain provisions of the Juvenile Justice Agreement; (2) the State's agreement to continue to implement policies and procedures that are substantially similar to the Education Agreement and the portions of Juvenile Justice Agreement that will be terminated; and (3) the State's agreement to continue to employ a State Director of Education to oversee the educational programs at the facilities, the parties agree to the following:

1. The parties agree to terminate the Education Agreement and shall jointly move the Court to dismiss with prejudice all claims regarding the provision of educational services at Louisiana's juvenile correctional facilities. [Note: Subject to an acceptable status report on purchases of vocational education materials].

2. The parties agree to terminate the Juvenile Justice Agreement, provided, however, that certain paragraphs of that agreement are incorporated into this Agreement and shall remain in effect until termination of this Agreement.

3. With regard to the juvenile justice provisions of the Juvenile Justice Agreement (paragraphs 20 - 75), the parties agree that the State is in substantial compliance with paragraphs 21, 22, 23, 29 (except the last sentence), 31, 37, 39, 40, 41, 42, 43, 49 (except the second to last sentence), 61, 62, 63, 64, 65, 66, 67, 68, 70, 71, 72, and 75. The parties agree that these paragraphs, or portions of paragraphs, are terminated and are not incorporated into this Agreement. The parties agree that the following juvenile justice provisions in the Juvenile Justice Agreement are incorporated into this Agreement and shall remain in effect until termination of this Agreement: 20, 24, 25, 26, 27, 28, 29 (the last sentence only), 30, 32, 33, 34, 35, 36, 38, 44, 45, 46, 47, 48, 49 (the second to last sentence only), 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 69, 73, and 74.

4. With regard to the medical, dental, and mental health provisions of the Juvenile Justice Agreement (paragraphs 76 - 116), the parties agree to terminate all paragraphs that apply to services provided by Louisiana State University Health Sciences Center ("LSUHSC") at Jetson Correctional Center for Youth ("JCCY") and Bridge City Correctional Center for Youth ("BCCCY") except paragraphs 76 (as discussed in the last sentence of this paragraph), 80 (a - i and k - n), 101, 103, and 111. The parties agree that the Department of Public Safety and Corrections' ("DPSC") responsibilities in paragraphs 87, 90, 101, 103, 108, 109, 110, 111, 112, 113, 114, 115, and 116 are incorporated into this Agreement and shall remain in effect until termination of this Agreement. The parties agree that paragraphs 76 - 116 of the Juvenile Justice Agreement, as they pertain to Swanson Correctional Center for Youth - Monroe ("SCCY-Monroe") and Swanson Correctional Center for Youth - Madison Parish Unit ("SCCY-Madison"), are incorporated into this Agreement and shall remain in effect until termination of this Agreement. In addition, the parties agree to modify paragraph 76 to indicate that the State shall maintain its contractual relationship with LSUHSC during the life of this Agreement, provided that this shall not be interpreted to expand any contractual obligations of LSUHSC.

5. With regard to the quality assurance provisions of the Juvenile Justice Agreement (paragraphs 117 - 121), the parties agree to terminate paragraph 121. All other quality assurance provisions of the Juvenile Justice Agreement are incorporated into this Agreement and shall remain in effect until termination of this Agreement.

6. With regard to the compliance and monitoring provisions of the Juvenile Justice Agreement (paragraphs 122 - 141), the parties agree to terminate paragraphs 122, 123, 127, 130, 132, 133, 134, 135 (1, 2, 3, 6, 7, 8) , and 138. Paragraphs 124, 125, 126, 128, 129, 131, 135 (4, 5), 139, and 140 are incorporated into this Agreement and shall remain in effect until termination is accomplished according to the terms of this Agreement. During the life of this agreement, the DOJ's Special Litigation Section of the Civil Rights Division and private plaintiffs agree that they will not seek authority for tours, inspections, or on-site monitoring of conditions at any of the secure facilities except as authorized by this Agreement. For purposes of monitoring this Agreement, the plaintiffs agree

to incorporate paragraphs 136, 137 and 141 into this Agreement with the following limitations:

A. The DOJ and private plaintiffs agree to limit their requests for review of documents for inspection and copying to no more than once per quarter at each institution. In addition, DOJ and private plaintiffs agree to review PZT reports at DPSC headquarters. The parties agree that DOJ, Nordyke & Denlinger, and Juvenile Justice Project of Louisiana ("JJPL") each shall receive 1000 copies at no charge over the life of this agreement and that any copies over that amount shall be billed at \$.25 a page;

B. Private plaintiffs agree to provide notice of requests to visit juveniles, who telephone and request a visit or who are identified by the facility in a "Nordyke Report," 48 hours in advance of any visit. In addition, once per quarter per institution, private plaintiffs may visit juveniles and review juveniles' files for five days per institution. Any documents requested during these visits shall be done so in writing and private plaintiffs will work with the facility to list the documents requested contemporaneously with the request.

C. Nothing in this paragraph shall be construed to limit counsel for individual juveniles to conduct legal visits.

7. With regard to the jurisdictional provisions and definitions in the Juvenile Justice Agreement (paragraphs 1 - 19), the parties agree to terminate paragraphs 5(c) (as it pertains to the appointment of John Whitley as the Court Expert only), 7, 8, and 9(b). Paragraph 18 of the Juvenile Justice Agreement shall be amended to read as follows:

A. The term "reportable injury" means any injury that threatens a juvenile's life or limb, or that requires urgent treatment by a doctor, or severely restricts the juvenile's usual activities, or requires followup by a doctor. Whenever the medical staff at any of the juvenile correctional facilities has cause to believe that there has been neglect, abuse, excessive use of force, use of any type of chemical restraint, or any sexual abuse or sexual activity between at least two people one of whom

is a juvenile, then the medical staff will notify PZT. The medical staff at each juvenile correctional facility will also notify PZT of any reportable injury. In addition, the medical staff will make a written record of the date and time that they made the referral to PZT required by this subparagraph. All such records of referrals will be kept in one location at each facility.

Paragraphs 25, 26 and 29 of the Juvenile Justice Agreement shall be amended to substitute "reportable injury" for "serious injury". The parties also agree to eliminate the phrase "the Secretary of the Department of Health and Hospitals and all Departments and Agencies of the State of Louisiana," in paragraph 19. All other jurisdictional provisions and definitions are incorporated into this Agreement and shall remain in effect until termination of this Agreement.

8. The State, with technical assistance from the Independent Expert, will develop and implement additional structured programming at each facility after school, in the evenings, and on the weekends. The structured programming shall be designed to support rehabilitation and reduce violence.

9. In an effort to enhance the quality and consistency of the youth's education and treatment at the facilities, the State will not, unless required by exigent circumstances, transfer youth from one facility to another once the initial placement has been made by the Juvenile Reception and Diagnostic Center ("JRDC") unless an interdisciplinary team meets to consider whether the youth's treatment, rehabilitation, and education, taken as a whole, would be better served at another facility. For purposes of this paragraph, the State shall form an interdisciplinary team, with advice and input from the Independent Expert, that may consist of a correctional officer from the youth's most recent dorm, one of the youth's current teachers (if the youth is in school), the youth's current caseworker, and the youth's mental health treatment provider (if applicable). When a youth is transferred, the State shall explain the reasons for the transfer and provide documentation in the youth's file. For purposes of this paragraph, exigent circumstances exist when there is a substantial threat to the safety of the juvenile, or others, or the security of the institution and

there is no time, as a practical matter, to convene an interdisciplinary team meeting.

10. In an effort to protect youth from harm and ensure that youth are receiving needed mental health services:

A. The State will not, unless required by exigent circumstances, house on Unit II at SCCY-Madison youth who are seriously mentally ill or have an IQ below 70; and

B. The State will not, unless required by exigent circumstances, transfer to Unit II at SCCY-Madison youth who are currently assigned to BCCCY or the short-term program at SCCY-Madison unless the juvenile is first evaluated by LSUHSC mental health staff at BCCCY, or the juvenile is transferred to JRDC for evaluation.

C. Ninety days after signing this Agreement, the State will house no more than 128 youth on Unit II at SCCY-Madison, including any youth from Unit I temporarily housed on Unit II, but not including youth housed in the infirmary.

D. For purposes of this paragraph, exigent circumstances exist when there is a substantial threat to the safety of the juvenile, or others, or the security of the institution and there is no time, as a practical matter, to convene an interdisciplinary team meeting.

E. If a youth in subparagraph (A) or (B) is sent to Unit II at SCCY-Madison because of exigent circumstances, the State shall include documentation of the exigent circumstances in the youth's file.

F. The limitations in subparagraphs (A), (B), and (C) can be modified only if (1) the purpose and use of one or more buildings on Unit II at SCCY-Madison changes substantially from its current maximum custody utilization, (2) the new purpose and use of one or more buildings on Unit II is shared, in writing, with the Independent Expert, DOJ and the private plaintiffs, and (3) the State consults with and receives input from the Independent Expert prior to implementing the new purpose and use of one or more of the buildings on Unit II. If the purpose and use for one or more buildings on Unit II

changes substantially, then the limitations in subparagraphs (A) and (B) cease to apply to those buildings only.

11. Within 45 days of signing this Agreement, the State shall reduce the population at SCCY-Madison to 245, and within 90 days of signing this Agreement, the State shall reduce the population at SCCY-Madison to 225. In addition, for as long as SCCY-Madison remains open, the State will:

A. continue to operate the LITE program on Unit I, unless the State (1) develops a plan, in writing, and provides a copy of the plan to the Independent Expert, DOJ, and the private plaintiffs, and (2) the State consults with and receives input from the Independent Expert prior to implementing the plan; and

B. within 90 days of signing the Agreement, the State shall (1) develop a plan for the future use of Unit II, (2) provide a copy of the written plan to the Independent Expert, DOJ, and the private plaintiffs, and (3) consult with and receive input from the Independent Expert prior to implementing the plan and any subsequent changes to the plan for Unit II. The State's plan for the future use of Unit II will include dates and deadlines for its implementation and completion and the State will adhere to those deadlines.

12. In order to further implement the paragraphs of the Juvenile Justice Agreement concerning the case management system (i.e., paragraphs 55, 56, 57, 80(n), 87, 90, 108, 110, 111, 112, 113, and 115), the State, with technical assistance from the Independent Expert, will:

A. establish and implement policies and procedures that will make it the regular and routine practice for each youth to work with one caseworker during his or her time at a correctional facility;

B. make it the regular and routine practice for caseworkers to have an individual counseling session with a youth promptly when one of the following events occur: (1) the youth is in danger of having his custody level increased due to an increased number of disciplinary tickets; (2) the court denies the youth early release; (3) the facility either removes the youth from the short-term program or extends his time in the short-term program;

or (4) the facility decides not to recommend the youth for early release even though he or she has maintained a minimum custody level for two consecutive quarters. The counseling session will be designed to help the youth develop concrete strategies for dealing with the problems (e.g., strategies for avoiding future tickets, strategies for completing the short-term program, strategies for obtaining a recommendation for early release). In addition, the caseworker will record notes from the counseling session in the youth's file. This counseling session does not replace or substitute the youth's regular, individual counseling session with the caseworker. The caseworker will be encouraged to share relevant information learned in these sessions with the interdisciplinary team during the youth's quarterly staffing and the team will decide whether the youth's individualized intervention plan ("IIP") needs to be modified to include additional programming or rehabilitative services;

C. establish and implement policies and procedures ensuring that the Office of Youth Development ("OYD") employees coordinate their efforts to ensure that motions, or letters if they are sufficient for that court, to modify youths' dispositions to less secure settings are timely filed with the court; and

D. continue to work with Dr. James Austin to identify youth deemed inappropriate for secure care and work with relevant State officials, including providing notification to the Louisiana Indigent Defense Assistance Board ("LIDAB"), to obtain a modification of disposition from the court for these youth.

13. The State will continue to improve access to courts provided to all incarcerated youth. To that end, the State will:

A. provide two attorneys to support and help develop access to the courts for youth. To that end, the parties agree that their principle responsibilities will be:

i. to monitor and support modifications of dispositions of those juveniles identified by the State as appropriate for modification and direct that information to the youth's attorney;

ii. notify the LIDAB when a youth seeks to retain counsel and the youth either never had an attorney or the youth's attorney no longer represents him/her; and

iii. train caseworkers and other facility staff to encourage juveniles to use the administrative remedies when the youth have a complaint.

B. amend DPSC policies and procedures regarding access to courts. To that end, the State will permit youth to visit and communicate confidentially with attorneys and place attorney's phone numbers on their approved telephone lists without parental consent. In addition, the State will adopt policies and procedures to recognize an attorney-client relationship without parental consent. Under these policies and procedures, the DPSC will recognize an attorney-client relationship without parental consent ten days after:

i. the DPSC has received a copy of the juvenile's written request for representation and a copy of the juvenile's written request that the attorney have access to documents from the juvenile's record (taking into account the limitations described below);

ii. the DPSC has received (a) a copy of a letter notifying the juvenile's parent or guardian that juvenile has requested representation and that the parent or guardian should notify DPSC or the court if they have any objection, and (b) "proof of mailing" from the post office verifying that this letter has been sent to the parent or guardian; and

iii. the attorney has provided a statement that he or she has made efforts to contact the parent or guardian.

The DPSC will recognize an attorney-client relationship ten days after receipt of these documents unless the DPSC or the parent or guardian has submitted an objection to the representation. The State agrees to provide access to the youth's education records if the attorney obtains parental consent from the youth's parent or guardian.

14. The juvenile administrative remedy procedure ("ARP") system at each facility will include, at a minimum, the following:

A. reasonable access to ARP forms and reasonable access to file ARP forms. The forms and a mechanism for filing the forms should be readily available in every dorm, school, and cafeteria;

B. assistance and/or accommodations for youth who, for any reason, are unable to file a timely written ARP;

C. a timely written response to the ARP that addresses the issue or concern raised in the ARP;

D. a mechanism to file an appeal in a timely manner to the Assistant Secretary. The Assistant Secretary or his designee will provide a timely written response; and

E. education about the purpose of the ARP system and the procedure for filing and appealing a ARP.

15. In an effort to clarify provisions in the Juvenile Justice Agreement regarding the PZT investigation system and to improve the quality of the PZT investigations, the State agrees to the following:

A. The lead investigator at each facility must have investigative experience outside of the Louisiana juvenile correctional system prior to being hired as a PZT investigator and must not have worked as a correctional officer at the institution at which the investigator will be working;

B. In Paragraph 32 of the Juvenile Justice Agreement, which requires the State to create a Multiple Allegation Database ("MAD") which tracks allegations of "abuse" and "misconduct," the term "misconduct" includes, at a minimum, any violation of Rule #10 (Entitled "Falsifying Documents or Making False Statements") in the Employee Rulebook that DPSC used in December 2002;

C. All current investigators must receive training to help improve their investigative techniques, standardize the PZT report writing format, and better

understand the standards they are required to apply. The training will be provided in consultation with the Independent Expert. The training will take into account the suggestions and comments of the two former auditors, Dale Dangremond and Terry Kincaid;

D. The PZT system will establish and implement a comprehensive training program, with technical assistance from the Independent Expert, that all current investigators will be required to complete by April 1, 2003. All new investigators hired during the life of this Agreement will be required to complete the training program within three months of being hired. New investigators who have not completed the training program shall only be assigned to investigations where they work under the close supervision of the lead investigator and shall not have the authority to conduct PZT investigations independently;

E. The State will address management problems that are uncovered during the course of a PZT investigation (e.g., inadequate staffing, contraband, location of fights or abuse, etc.);

F. The State will review and correct the disposition and sanction of any disciplinary ticket to ensure that it is consistent with the facts and findings of any related substantiated PZT investigation;

G. The State will inform, in writing, every youth who files a PZT complaint against a staff member of the outcome of the investigation. In addition, the State will notify the youth's parent or guardian in writing when their child is the victim listed on a substantiated case of staff-on-juvenile abuse; and

H. Concurrent with the release of the second quarterly report, the Independent Expert will identify, in a confidential letter to the parties, the names of PZT investigators, if any, who, despite efforts to train, are not producing adequate investigations on a regular basis. The Independent Expert's findings must be supported by examples of inadequate work product. The State agrees to take appropriate action such as reassigning the individuals to other non-investigatory positions.

16. Not later than February 1, 2003, DPSC shall assume responsibility for (1) hiring all PZT investigators,

(2) providing adequate initial and ongoing training for all PZT investigators, and (3) supervising, reviewing, and ensuring the quality of all PZT investigations. In making hiring decisions, preference will be given to applicants who have experience as an investigator prior to being hired as a PZT investigator. In addition, the State, after consultation and input from the Independent Expert, will develop and implement criteria for hiring PZT investigators and supervisors. The individual facilities and wardens are relieved of the responsibility of supervising PZT investigations. However, the wardens at each facility must still review PZT investigations that substantiate abuse or misconduct. The wardens at each facility must impose appropriate discipline for any substantiated abuse or misconduct. OYD must review the discipline that the wardens impose and ensure that the discipline is appropriate given the nature and severity of the abuse or misconduct.

17. In order to provide adequate and appropriate services for youth who have been identified in the LSUHSC assessment as (1) youth with IQs below 70; (2) victims of sexual abuse for whom LSUHSC has recommended treatment for sexual abuse; (3) youth adjudicated to secure care as a result of the commission of a sexual offense or youth currently diagnosed with a sexual disorder; and (4) youth currently diagnosed with a substance abuse disorder or substance dependency disorder, the State will, in consultation with LSUHSC, do the following:

A. design and implement individualized treatment plans for each youth covered in this paragraph;

B. provide appropriate programming for youth with an IQ below 70;

C. provide training to DPSC employees to implement the individualized treatment plans and programming effectively; and

D. provide continuing quality assurance to ensure that the treatment and programming is implemented properly and is achieving the desired outcomes.

18. In an effort to clarify paragraph 48 of the Juvenile Justice Agreement regarding the use of force, the parties agree to the following:

A. Paragraph 48(d) of the Juvenile Justice Agreement delineates the limited situations in which a staff member may use force; and

B. When a staff member uses force under paragraph 48(d), the use of force must be reasonable under the circumstances and comply with the other applicable requirements in paragraph 48.

19. A nationally recognized expert in juvenile corrections will serve as the Independent Expert. The Independent Expert will:

A. provide on-site technical assistance, and report on compliance with the remaining provisions of the Juvenile Justice Agreement and the terms of this Agreement;

B. hire qualified assistants with relevant and appropriate expertise - as determined by the Independent Expert;

C. issue written reports on a quarterly basis. The first report will cover the period ending on March 31, 2003 and will be issued by April 30, 2003. These reports will explain, in detail, the status of the State's compliance with the terms of this Agreement;

D. hold quarterly conferences with the parties so that the parties can discuss the Independent Expert's quarterly report.

20. In order to enable the Independent Expert to perform his duties, the parties agree that the Independent Expert and his staff will:

A. have reasonable access to all facilities, residents, staff, documents, videos, and any other materials that the Independent Expert needs to perform his duties.

B. be permitted to conduct confidential interviews with staff and residents at all facilities; and

C. be permitted to have ex parte communications with the parties.

21. The Independent Expert will evaluate the State's substantial compliance with this Agreement using three levels of compliance: primary compliance, secondary compliance, and operational compliance. The terms are defined as follows:

A. Primary compliance requires the creation of policies, procedures, rules, regulations, or directives to "comply" with the text of this Agreement;

B. Secondary compliance requires training, supervision, audit and inspection, and discipline to ensure that a specific policy is being implemented as designed; and

C. Operational compliance requires that the State has achieved both primary and secondary compliance, and that the State is following the directives in the day-to-day operations of the facilities.

22. The State's compliance with this agreement shall be monitored by one expert selected by the DOJ and one expert selected by the State (the "Juvenile Justice Experts"). The Juvenile Justice Experts shall conduct only one compliance tour of each of Louisiana's four secure juvenile facilities, and all such tours shall be conducted between October 1, 2003 and November 30, 2003. In addition, all reports shall be submitted by December 15, 2003. If necessary, the DOJ and private plaintiffs may spend four days at each facility. In all other respects, the Juvenile Justice compliance tours shall be conducted in accordance with guidelines set forth in paragraph 128 and 129 of the Juvenile Justice Agreement (except for the dates, which shall be controlled by this Agreement).

23. The State's compliance with this agreement shall be monitored by Dr. Trupin, Dr. McPherson, and Dr. Peck. The Drs. shall conduct only one compliance tour of each juvenile facility, and all such tours shall be conducted between October 1, 2003 and November 30, 2003. In addition, all reports shall be submitted by December 15, 2003. One attorney from DOJ, one attorney from the private plaintiffs, and one attorney from the State may accompany Drs. Trupin and McPherson on their tours. To the extent possible, mental health compliance tours and juvenile justice tours will not be conducted concurrently. In all

other respects, the medical/mental health tours shall be governed by guidelines set forth in paragraphs 124-126 of the Juvenile Justice Agreement.

24. If the private plaintiffs or DOJ believe that the State has failed to substantially comply with this agreement, then they shall so notify the State in writing. The parties shall conduct good faith negotiations to resolve the dispute and may agree in writing to adopt a plan of correction or otherwise modify or extend this agreement. If the parties are unable to reach agreement within thirty days of the date on which the private plaintiffs or DOJ informed the State of their allegations of noncompliance, then the private plaintiffs, acting collectively, or DOJ may file a motion with the court to reopen the lawsuits. Notwithstanding the foregoing, JJPL shall have the right to independently move to bifurcate and reopen only the Brian B. action between December 15, 2003 and January 4, 2004 if JJPL claims that the State is not in substantial compliance with the terms of this Agreement. The State shall respond to the motion within twenty days. If the court enters an order to reopen the lawsuits, then this agreement is terminable at the discretion of the State.

25. This Agreement shall, in any event, terminate and shall be of no further effect whatsoever after January 5, 2004, unless the private plaintiffs, acting collectively, or the DOJ has moved for an order reopening or reactivating the lawsuits prior to that date. Notwithstanding the foregoing, JJPL shall have the right to independently move to bifurcate and reopen only the Brian B. action between December 15, 2003 and January 4, 2004 if JJPL claims that the State is not in substantial compliance with the terms of this Agreement. The parties consent and agree to entry of a final judgment dismissing with prejudice the lawsuits at any time on or after January 5, 2004 unless the private plaintiffs or the DOJ has moved for an order reopening or reactivating the lawsuits prior to that date.

26. The parties agree that all references to the Court Expert in paragraphs that are incorporated into this Agreement shall be deleted.

27. This Agreement is effective between the DOJ and the State immediately upon execution. This Agreement

is effective between the private plaintiffs and the State once the Court approves the Agreement. Simultaneously with their signing of this Agreement, counsel for the State and counsel for the private plaintiffs shall file a joint motion for preliminary approval of the Agreement under Rule 23 of the Federal Rules of Civil Procedure, and for approval of class notice. If the Court does not approve the Agreement, the private plaintiffs shall have 20 days from the date they receive actual notice of the Court's decision to move for an order reopening and reactivating the lawsuits pursuant to paragraphs 132 and 138 of the Juvenile Justice Agreement. The requirement of prior good-faith negotiations contained in paragraph 138 shall not be a bar to any such motion. During the pendency of the Court's approval of the Agreement, the State and the private plaintiffs agree to comply with it.

FOR PRIVATE PLAINTIFFS

**FOR THE DEPARTMENT OF
JUSTICE**

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