

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CHARLIE AND NADINE H., et al.,

Hon. Stanley R. Chesler, U.S.D.J.

Plaintiffs,

Civ. Action No. 99-3678 (SRC)

v.

CHRISTOPHER J. CHRISTIE, as Governor of
the State of New Jersey, and ALLISON
BLAKE, as Commissioner of the New Jersey
Department of Children and Families,

Defendants.

**SUSTAINABILITY AND EXIT PLAN
(SECOND MODIFIED SETTLEMENT AGREEMENT)**

PREAMBLE

This Second Modified Settlement Agreement (hereinafter the “Agreement”) supersedes all previous agreements, oral and written, and resolves all disputes in the case captioned Charlie and Nadine H., et al., v. Christie, et al., Civil Action Number 99-3678 (SRC) (the “Action”) including, without limitation, the claims of the named plaintiffs and the plaintiff classes as of the dates of (1) the September 2, 2003 Settlement Agreement, (2) the December 1, 2005 Motion for Contempt and Noncompliance, and (3) the July 18, 2006 Modified Settlement Agreement.

The United States District Court for the District of New Jersey has subject-matter jurisdiction over the claims set forth in the Amended Complaint filed in the Action, personal jurisdiction over parties to the Action, and the authority to approve and enter this Agreement as a fair, reasonable, and adequate settlement of the Action. Unless otherwise noted, the terms of this Agreement will not take effect until the Court approves and enters the Agreement. Unless otherwise noted, the terms of this Agreement referred to as the Sustainability and Exit Plan, will not take effect until the Court approves and enters the Agreement.

The United States District Court for the District of New Jersey will have continuing jurisdiction to enforce the terms of this Agreement, and any documents incorporated herein, until such time as the parties agree to terminate this Agreement or the Court terminates this Agreement.

This Agreement is not, nor will it be construed to be, an admission of liability on the part of Defendants, or any of them, as to the truth of any fact alleged or the validity of any claim which has or could have been asserted in the Action, or of the deficiency of any defense which has or could have been asserted in the Action or of any wrongdoing or liability whatsoever, nor will this Agreement be construed as an acknowledgment by Plaintiffs of the absence of such liability.

As set forth above, it is the intent of the parties to this Agreement that the Court retain jurisdiction over this Agreement and that this Agreement will be enforceable by the Court as provided herein. It is also the intent of the parties that, notwithstanding the preceding sentence, the parties will apply their best efforts to effectuate the purposes of this Agreement and make every reasonable effort to resolve disputes prior to seeking court intervention. Plaintiffs agree not to seek relief for isolated or minor violations, nor for violations relating solely to an individual child, unless that child is a named plaintiff in this litigation.

Unless otherwise specifically stated in a provision of this Agreement, all provisions of this Agreement will be enforceable as provided herein and will apply to all children in custody, regardless of whether they are in a placement made by the State or by a contract agency, and regardless of the type of placement.

All references to “the State” within this Agreement refer to and specifically apply to the Defendants, the Governor of the State of New Jersey as supervisor of the Department of Children and Families (“DCF”), and the Commissioner of DCF, acting in their official capacities.

I. PRINCIPLES OF THE SUSTAINABILITY AND EXIT PLAN

The interpretation of the provisions of this Agreement will be guided by the following principles:

- A. Children in out-of-home care should be protected from harm.
 - 1. Foster care should be as temporary an arrangement as possible, with its goal being to provide to children in out-of-home placements a safe, nurturing, and permanent home quickly.
 - 2. If at all possible, children in out-of-home placements should be quickly and safely reunified with their biological families. If this cannot be accomplished, children need to be placed with an adoptive family, or in the permanent legal custody of an appropriate kinship family, in a timely fashion.
 - 3. Families should be provided with the services they need to keep them together whenever possible. Families should be provided with the services they need to allow for safe and speedy reunification whenever possible.
 - 4. In making determinations about plans and services, the child’s interests are paramount.
 - 5. Children in out-of-home placement should be in the least restrictive, most family-like setting appropriate for their needs.
 - 6. Children in out-of-home placement should be placed in settings that promote the continuity of critical relationships: together with their

siblings; with capable relatives whenever possible; and in their own communities.

7. Children in out-of-home placement should have stable placements that meet their needs, and should be protected from the harm caused by multiple placement moves.
 8. Children in out-of-home placement should have the services necessary to address their medical and psychological needs, including those services needed to address problems arising from the child's removal from his or her biological family.
 9. Children in out-of-home placement must have timely decision-making about where and with whom they will spend their childhood, and timely implementation of whatever decisions have been made.
 10. Children in out-of-home placement should be protected from abuse and neglect and, to this end, investigations of allegations of abuse and neglect in out-of-home placements should be timely, thorough and complete.
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11. Adolescents in out-of-home placements should be provided with the skills, opportunities, housing and permanent connections with caring adults they need to successfully make the transition to adulthood.
 12. The State shall make every effort to ensure that all children shall receive equal and appropriate access to services without regard to race, religion, sexual identity or ethnic origin.
- B. Decisions about children in out-of-home placement should be made with meaningful participation of their families and of the youth themselves to the extent they are able to participate.
 - C. In order to protect children and support families, New Jersey's child welfare system should operate in partnership with the neighborhoods and communities from which children enter care.
 - D. New Jersey's child welfare system should be accountable to the public; to other stakeholders; and to communities throughout the State.
 - E. Services to children in care and their families should be provided with respect for and understanding of their culture. No child or family should be denied a needed service or placement because of race, ethnicity, or special language needs.
 - F. New Jersey's child welfare system should have the infrastructure, resources, and policies needed to serve the best interests of the children in its care.

The list of principles outlined above is not intended to be exhaustive. Rather, the parties acknowledge that the shared goal of improving outcomes for children will require commitments to principles and outcome measures that are broader than the subject matter of this Action.

II. FOUNDATIONAL ELEMENTS

The Parties acknowledge that elements in this Section provide the foundation for a healthy child welfare system. At the Monitor's discretion, based on a concern that a foundational element has not been sustained, the Monitor may request additional data. If the data demonstrate a persistent problem, in the Monitor's discretion, the State will propose and implement corrective action. The elements in this category are enforceable if the Monitor determines that a foundational element has not been sustained.

A. DATA TRANSPARENCY

DCF will continue to maintain a case management information and data collection system that allows for the assessment, tracking, posting or web-based publishing, and utilization of key data indicators. The data indicators, including definitions and methodology will be developed in consultation and agreement with the Monitor. Published data will be made available on worker caseloads by worker type and office. DCF will ensure the accuracy of published data and will maintain its definitions and methodology. DCF will continue to collect and publish, at appropriate intervals determined in consultation with the Monitor, both process and outcome data related to the requirements of this Agreement.

B. CASE PRACTICE MODEL

DCF will continue to implement and sustain a Case Practice Model that is reflective of the principles of this Agreement and DCF's values. The model is a continuous set of activities that emphasizes quality investigation and assessment, including safety and risk assessment and risk reassessment, and engagement with youth and families; working with family teams; individualized planning and relevant services; continuous review and adaptation; and safe and sustained transition from DCF.

C. STATE CENTRAL REGISTRY OPERATIONS

Investigations of alleged child abuse and neglect shall be received by the field in a timely manner and investigation commenced within the required response time as identified at SCR but no later than 24 hours.

D. APPROPRIATE PLACEMENTS

When out-of-home placement is necessary, DCF will provide the most appropriate and least restrictive placements, allowing children to remain in their own communities, be placed with or maintain contact with siblings and relatives, and have their educational needs met. Children under age 13 shall not be placed in

shelters, and no child shall be placed out-of-state in a behavioral health facility without written approval of the Director of the Children's System of Care. The State shall maintain an adequate number and array of family-based placements to appropriately place children in family settings.

E. SERVICE ARRAY

DCF will provide comprehensive, culturally responsive services to address the identified needs of the children, youth, and families it serves. These services shall include but not be limited to services for: youth age 18-21, LGBTQI services, mental health and domestic violence services for birth parents whose families are involved with the child welfare system, and preventive home visitation programs. The State shall maintain an adequate statewide network of Family Success Centers.

F. MEDICAL AND BEHAVIORAL HEALTH SERVICES

The State will continue to provide medical care to children and youth including appropriate medical assessment and treatment, pre-placement and entry medical assessments under EPSDT guidelines, dental examinations, up to date immunizations, follow-up care and treatment and mental health assessment and treatment, where appropriate. The State will continue to provide behavioral health treatment in the least restrictive setting for children and youth.

G. TRAINING

DCF will maintain a comprehensive training program for child welfare staff and supervisors including specialized training for investigators and IAIU staff. The training shall minimally include: pre-service training covering such areas as the case practice model and permanency planning, including concurrent planning, and adoption and NJ SPIRIT training. Staff completing training shall demonstrate competency on required areas of training.

H. FLEXIBLE FUNDING

DCF will continue to make flexible funds available for use by workers in crafting individualized service plans for children, youth and families to meet the needs of children and families, to facilitate family preservation and reunification where appropriate, and to ensure that families are able to provide appropriate care for children and to avoid the disruption of otherwise stable and appropriate placements.

I. RESOURCE FAMILY CARE SUPPORT RATES

The State will continue to adjust the resource family care support rates to maintain them at the USDA estimates for the cost of raising a child for the following State fiscal year. The State will continue to adjust the Independent Living Stipend considering the USDA estimate rates for raising an adolescent, the

HUD Fair Market Value for average rent in New Jersey, and IRS estimates for monthly food and household expenses.

J. PERMANENCY

Consistent with the principles of this agreement, DCF will continue to strengthen and sustain appropriate permanency and adoption practices for the children and youth it serves, recognizing that DCF's permanency work begins at intake and is encompassing of the elements of the Case Practice Model.

K. ADOPTION PRACTICE

The process of freeing a child for adoption and seeking and securing an adoptive placement shall begin as soon as the child's permanency goal becomes adoption but no later than as required by federal law. The State will conduct 5- and 10-month placement reviews for children in custody. DCF shall commence the adoption process as soon as a diligent search process has been completed and has failed to identify the location of both parents or a suitable family placement. DCF shall develop a child specific recruitment plan for all children with a permanency goal of adoption needing the recruitment of an adoptive family.

III. TO BE MAINTAINED

This category will include all requirements within this Agreement for which the State has satisfied the outcomes and specified targets in this Agreement during at least the previous six-month period. If the State's performance for a review period falls below the designated outcomes and standards in this Agreement, the Monitor has discretion to advise the State, and the State will have the opportunity to propose corrective action. If the State's performance for a subsequent review period remains below the designated outcomes and standards in this Agreement, the Monitor will have the discretion to determine if the decline in performance is temporary, insubstantial and/or caused by reasonably unforeseen circumstances or that the State's corrective actions are sufficient to remedy the decline or to re-designate the standard as an "Outcome to be Achieved."

In reviewing the status of measures in the "To Be Maintained" category, the Monitor will first look to the data published by DCF. For any measures for which public data are not available and where necessary for verification, DCF will provide data to the Monitor so that the Monitor can verify performance and continued compliance with the standards in this Agreement for each review period. The Monitor shall have access to all information it deems necessary as provided in Section V. of this Agreement.

If either party objects to the Monitor's designation of a requirement into the "To Be Maintained" category, either party may trigger the dispute resolution process for re-designation of measures as described in Section VI, the Dispute Resolution section concerning re-designation of measures.

A. INVESTIGATIONS

1. 80% of IAIU investigations will be completed within 60 days.

B. CASELOADS

2. Supervisor/Worker Ratio: 95% of offices will have sufficient supervisory staff to maintain a 5 worker to 1 supervisor ratio.
3. IAIU Investigators: 95% of IAIU investigators will have (a) no more than 12 open cases, and (b) no more than eight new case assignments per month.
4. Permanency Workers (Local Offices): 95% of local offices will have average caseloads for permanency workers of (a) no more than 15 families, and (b) no more than 10 children in out-of-home care.
5. Permanency Workers: 95% of permanency workers will have (a) no more than 15 families, and (b) no more than 10 children in out-of-home care.

C. CASE PLANS

6. 95% of case plans for children and families will be reviewed and modified no less frequently than every six months.

D. DAsG STAFFING

7. The State will maintain adequate DAsG staff positions and keep positions filled.

E. CHILD HEALTH UNITS

8. The State will continue to maintain its network of child health units, adequately staffed by nurses in each local office.

F. VISITATION

9. Caseworker Contacts with Children – New Placement/Placement Change: 93% of children shall have at least twice-per-month face to face contact with their caseworker within the first two months of placement, with at least one contact in the placement.
10. Caseworker Contacts with Children in Placement: During the remainder of the placement, 93% of children shall have at least one caseworker visit per month, in the placement.

G. EDUCATION

11. Children will be enrolled in school and DCF will have taken appropriate actions to ensure that their educational needs are being met. 80% of cases will be rated acceptable as measured by the QR in stability (school) and learning and development. The Monitor, in consultation with the parties, shall determine the standards for school stability and quality learning and development.

H. MALTREATMENT

12. Abuse and Neglect of Children in Foster Care: No more than 0.49% of children will be victims of substantiated abuse or neglect by a resource parent or facility staff member.

IV. TO BE ACHIEVED

Measures in this category are those that remain to be achieved after execution of this Agreement. At the conclusion of each six-month monitoring period, the Monitor will determine whether DCF's performance during the monitoring period satisfies each measure. If it does, the Monitor will certify the measure as "To be Maintained"; if not, the Monitor will continue to designate the measure as "To be Achieved." In making that determination, the Monitor will have the discretion to determine that any variations in performance are insubstantial.

All measures in this category will be subject to monitoring pursuant to Section V of this Agreement. If plaintiffs or defendants object to the Monitor's designation of a measure, either party may trigger the dispute resolution process for re-designation of measures as described in Section VI, the Dispute Resolution section.

A. INVESTIGATIONS

13. Timeliness of Completion: 85% of all investigations of alleged child abuse and neglect shall be completed within 60 days. Cases with documented acceptable extensions in accordance with policy are considered compliant.
14. Timeliness of Completion: 95% of all investigations of alleged child abuse and neglect shall be completed within 90 days. Cases with documented acceptable extensions in accordance with policy are considered compliant.
15. Quality of Investigations: 85% of investigations shall meet the standards for quality investigations. The Monitor, in consultation with the parties, shall determine appropriate standards for quality investigations.

B. FAMILY TEAM MEETINGS

16. Initial FTM: 80% of children newly entering placement shall have a family team meeting before or within 45 days of placement.

17. Subsequent FTMs within 12 Months: 80% of children will have three additional FTMs within the first 12 months of the child coming into placement.
18. Subsequent FTMs after 12 Months – Reunification Goal: After the first 12 months of a child being in care, 90% of those with a goal of reunification will have at least three FTMs each year.
19. Subsequent FTMs after 12 Months – Other than Reunification Goal: After the first 12 months of a child being in care, for those children with a goal other than reunification, 90% shall have at least two FTMs each year.
20. Quality of Teaming: 75% of cases involving out-of-home placements that were assessed as part of the QR process will show evidence of both acceptable team formation and acceptable team functioning. The Monitor, in consultation with the parties, shall determine the standards for quality team formation and functioning.

C. NEEDS ASSESSMENT

21. The State shall regularly evaluate the need for additional placements and services to meet the needs of children in custody and their families, and to support intact families and prevent the need for out-of-home care. Such needs assessments shall be conducted on an annual, staggered basis that assures that every county is assessed at least once every three years. The State shall develop placements and services consistent with the findings of these needs assessments.

D. QUALITY OF CASE AND SERVICE PLANNING

22. Initial Case Plans: 95% of initial case plans for children and families shall be completed within 30 days.
23. Quality of Case Plans: 80% of case plans shall be rated acceptable as measured by the QR process. The Monitor, in consultation with the parties, shall determine the standards for quality case planning.

E. CASELOADS

24. Intake Workers (local offices): 95% of local offices will have average caseloads for intake workers of no more than 12 families and no more than eight new case assignments per month.
25. Intake Workers: 90% of individual intake workers shall have no more than 12 open cases and no more than eight new case assignments per month.

No intake worker with 12 or more open cases can be given more than two secondary assignments per month.

26. Adoption Workers (local offices): 95% of local offices will have average caseloads for adoption workers of no more than 12 adoptive families per worker.
27. Adoption Workers: 95% of individual adoption worker caseloads shall be no more than 12 adoptive families per worker.

F. VISITATION

28. Caseworker Contacts with Family When Goal is Reunification: 90% of families will have at least twice-per-month, face-to-face contact with their caseworker when the permanency goal is reunification.
29. Parent-Child Visits – weekly: 60% of children in custody with a return home goal will have an in-person visit with their parent(s) or other legally responsible family member at least weekly, excluding those situations where a court order prohibits or regulates visits or there is supervisory approval of a decision to cancel a visit because it is physically or psychologically harmful to a child.
30. Parent-Child Visits – bi-weekly: 85% of children in custody will have an in-person visit with their parent(s) or other legally responsible family member at least every other week, excluding those situations where a court order prohibits or regulates visits or there is supervisory approval of a decision to cancel a visit because it is physically or psychologically harmful to a child.
31. Child Visits with Siblings: 85% of children in custody who have siblings with whom they are not residing will visit those siblings at least monthly, excluding those situations where a court order prohibits or regulates visits or there is supervisory approval of a decision to cancel a visit because it is physically or psychologically harmful to a child.

G. PLACEMENT

32. Sibling Placements: At least 80% of siblings groups of two or three children entering custody will be placed together.
33. Sibling Placements of four or more children: All children will be placed with at least one other sibling 80% of the time.
34. Recruitment for Sibling Groups of Four or More: DCF will continue to recruit for resource homes capable of serving sibling groups of four or more.
35. Placement Stability, First 12 Months in Care: At least 84% of children entering out-of-home placement for the first time in a calendar year will have no more than one placement change during the 12 months following their date of entry.
36. Placement Stability, 13 – 24 Months in Care: At least 88% of these children will have no more than one placement change during the 13-24 month-following their date of entry.

H. MALTREATMENT

37. Repeat Maltreatment (In-home): No more than 7.2% of children who remain at home after a substantiation of abuse or neglect will have another substantiation within the next 12 months.
38. Maltreatment Post-Reunification: Of all children who enter foster care in a 12-month period for the first time who are discharged within 24 months to reunification or living with a relative(s), no more than 6.9% will be the victims of abuse or neglect within 12 months of their discharge.
39. Re-entry to Placement: Of all children who enter foster care in a 12 month period for the first time who are discharged within 12 months to reunification, living with a relative(s), or guardianship, no more than 9 percent will re-enter foster care within 12 months of their discharge.

I. TIMELY PERMANENCY

40. Permanency within 12 Months: Of all children who enter foster care in a 12-month period, at least 42% will be discharged to permanency (reunification, living with relatives, guardianship or adoption) within 12 months of entering foster care.
41. Permanency within 24 Months: Of all children who enter foster care in a 12-month period, at least 66% will be discharged to permanency

(reunification, living with relatives, guardianship or adoption) within 24 months of entering foster care.

42. Permanency within 36 Months: Of all children who enter foster care in a 12-month period, at least 80% will be discharged to permanency (reunification, living with relatives, guardianship or adoption) within 36 months of entering foster care).
43. Permanency within 48 Months: Of all children who enter foster care in a 12-month period, at least 86% will be discharged to permanency (reunification, living with relatives, guardianship or adoption) within 48 months of entering foster care.

J. SERVICES TO SUPPORT TRANSITION

44. 80% of cases will be rated acceptable for supporting transitions as measured by the QR. The Monitor, in consultation with the parties, shall determine the standards for quality support for transitions.

K. OLDER YOUTH

45. Independent Living Assessments: 90% of youths age 14 to 18 will have an Independent Living Assessment.
46. Quality of Case Planning and Services: 75% of youth aged 18 to 21 who have not achieved legal permanency shall receive acceptable quality case management and service planning.
47. Housing: 95% of youth exiting care without achieving permanency shall have housing.
48. Employment/Education: 90% of youth exiting care without achieving permanency shall be employed, enrolled in or have recently completed a training or an education program or there is documented evidence of consistent efforts to help the youth secure employment or training.

V. MONITORING

- A. The parties agree that the Center for the Study of Social Policy, under the direction of Judith Meltzer, shall be the Monitor of the State's compliance with the goals and principles of this Agreement.
- B. The Monitor's duties shall be to confirm independently the data reports and statistics provided pursuant to this Agreement, including: conduct independent case record and other qualitative reviews; review all plans and documents agreed to be developed and produced by the State pursuant to this Agreement; and report on the State's progress in implementing the terms of this Agreement and the

achievement of the improved outcomes set forth herein. Among the Monitor's responsibilities, the Monitor shall review whether case practice reflects the components of the Case Practice Model referred to throughout this Agreement.

- C. The Monitor shall prepare reports that will address these issues and be released periodically, but no less than every six months, unless the parties and the Monitor agree otherwise. To avoid duplication and to build capacity within the agency, the Monitor will look first to the State's data and data analysis. Accordingly, the State shall provide the Monitor with copies of all regular data reports respecting measures contained in this Agreement. The State also agrees to provide all data and reports requested by the Monitor, whether or not that data is already compiled for use on the State's website or in any of its web-based or other publications, respecting measures contained in this Agreement.
- D. Respecting measures contained in this Agreement, notwithstanding the existence of State data, data analysis, and reports, the Monitor will have the authority to prepare new reports on outcome measures and all other enforceable measures contained in this Agreement.
- E. ~~The State agrees to provide the Monitor with free access to all individuals within DCF and its Divisions, any successor agencies or divisions, and persons within the Executive Branch, as the Monitor chooses; to assist the Monitor in gaining free access to other stakeholders in the child welfare system (including but not limited to the staff of contract providers); and to provide the Monitor with free access to all documents and data the Monitor deems relevant to its work (including but not limited to documents and data from contract agencies). The Monitor agrees to respect the confidentiality of all information related to individually identifiable clients of the Department and its Divisions, subject to applicable law. The Monitor further agrees to respect the confidentiality of any documents that are in draft form or otherwise privileged, subject to applicable law.~~
- F. The reports of the Monitor shall be public documents, except that any individually identifiable information (as that term is understood under New Jersey law) and any other confidential information protected from disclosure by law, including without limitation any protected health information and/or individually identifiable health information (as those terms are understood under HIPAA) shall be redacted or otherwise removed from any public report. The Monitor shall have a sufficient, reasonable budget (the funding of which shall be the responsibility of the State), staff, and access to information, including access to State employees, that the Monitor deems necessary to fulfill his or her duties. Any such information received by the Monitor, unless already public, will not be made public without the State's prior written permission, except as incorporated into a public report of the Monitor.
- G. Plaintiffs shall have access, through the Monitor, to all information made available to the Monitor, and to all information related to ensuring compliance

with and enforcing this Agreement, subject to any confidentiality order(s) in effect in this case.

- H. The parties' intent is that the Monitor, in collaboration with the State, will develop a plan to transfer the primary monitoring function to DCF's Office of Performance Management and Accountability upon the termination of this Agreement, or at such earlier time as the parties may agree. The Monitor will work in collaboration with the State to build DCF's quality-assurance capacity and will reasonably ensure that monitoring is supportive of DCF's good-faith effort and need to absorb primary monitoring within DCF.
- I. The Monitor may periodically meet privately with the Court concerning issues related to this case, provided the parties are made aware of the occurrence of such a meeting.
- J. If at any point the Monitor can no longer serve, the parties shall agree on another Monitor, with input and recommendations from the outgoing Monitor.

VI. DISPUTE RESOLUTION

A. Dispute Resolution regarding Non-compliance

In the event that Plaintiffs believe that Defendants are not in substantial compliance with an enforceable provision of this Agreement:

1. Plaintiffs shall notify Defendants and the Monitor in writing of the compliance issue prior to seeking any judicial relief.
2. Within 10 calendar days of such notification, the State may respond in writing to Plaintiffs and the Monitor regarding the compliance issue raised and what actions, if any, it proposes to take with regard to the alleged issue of non-compliance.
3. Within 30 calendar days of the original notification, the parties shall meet with the Monitor, unless extended by agreement of the parties and the Monitor. The purpose of the meeting will be for the parties to engage in good-faith negotiations with the assistance of the Monitor to determine what, if any, actions are necessary to address the issues raised in the dispute. The parties shall engage in negotiations for a period not to exceed 30 calendar days, unless extended by mutual agreement of the parties and the Monitor.
4. At the conclusion of the dispute resolution, if the parties have not come to a resolution, the Monitor shall analyze the issues raised by Plaintiffs and the State's response and shall prepare and issue a written report with recommendations concerning the dispute. The Monitor's report shall be issued no later than 15 calendar days after the conclusion of dispute

resolution. The report shall be provided to the parties and the Court and shall be considered a public document.

5. If, at the conclusion of the dispute resolution process and following the receipt of the Monitor's report, Plaintiffs determine that judicial action is necessary, Plaintiffs may seek further relief from the Court.
6. If Plaintiffs believe that Defendants have violated this Agreement and the alleged violations have caused or are likely to cause immediate or irreparable harm to the well-being of children in the State's custody, they make seek judicial relief following an expedited dispute resolution process. Plaintiffs must provide Defendants and the Monitor with written notice with respect to any such harm, including documentation that Plaintiffs believe supports their decision to invoke the provisions of this paragraph. Defendants will respond to this notice, in writing, within 3 business days. The Parties and the Monitor will then engage in the mediation process outlined in sections 3 and 4 above, provided that the entire mediation process is completed within 10 business days of Defendants' response to Plaintiffs' notice, unless extended by mutual agreement of the parties and the Monitor.
7. In an action in federal court to remedy an alleged failure to comply with any terms of this Agreement, Plaintiffs shall have the burden to demonstrate that Defendants have failed to comply with the specific terms of the Agreement and that they are entitled to relief. Factors that may be considered by the Court, but are not dispositive, are:
 - a. Conclusions and findings in the independent monitoring reports;
 - b. Constraints, including legal constraints, upon Defendants' ability to comply;
 - c. The interests at stake; and
 - d. The progress that has been made towards achieving compliance with the specific terms in dispute.

B. Dispute Resolution regarding Re-designation of Measures

1. Concurrent with the Monitor's Report for each reporting period, the Monitor shall inform the parties of any measures that they will recommend to the Court be re-categorized as either an "Outcome to be Maintained" or an "Outcome to be Achieved."
2. If either party objects to the Monitor's designation of a measure as being categorized as either To Be Maintained or To Be Achieved, that party may invoke the dispute resolution procedure described in this section.
3. Within 10 calendar days of such notification, either party may provide written notification to the Monitor and to the other party that they disagree

- with a recommendation for categorization and provide their reasons for such disagreement.
4. Within 15 calendar days of the Monitor's receipt of written notification of objection from either party, the Monitor will engage in discussions with both parties to understand the nature of any objections and the evidence for accepting/disputing the Monitor's recommendation.
 5. Within 30 days of the Monitor's discussions with each party, the Monitor shall determine the category designation and provide both parties and the Court with a written statement of its decision and the evidence that supports it.
 6. The Monitor's decision shall be final and binding on the parties.
 7. Once a requirement has been included in the "Outcome to Be Maintained" category, it will remain in that category for the duration of court jurisdiction of this matter, unless the Monitor determines that the State's performance during the immediately preceding six-month period has fallen below the designated outcomes and standards in this Agreement. In making this determination, the Monitor shall have the discretion to determine whether the decline in performance is insubstantial, temporary and/or caused by reasonably unforeseen circumstances; or that the State's corrective action(s) are sufficient to remedy the decline; or to re-designate the measure as an "Outcome to Be Achieved."
 8. If the performance fails to meet the performance standard for a subsequent period, the Monitor shall determine whether to re-designate the performance measure as an "Outcome to Be Achieved." In making this determination, the Monitor shall have the discretion to determine whether the decline is insubstantial or caused by reasonably unforeseen circumstances and/or whether there is evidence that the State's actions to remedy the decline demonstrate sound implementation of sufficient corrective action(s), CQI efforts to examine the effectiveness of the corrective action and progress toward meeting the designated performance measure.

VII. TERMINATION AND EXIT

- A. Defendants may seek a ruling from the Court terminating the Court's jurisdiction over this Agreement based on Defendants demonstrating that they have achieved compliance with this Agreement for a continuous period of at least 12 months. A determination by the Monitor that all provisions are in the "To Be Maintained" category and have remained in that category for at least 12 months is *prima facie* evidence that this standard has been met.
- B. Defendants may not, however, seek such a ruling if there are any pending motions before the Court, if there are then in effect any orders based on

noncompliance with any enforceable provisions of this Agreement, or there are any notices of non-compliance or action plans still in effect pursuant to the dispute resolution section of this Agreement. If, in response to such an application by Defendants, Plaintiffs can show that Defendants have failed to satisfy their burden outlined above, the Court shall retain jurisdiction. If Plaintiffs can show continued Court jurisdiction is necessary to accomplish the purposes of this Agreement the Court may also retain jurisdiction.

- C. During the first six months following the Court's entry of an order terminating the Court's jurisdiction over this Agreement pursuant to section VII.A, the State shall continue to publish accountability data and make additional data available to the Monitor if the Monitor requests it to validate continued performance. If there is a serious, systemic decrease in Defendants' performance that is not temporary or insubstantial, Plaintiffs have the right to file a motion seeking to vacate the order and restore Court jurisdiction based on that change in performance.
- D. Neither party may argue that any change in the exit standard from the Settlement Agreement of September 2, 2003, or the Modified Settlement Agreement of July 18, 2006, is intended to reflect agreement that there has been a substantive change to the legal standard applicable to the termination or modification of this agreement when the Settlement Agreement was first executed.

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND HEREBY, the parties, by and through their duly authorized representatives, execute this Agreement, intending that it will become effective upon its approval and entry by the Court as provided herein.

DATED:

Christopher J. Christie, Governor of the State of New Jersey

Allison Blake, Commissioner for Defendants

Marcia Robinson Lowry, for Plaintiffs

IT IS SO ORDERED:

DATED: ^{November} 4, 2015

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