



U.S. Department of Justice

Civil Rights Division

*Assistant Attorney General
950 Pennsylvania Avenue, NW - RFK
Washington, DC 20530*

January 29, 2010

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

Re: Investigation of the Indianapolis Juvenile
Correctional Facility, Indianapolis, Indiana

Dear Governor Daniels:

I am writing to report the findings of the Civil Rights Division's investigation of conditions at the Indianapolis Juvenile Correctional Facility ("IJCF") in Indianapolis, Indiana. On January 28, 2008, we notified you of our intent to conduct an investigation of IJCF, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA") and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"). As we noted, both CRIPA and Section 14141 give the Department of Justice authority to seek a remedy for a pattern or practice of conduct that violates the constitutional or federal statutory rights of youths in juvenile justice institutions.

From April 22 to 25 and July 21 to 24, 2008, we conducted on-site inspections of IJCF. We were accompanied by expert consultants in mental health care, juvenile justice, sexual misconduct, and special education. We interviewed staff members, youth residents, mental health care providers, teachers, and administrators. Before, during, and after our visit, we reviewed an extensive number of documents, including policies and procedures, incident reports, youth detention records, mental health records, grievances from youth residents, unit logs, orientation materials, staff training materials, and school records. Consistent with our commitment to provide technical assistance and conduct a transparent investigation, at the conclusion of each of our tours, we conducted an exit conference

with facility and Indiana Department of Correction (“IDOC”) officials, during which our consultants conveyed their initial impressions and concerns.

At the outset, we commend the staff of IJCF for their helpful, courteous, and professional conduct throughout the course of the investigation. We also wish to express our appreciation for the cooperation of IDOC officials. We hope to continue to work with the State and IJCF officials in the same cooperative manner going forward.

Consistent with our statutory obligation under CRIPA, we now write to advise you formally of the findings of our investigation, the facts supporting them, and the minimum remedial steps that are necessary to remedy the deficiencies set forth below. 42 U.S.C. § 1997b(a). We have concluded that certain conditions and practices at IJCF violate the constitutional and federal statutory rights of its residents. In particular, we find that IJCF fails to provide its youth residents with adequate: (1) protection from harm; (2) mental health care; and (3) special education services. See Youngberg v. Romeo, 457 U.S. 307 (1982); Nelson v. Heyne, 491 F.2d 352 (7th Cir. 1974); Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400-1482.

I. BACKGROUND

A. Description of the Facility

IJCF is a maximum security juvenile facility located in Indianapolis, Indiana.¹ Until March 2008, the facility housed both boys and girls, and the average total population was approximately 270 youths. A few weeks prior to our April 2008 tour, however, the State transferred all boys out of IJCF. Accordingly, at the time of both of our tours, the facility housed only girls; the population was approximately 158 and the girls ranged in age from 13 to 19 years old. IJCF is the only IDOC juvenile facility that houses girls. Consequently, it also serves as IDOC’s intake and diagnostic facility for girls, and houses all girls committed to IDOC, regardless of age or offense.²

¹ In July 2009, the State announced plans to relocate the facility to Madison, Indiana, approximately two hours south of Indianapolis. This move occurred in early November 2009; all the girls in the State’s juvenile system are now housed at the Madison Juvenile Correctional Facility.

² IJCF is the most recent of several IDOC juvenile facilities into which we have opened investigations pursuant to CRIPA and Section 14141. In addition to IJCF, we have opened investigations of, and reached resolution regarding, the South Bend

The site upon which IJCF sits has served as a juvenile facility for many years; the physical plant, however, has changed over time. The entire IJCF campus is surrounded by a security fence. The campus comprises of an older section and a newer section, and the two areas are separated by a second security fence. Before the State moved the boys out of IJCF in March 2008, they were all housed in the newer section, and the girls were all housed in the older section. By the time of our tours, most of the girls had been moved into the newer section.

The living units in the newer section consist of single occupancy sleeping rooms that open into large day rooms. The sleeping rooms do not have plumbing. Instead, communal bathrooms are connected to the day rooms. The bathrooms have open windows to a toilet area, and the shower areas have no doors. The toilet and shower areas therefore are clearly visible from the staff duty station desk, which is located just outside the bathroom doorway and window.

The older section of the campus contains eight living units. At the time of our tours, only one of those living units was still in use. This living unit consists of double occupancy rooms and a day room. We were informed that the remaining seven living units in the older section either were undergoing or scheduled to undergo renovations.

During the course of our ongoing compliance monitoring at South Bend, the State has provided us with revised policies in some of the areas discussed below, including, for example, satisfactory policies in the areas of grievances and suicide prevention. We understand that these policies are intended to apply to all IDOC facilities, including IJCF. Our findings below are based on our on-site tours of IJCF in April and July 2008; we have not had an opportunity to evaluate whether, and to what extent, any revised policies are being implemented at IJCF. We understand that positive changes may be occurring at the facility based on the revised policies, and we look forward to evaluating their implementation in the future.

B. Legal Background

CRIPA gives the Department of Justice authority to investigate and take appropriate action to enforce the constitutional and federal statutory rights of

Juvenile Correctional Facility (“South Bend”), Plainfield Juvenile Correctional Facility (“Plainfield”), and Logansport Juvenile Intake/Diagnostic Facility (“Logansport”) (our Rule 41 settlement agreement with the State regarding South Bend is set to terminate on February 8, 2010). We also have opened an investigation of the Pendleton Juvenile Correctional Facility (“Pendleton”); our findings regarding Pendleton will be provided by separate letter.

juveniles in juvenile justice facilities. 42 U.S.C. § 1997. Section 14141 prohibits any governmental authority responsible for incarcerating juveniles from engaging in a pattern or practice of conduct that deprives those juveniles of constitutional or federal statutory rights. 42 U.S.C. § 14141. Section 14141 grants the Attorney General authority to file a civil action to eliminate any pattern or practice.

The Constitution requires states to provide reasonably safe conditions of confinement to individuals held in its institutional care in a non-penal context, like juveniles confined in a juvenile facility who have been adjudicated delinquent but not convicted of a crime. See Deshaney v. Winnebago County, 489 U.S. 189, 200 (1989) (“[W]hen the State . . . so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs – e.g., food, clothing, shelter, medical care, and reasonable safety – it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.”); Youngberg, 457 U.S. at 315-16 (recognizing that a person with mental retardation held in state custody has substantive due process rights under the Fourteenth Amendment, including the right to safe conditions of confinement); Bell v. Wolfish, 441 U.S. 520, 535-36 & n.16 (1979) (applying the Fourteenth Amendment standard to a facility for adult pre-trial detainees); K.H. ex rel. Murphy v. Morgan, 914 F.2d 846, 851 (7th Cir. 1990) (“Youngberg v. Romeo made clear . . . that the Constitution requires the responsible state officials to take steps to prevent children in state institutions from deteriorating physically or psychologically.”);³ Nelson, 491 F.2d at 357, 360 (recognizing that “the use of disciplinary beatings and tranquilizing drugs” violated juveniles’ Fourteenth Amendment right to protection from cruel and unusual punishment and Fourteenth Amendment right to rehabilitative treatment, including a “right to minimum acceptable standards of care and treatment”).⁴ The proper inquiry into whether the

³ K.H. also notes that the holding in Nelson “anticipated” Youngberg. K.H., 914 F.2d at 851.

⁴ The Seventh Circuit has not directly addressed the constitutional standards applicable to juveniles confined in state facilities. Where, as here, confined persons have not been formally convicted of a crime, the Fourteenth Amendment and its coordinate development in case law is generally the source of constitutional protections, although the protections of the Eighth Amendment may be incorporated where appropriate. See Bell, 441 U.S. at 535-36; Ingraham v. Wright, 430 U.S. 651, 669 n.37 (1977); Nelson, 491 F.2d at 357, 360 (applying both the Eighth Amendment and substantive elements of the Due Process Clause of the Fourteenth Amendment in determining the rights of juveniles in a medium security facility); see also Doe v. Strauss, No. 84C2315, 1986 WL 4108, at *4 (N.D. Ill. Mar. 28, 1986) (unreported) (“[W]hat we have here is a long elevated Fifth, Eighth and

constitutional rights of institutionalized juveniles have been violated focuses on whether conditions substantially depart from generally accepted professional judgment, practices, or standards. See Youngberg, 457 U.S. at 323.

In providing safe conditions, the State may not subject confined juveniles to undue restraint and its staff may not use excessive force. See Youngberg, 457 U.S. at 316; Nelson, 491 F.2d at 356 (holding that beating juveniles with a paddle violates their constitutional rights); see also Milonas v. Williams, 691 F.2d 931, 942-43 (10th Cir. 1982) (invalidating the use of undue physical force); Morales v. Turman, 364 F. Supp. 166, 173 (E.D. Tex. 1973) (issuing a preliminary injunction where the court found that juvenile facilities' widespread practice of beating, slapping, kicking, and otherwise abusing juveniles in the absence of exigent circumstances violated juveniles' rights). The State also must keep juveniles in its institutions reasonably safe from harm inflicted by third parties, including by other juveniles in the facility. See J.H. ex rel. Higgin v. Johnson, 346 F.3d 788, 791 (7th Cir. 2003) (“[C]hildren in state custody have a constitutional right not to be placed in a foster home where the state knows or suspects that the children may be subject to sexual or other abuse.”); B.H. v. Johnson, 715 F. Supp. 1387, 1395 (N.D. Ill. 1989) (“[A] child who is in the state’s custody has a substantive due process right to be free from unreasonable and unnecessary intrusions on both its physical and emotional well-being.”); see also K.H., 914 F.2d at 851.

When subjecting a confined juvenile to disciplinary procedures, the State must provide the accused juvenile with procedural due process, including an opportunity to present evidence in his or her defense. See Mary v. Ramsden, 635 F.2d 590, 599 (7th Cir. 1980) (holding that juveniles have a right to present evidence and call witnesses on their behalf in the context of a disciplinary proceeding); see also Gary H. v. Hegstrom, 831 F.2d 1430, 1433 (9th Cir. 1987) (“To the extent that the court ordered due process hearings prior to confinement in excess of 24 hours, . . . the decree was clearly within the power of a federal court to assure minimum constitutional standards taught by Youngberg.”); H.C. ex rel. Hewett v. Jarrard, 786 F.2d 1080, 1088 (11th Cir. 1986) (holding that procedural

Fourteenth Amendment right decisionally recognized in this state and many others. It protects juveniles when they are placed by state action in special custody, management and control because of their homeless, their delinquent conduct, and their unmonitored living. It is a right to care, management and therapy reasonably designed and calculated to effect rehabilitation, moral restoration and proper development.”). But see Viero v. Bufano, 925 F. Supp. 1374, 1381 n.15 (N.D. Ill. 1996) (stating summarily, in a footnote, that Eighth Amendment protections apply to juveniles in the context of a Section 1983 damages case where a juvenile in a facility committed suicide).

due process violations that result in solitary confinement for a juvenile can give rise to compensatory damages); Santana v. Collazo, 714 F.2d 1172, 1179 (1st Cir. 1983) (citing Youngberg and holding that juveniles in a juvenile facility, “who have not been convicted of crimes, have a due process interest in freedom from unnecessary bodily restraint which entitles them to closer scrutiny of their conditions of confinement than that accorded convicted criminals”). This right extends to proceedings determining whether a juvenile is to be subjected to disciplinary segregation. See Mary, 635 F.2d at 594. If used, throughout the duration of confinement, the segregation must be closely regulated; the choice to use segregation must be an informed one; the juvenile must be aware of the reason for the detention; the facility must demonstrate that segregation is in the juvenile’s best interest; the segregation must be subject to regular, periodic review by professionals; and the juvenile must be given reasonable access to peers and treatment staff, a reasonable amount of reading or recreational material, and opportunities for daily physical exercise. Nelson v. Heyne, 355 F. Supp. 451, 456 (N.D. Ind. 1972), aff’d, 491 F.2d 352 (7th Cir. 1974); see Youngberg, 457 U.S. at 322 (holding that the Due Process Clause includes the right to be free from unreasonable bodily restraint); see also Milonas, 691 F.2d at 942-43 (upholding an injunction limiting the use of isolation rooms in a juvenile facility where district court found that the facility permitted the rooms to be used unreasonably).

Additionally, both inmates and detained youths have a right to file grievances with the facility regarding their treatment, as well as a right not to be punished for using the grievance system. Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995); Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6th Cir. 1999); D.B. v. Tewksbury, 545 F. Supp. 896, 905 (D. Or. 1982); Morales, 364 F. Supp. at 175; see also Bounds v. Smith, 430 U.S. 817, 828 n.17 (1977) (“Our main concern here is protecting the ability of an inmate to prepare a petition or complaint.”); Walker v. Thompson, 288 F.3d 1005, 1009 (7th Cir. 2002) (holding that an inmate’s grievance is constitutionally protected speech and that a prison’s retaliation for filing the grievance is unconstitutional); Hasan v. U.S. Dep’t of Labor, 400 F.3d 1001, 1005 (7th Cir. 2005) (holding that, unless frivolous, prisoners’ grievances are entitled to First Amendment protection).

The State also is limited in the cross-gender supervision and searches it may conduct in its juvenile facilities. For example, in the context of adult prisons, although pat-down searches and occasional or inadvertent sightings of male inmates in their cells or showers by female staff do not violate the inmates’ right to privacy, observation that is “more intrusive (like a strip search, in the absence of an emergency) or a regular occurrence” does violate inmates’ right to privacy. Canedy v. Boardman, 16 F.3d 183, 185-86, 188 (7th Cir. 1994) (holding that a prison may not ignore a prisoner’s right to privacy and must accommodate that right where

reasonable);⁵ see also Henry v. Milwaukee County, 539 F.3d 573, 584-85 (7th Cir. 2008) (holding that sex is not a bona fide occupational qualification in a juvenile justice facility for the purposes of maintaining same-gender supervision during the nighttime shift, but leaving open the possibility that, in other circumstances, a juvenile facility could show that single-sex supervision is necessary for promoting the goals of rehabilitation, security, and privacy). In addition, although Title VII of the Civil Rights Act prohibits gender-based discrimination in the workplace, in particularized circumstances, “the goals of security, safety, privacy, and rehabilitation can justify gender-based assignments in female correctional facilities.” Everson v. Mich. Dep’t of Corrections, 391 F.3d 737, 750, 761 (6th Cir. 2004) (citing Torres v. Wis. Dep’t of Health & Soc. Svcs., 859 F.2d 1523, 1532 (7th Cir. 1988) (en banc)) (upholding the State’s considered decision that sex as a bona fide occupational qualification for female housing units in Michigan correctional facilities was necessary to address the sexual abuse of female inmates by male correctional officers but “emphasiz[ing] the limited nature of [the court’s] holding”).

It is well established that juveniles held by the state should enjoy at least the same protections as prisoners. See Nelson, 355 F. Supp. at 457 (noting, in the course of finding cruel and unusual treatment of juveniles, that “there is a legal distinction in the nature of treatment appropriate to a convicted felon and that accorded one adjudged a juvenile delinquent”); Belloti v. Baird, 443 U.S. 622, 634 (1979) (plurality opinion) (noting recognition of three reasons justifying the different treatment of juveniles: “the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing”); Schleiffer v. Meyers, 644 F.2d 656, 660 (7th Cir. 1981) (relying on Belloti to determine the rights of a minor in a custody dispute); Swansey v. Elrod, 386 F. Supp. 1138, 1143 (N.D. Ill. 1975) (“In effect, the Supreme Court has held that a juvenile is entitled to a higher standard of custodial care in return for a more limited set of rights during the adjudication process under the due process clause.”).

⁵ Compare Johnson v. Phelan, 69 F.3d 144, 145, 147 (7th Cir. 1995) (holding that the anonymous inspection of a male pretrial detainee by female guards did not violate the Constitution and characterizing Canedy as an Eighth Amendment case solely addressing tactile searches), with id. at 156 (Posner, J., dissenting) (noting that there was “no basis in the record” showing that prison officials had weighed accommodation in their decision-making), and Calhoun v. DeTella, 319 F.3d 936, 939-40 (7th Cir. 2003) (holding that allegations of direct cross-gender monitoring could state an Eighth Amendment claim because the allegations included a claim that the monitoring served no legitimate purpose).

Moreover, as to strip searches specifically, in the analogous school context, the Supreme Court has held that a search of a student in school must be justified in its inception and must be reasonably related in scope to the reason for the search. Safford v. Redding, 129 S. Ct. 2633, 2639 (2009); New Jersey v. T. L. O., 469 U.S. 325, 341-42 (1985). The Supreme Court places a strip search in “a category of its own” that requires specific suspicions of hiding evidence of wrongdoing in underwear or of danger, rather than mere knowledge that youth sometimes hide contraband in their underwear. Safford, 129 S. Ct. at 2643.

In addition to keeping juveniles safe from harm, the State must provide juveniles held in its facilities with rehabilitative treatment. Nelson, 491 F.2d at 359-60. Rehabilitative treatment, in turn, includes mental health services. See id. at 360 (noting that “the juvenile process has elements of both the criminal and mental health processes”); see also Youngberg, 457 U.S. at 323 n.30; K.H., 914 F.2d at 851; A.M. ex rel. J.M.K. v. Luzerne County Juvenile Det. Ctr., 372 F.3d 572, 585 n.3 (3d Cir. 2004). Like all services that the state provides to confined juveniles, mental health services may not depart substantially from generally accepted professional standards. See Youngberg, 457 U.S. at 323; In re Cole v. Fromm, 94 F.3d 254, 262 (7th Cir. 1996).

Facilities further must ensure that juveniles who pose a risk to themselves are adequately protected. See Youngberg, 457 U.S. at 315-16; K.H., 914 F.2d at 851; Myers v. County of Lake, 30 F.3d 847, 850 (7th Cir. 1994) (“Indiana requires institutions to use reasonable care to prevent their wards from committing suicide”); Dohilite v. Maughon ex rel. Videon, 74 F.3d 1027, 1042-43 (11th Cir. 1996) (applying to the juvenile context the rule that, “[w]here prison personnel directly responsible for inmate care have knowledge that an inmate has attempted, or even threatened, suicide, their failure to take steps to prevent that inmate from committing suicide can amount to deliberate indifference”).

Finally, as to special education services, students with disabilities have federal statutory rights to such services under the IDEA, 20 U.S.C. §§ 1400-1482. See Honig v. Doe, 484 U.S. 305, 310 (1988) (noting that the Education for All Handicapped Children Act, as amended by the IDEA, “confers upon disabled students an enforceable substantive right to public education in participating States”). The IDEA requires states that accept federal funds to provide educational services to all children with disabilities between the ages of 3 and 21, even if the children have been suspended or expelled from school. 20 U.S.C. § 1412(a)(1)(A). Accordingly, the State must provide such services to youths in juvenile justice facilities. See id. (conditioning funds on the availability of services to “all children with disabilities” (emphasis added)); 34 C.F.R. § 300.2(b)(1)(iv) (applying IDEA requirements to “all political subdivisions of the State that are involved in the education of children with disabilities, including . . . State and local juvenile and

adult correctional facilities”); see also Donnell C. v. Ill. State Bd. of Educ., 829 F. Supp. 1016, 1020 (N.D. Ill. 1993) (finding the IDEA applicable to “school-aged pretrial detainees” in county jail); Handberry v. Thompson, 92 F. Supp. 2d 244, 248 (S.D.N.Y. 2000) (“Just like the general entitlement to a free public education, the [IDEA] entitlement to special education services is not trumped by incarceration.”); Alexander S. ex rel. Bowers v. Boyd, 876 F. Supp. 773, 800 (D.S.C. 1995) (“The [IDEA] regulations make it clear that the reference to all programs includes state correctional facilities and that the requirements of the IDEA apply to such facilities.”). The IDEA also requires schools to have procedures for identifying and testing students with disabilities. 34 C.F.R. § 300.111(a)(1)(I).

Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794, similarly obligates the State to provide juveniles confined in its institutions with educational services. Section 504 requires that “[n]o otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Id. § 794(a).

II. FINDINGS

A. PROTECTION FROM HARM

The State must provide juveniles housed at IJCF with reasonably safe conditions of confinement. See Youngberg, 457 U.S. at 315-16; Bell, 441 U.S. at 535-36 & n.16; K.H., 914 F.2d at 851; Nelson, 491 F.2d at 360.

The State fails to keep the youths at IJCF safe from harm in a number of respects. Specifically, the State: (1) fails to protect youths from staff sexual abuse and misconduct; (2) fails to conduct adequate abuse and misconduct investigations; (3) fails to provide adequate staffing; (4) uses inappropriate and excessive force; (5) uses isolation excessively and without adequate due process; (6) fails to provide an adequate grievance system; (7) fails to provide adequate programming; and (8) fails to provide adequate access to toilets.

1. Staff Sexual Abuse and Misconduct

The State fails to adequately protect IJCF youths from staff sexual abuse and misconduct. In the three-week period prior to and during our April 2008 tour, the following serious incidents occurred:

- On April 18, 2008, an officer was caught engaging in sexual activity with one of the girls he was supposed to be supervising in the campus kitchen.

When confronted, the officer admitted his conduct and, on April 21, 2008, his employment was terminated.

- On April 6, 2008, in two separate incidents, an officer engaged in sexual intercourse with two girls, including a 15-year-old girl. The facility referred the matter to the State police for further investigation. The officer subsequently plead guilty to one count of sexual misconduct and one count of sexual misconduct with a minor.

Although in some instances, like those described above, sexual abuse is discovered by or reported to the facility's administration, and appropriate steps are taken in the aftermath, our investigation revealed that the frequency of staff sexual abuse and misconduct at the facility is significantly higher than officially reported or investigated by the administration, as discussed below. Indeed, the sexualized environment at the facility appears rampant.

Many of the girls we interviewed consistently and independently described incidents of staff making sexual advances toward girls, including attempting to kiss or otherwise inappropriately touch the girls, and incidents of staff making sexually inappropriate comments to the girls. For example, one IJCF youth told us that a male officer repeatedly came to her room and asked to see or touch her breasts.⁶ Another girl described an incident in which a male staff member told another youth, who was on her hands and knees cleaning, "I bet you like it on your knees." Another girl summed up her fears about living at IJCF by saying: "Kids have sex with kids, staff have sex with kids, staff have sex with each other. This place is messed up."

As discussed below, the facility superintendent acknowledged that the staffing pattern at the facility likely contributes to the frequency of sexual encounters between officers and residents. Indeed, as of April 2008, nearly half of IJCF's officers were male, and we observed numerous occasions on which a single male officer was supervising a unit of approximately 25 girls.

Our findings of a rampant sexual environment at IJCF are further confirmed by a recent Bureau of Justice Statistics Special Report, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-2009*, released on January 7, 2010 ("BJS Report"). According to the BJS Report, 22.8% of girls at IJCF reported having experienced at least one incident of sexual victimization by another youth or

⁶ With the girl's consent, we reported this incident to the facility superintendent, who informed us that he would initiate the investigative process. We do not have information regarding the outcome of this investigation.

staff member at the facility in the prior year. IJCF's rate of 22.8% is nearly double the national average of 12.1%. It is also nearly double the national average of 14% for facilities housing only girls and is more than double the national average of 9.6% for facilities housing both sexes. These numbers place IJCF among the thirteen facilities with the highest rates of sexual victimization nationally. An astounding 16.3% of girls at IJCF reported unwanted sexual activity with another youth. This is more than six times the national average of 2.6%, and is nearly double the national average of 9.1% for girls in juvenile facilities nationwide. It also far exceeds the national average of 11% in facilities housing only girls. Additionally, 8.7% of girls at IJCF reported sexual activity with facility staff. Although slightly below the national average of 10.3%, this rate is nearly double the national average of 4.7% for girls in juvenile facilities nationwide, and nearly double the national average of 5% in facilities housing only girls.

2. Inadequate Abuse Investigations

The State also fails to ensure that allegations of staff abuse and misconduct are adequately reported and investigated. Indeed, allegations of staff sexual abuse and misconduct are not investigated in accordance with the facility's own policy. For example:

- In an incident report dated June 27, 2008, Officer A reported that an IJCF youth had made allegations of sexual misconduct to Officer A against Officer B. Officer A, however, did not refer the matter for investigation, nor did the officer complete a Report of Alleged Child Abuse or Neglect (the facility's official form for reporting abuse and neglect allegations). Instead, Officer A and Officer B together confronted the youth about her allegations. The youth then recanted, and Officer B wrote a conduct report charging her with "false accusations," which resulted in disciplinary action against the girl. Under these circumstances, there is no way of knowing whether the youth's allegations were false or whether, when confronted by the very staff member who reportedly assaulted her, she was too afraid to press the matter. In any case, the handling of her complaint was grossly inappropriate and well outside the bounds of what is generally accepted in the field.
- In an incident report dated June 9, 2008, an officer reported finding a note passed under a girl's door stating, "he keeps coming into my room, and I tell him not to and he does anyway." The note was appropriately turned over to the facility investigator. According to the incident report, however, two male staff attempted to talk with the girl about the note, and she refused, stating that she did not "want to talk to a man." No Report of Alleged Child Abuse or Neglect was completed, nor did we find any other evidence that this matter was investigated any further.

- On April 13, 2008, an IJCF counselor filed a Report of Alleged Child Abuse or Neglect, reporting an IJCF youth's allegations that an officer had been sexually abusing her during the night shift. Reportedly, the youth alleged that the officer had been touching her inappropriately and showing her his body parts. Although the cover page of the report contains a handwritten note that the girl's allegations were found to be unsubstantiated, the report offers no explanation regarding the basis of this finding, nor any other evidence that the allegations were investigated.

Our investigation also revealed instances where IJCF failed to adequately investigate alleged youth-on-youth sexual abuse and misconduct. For example:

- On June 2, 2008, a youth reported that another girl had touched her breast on a number of occasions. There was no report of a follow-up investigation of this allegation of sexual misconduct.
- On June 23 and 25, 2008, an IJCF school staff member asked for assistance in responding to a student who was upset after she was accused of raping a peer and was fearful that other girls would gang up to harm her. Despite efforts to obtain guidance, the staff member later wrote: "I'm hoping that someone . . . can talk to [the youth] or provide me with some info to help her out." We found no report of an investigation of the alleged rape or improper advances made between the youths.

3. Inadequate Staffing

Constitutional standards require that juvenile facilities have a sufficient number of adequately trained staff members to ensure the safety and security of residents. Without an adequate number of officers on duty, staff cannot adequately supervise the youths in their care. IJCF fails to provide adequate numbers of staff to keep girls safe, and fails to provide adequate female staff to protect girls' privacy. The staffing pattern likely exacerbates IJCF's problems with incidents of sexual abuse and misconduct, as well as with other program functions.

The living units at IJCF generally house approximately 25 youths. Both staff and youths reported to us, and our own observations confirmed, that usually, one or two officers were present on the living units. To the extent that one staff member is required to supervise 25 youths, this is well outside the bounds of generally accepted professional standards and is not adequate to ensure the safety of IJCF youths.

To protect due process rights, female staff must provide direct supervision to girls in juvenile facilities when the girls are engaged in private activities such as

showering, toileting, dressing, and undressing.⁷ As noted above, as of April 2008, nearly half of the officers at IJCF were male. We observed during our tours that it is not uncommon for a single male officer to supervise a unit of approximately 25 girls, including when the girls are engaged in private activities. Such staffing patterns not only lead to violations of girls' privacy and facilitate staff misconduct, but they also expose staff members to false allegations of staff misconduct. Indeed, the superintendent at the time of our April 2008 tour acknowledged that this staffing pattern was problematic and likely contributed to the frequency of sexual encounters between officers and residents.

Moreover, the physical layout of the facility undoubtedly increases the likelihood of sexual misconduct by staff members. As described above, the showering and toileting areas of the living units are visible from the staff duty station desk on each unit. Thus, male staff easily can observe girls at these vulnerable times. The facility's failure to provide same-gender supervision for private activities is contrary to the National Prison Rape Elimination Commission's proposed Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Juvenile Facilities ("Proposed Standards") and places IJCF residents at risk of invasions of privacy, embarrassment, and potentially humiliating situations. For girls in juvenile facilities, the vast majority of whom have histories of physical and/or sexual abuse, such loss of privacy may be particularly traumatic and may trigger fears about their safety.

Deployment of female staff to cover girls' private activities would better protect privacy of these teen girls. Both staff and residents recognize this need. Indeed, one supervisor acknowledged to us that he would like to have more female staff because "it's uncomfortable for male staff with the [bathroom] windows." And, one youth told us that male officers can see tall girls when they are in the bathroom or shower and added, "I dread showers."

⁷ Consistent with these standards, except in cases of emergency or other extraordinary unforeseen circumstances, the National Prison Rape Elimination Commission's proposed Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Juvenile Facilities ("Proposed Standards") require facilities to prohibit non-medical staff from viewing opposite gender juveniles who are nude or who are performing bodily functions. *Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Juvenile Facilities*, 11 (Nat'l Prison Rape Elimination Comm'n, Proposed Standards, Jun. 23, 2009), available at http://nprec.us/publication/standards/juvenile_facilities/ (last visited Aug. 3, 2009) ("Proposed Standards"). As of the issuance of this letter, the Proposed Standards have been submitted to the Attorney General for review and promulgation of final rules.

4. Inappropriate and Excessive Use of Force

The State inappropriately and excessively uses force on girls at IJCF, in violation of their Constitutional right to be free from excessive use of force. See Youngberg, 457 U.S. at 316; Nelson, 491 F.2d at 356.

The State uses a number of highly intrusive and drastic measures, ostensibly in an effort to control its juvenile population. Such measures – including cell extractions, Oleo Resin Capsicum chemical spray (“OC Spray”) and restraint chairs, – typically are used only in adult correctional facilities. Although not unprecedented in juvenile facilities, the use of these measures is uncommon. Each such use in a juvenile facility must be scrupulously managed to ensure that the measure is employed only when absolutely necessary for the safety and security of the facility, residents, and staff, and only when less drastic measures have been attempted and failed. IJCF failures to manage the use of these drastic measures lead to abuse, including a forcible strip search of a teenage girl with severe mental illness, as described below. Indeed, instead of establishing an atmosphere of care, cooperation, and rehabilitation, IJCF uses intrusive and drastic control measures that foster an atmosphere of excessive force, high stress, fear, and crisis in a facility whose residents are abused and traumatized teenage girls.

a. Cell Extractions of Teenage Girls by Staff Dressed in Swat Gear

IJCF employs cell extraction techniques that involve excessive uses of force. The facility assembles and uses teams of staff heavily dressed in swat gear (protective vests, helmets, and pads) who forcibly extract girls from their cells. As with the other measures described above, the use of cell extractions in this manner in a juvenile facility is highly unusual; the use of such a tactic may be acceptable, if at all, only in the most extreme emergency situations, when absolutely necessary for safety and security, and after other, less intrusive methods have been attempted and failed. Specifically, rather than resorting to a forceful cell extraction, well-trained and competent staff typically can achieve compliance with the security needs of a facility by using a subtle approach of explaining the situation and seeking the juvenile’s cooperation. This generally begins by staff demonstrating a caring, concerned, and respectful attitude toward residents in the routine day-to-day living activities of the facility.

In a particularly egregious incident, on January 10, 2008, senior management at IJCF ordered the activation of a cell extraction team consisting of male officers dressed heavily in swat gear to search for a missing piece of porcelain that had broken off from a toilet in the segregation unit, which houses the facility’s most troubled and vulnerable girls. The five-man team searched the first side of

the unit by forcibly entering each cell in a single-file formation, extracting each girl, and having a female staff member strip search her. After finding most of the missing porcelain on the first side of the unit, the cell extraction team continued the search, on the second side of the unit as a shakedown, or “spring cleaning,” to find additional contraband.

According to video of this incident, the general process of the extractions consisted of the cell extraction team ordering each girl to “cuff up” (submit her hands for handcuffing through a slit in their cell doors), handcuffing her through her cell door, and then ordering her to get on her knees in front of the back wall of the cell, with her back to the cell door. For some girls, the five-man team then entered the cell and walked out with the girl. For other girls, the men entered the cell, placed the girl in the prone position on the floor, held her down at her upper back and each arm and leg, and shackled her legs before removing her from her cell. For two of the girls, as discussed below, the team used OC spray after the girls refused to cuff up. The team then brought each girl into another cell for the strip search, again placed her on the floor in the prone position, and removed her restraints. The team then left the girl on the floor and warned her that if she got up or moved, the team would return to “do it all over again.” The video we observed provides no indication of why the cell extraction team shackled some girls’ legs in addition to handcuffing them. Moreover, as is evident from the video, the girls apparently did not know the reason for the extractions, and many shouted questions such as “what the fuck?” “what [sic] you all doing?” and “why are you doing this shit?” during the extraction process.

Although accepted juvenile corrections practice requires facility staff to first attempt to secure residents’ cooperation, it appears that IJCF made no effort to do so. Although the vast majority of the girls were non-violent, non-threatening, did not pose a risk to themselves, staff, or other girls, and complied with staff’s order to cuff up, move to the back of their cells, and get on their knees, the facility nonetheless used the cell extraction team to forcibly remove them, often further restraining them in the process. Moreover, the cell extractions violated the facility’s policies, which do not provide for cell extractions for shakedown purposes or where a youth complies with an order to be restrained. Indeed, the facility’s own post-event analysis concluded that this use of the cell extraction team was inappropriate; the analysis notes that the team is altogether unnecessary when a girl complies with staff orders to submit to a restraint. That same analysis also notes that the use of the cell extraction team as a shakedown team is inappropriate. Accordingly, the team never should have been deployed for this purpose. In short, staff used clearly excessive and abusive force in an incident that likely could have been avoided entirely. Such practices are a gross departure from generally accepted professional standards and expose girls to grave risk of both physical and emotional harm, including bodily injury and re-traumatization.

We were unable to ascertain the precise frequency with which cell extractions occur. It appears that IJCF's reporting of such incidents is unreliable because IJCF inexplicably appears to consider an incident a cell extraction only where the cell extraction team uses additional force during the extraction. As part of our review of the January 10 incident in which at least 17 girls were extracted from their cells,⁸ we requested a list of all girls who have been extracted by the cell extraction team since the team's inception. The list IJCF provided included only three of the girls who had been extracted during the January incident. These three were the ones on whom the cell extraction team used additional force; as discussed below, the team sprayed two of them with OC spray and forcibly cut off all of the third girl's clothing.

b. Unjustified Strip Search of a Teenage Girl by Male Staff

As noted above, the January 10, 2008 cell extractions described above resulted in an additional alarming incident that exposed a particularly vulnerable girl to serious harm and risk of harm. Specifically, while on site, we reviewed a video showing the cell extraction and forceful strip search of B.B.,⁹ a 17-year-old girl with serious mental illness.¹⁰ The cell extraction team, consisting of five male staff, extracted B.B. from her cell and forcefully cut off all of her clothing to strip search her, in clear violation of both the law and generally accepted professional standards.

The video shows that B.B. quietly cooperates with the cell extraction team's directive to exit her cell, and the team then takes her to another cell. When directed to remove her clothing for the strip search, B.B. refuses. Staff make several additional demands for B.B. to remove her clothing, but she repeatedly refuses, telling staff that she does not have any contraband. According to IDOC's own internal affairs report, the video "clearly shows [B.B.] sitting on the floor being passive, none [sic] threatening, no indication that she possessed a weapon . . ."

⁸ IJCF indicated that all the girls on the unit that was searched on January 10, 2008 were extracted from their cells and searched. When we requested a full list of the extractions, the facility provided us with the unit roster. The roster listed 24 names, with seven names inexplicably crossed out.

⁹ The initials used to refer to youth are pseudonyms to protect their privacy.

¹⁰ In fewer than three total years at the facility, B.B. had been placed on suicide precautions at least eight times and, by the time of our second visit to IJCF in July 2008, she had been civilly committed to a mental health facility.

Nonetheless, the five male officers storm into the room and surround B.B. The only female present is the officer recording the incident on video. The five male officers restrain B.B. in a prone (face down)¹¹ position on the floor, handcuff her, and shackle her ankles. Although the facility's own report indicates that B.B. "took to the floor with little to no resistance," one officer holds down her head and neck, forcing her head and forehead against the floor. Other officers hold down her arms and legs and bend her legs backward so that her feet touch her buttocks. While B.B. wails and cries that the men are hurting her arm, the men silently cut off all of her clothing using a seat belt cutting tool, a rescue tool designated only to cut down youths during a suicide attempt. The men then unsnap B.B.'s bra using their gloved hands, tear off her bra straps, remove her bra, and cut off her underwear. The video ends with B.B. lying on the floor wearing nothing but her socks, being held down by the five men in SWAT gear. The only item between her and the dirty floor is a fragment of her torn underwear.

This seemingly arbitrary, forceful strip search of a girl with mental illness, when the facility did not have individualized suspicion that she possessed contraband, is a clear violation of the law and of generally accepted professional standards. Both the courts and generally accepted professional standards prohibit cross-gender strip searches, except in cases of emergency. Canedy, 16 F.3d at 187 (holding that an inmate's right to privacy is violated where observation of the inmate by an opposite-gender employee is not occasional or inadvertent but "is more intrusive (like a strip search, in the absence of an emergency) or a regular occurrence"); Proposed Standards at 11 (requiring facilities to prohibit cross-gender strip searches and visual body cavity searches, except in cases of emergency).¹²

As noted above, the Supreme Court places a strip search in "a category of its own." Safford, 129 S. Ct. at 2643. The Supreme Court has held that a lawful

¹¹ The use of prone restraints is controversial and has been banned by many facilities nationwide due to the high risk of serious injury or death. The danger of prone restraints is that if the individual's airway is constricted, he or she is unable to express physical distress. Further, the restrained individual's struggle for air may be misconstrued by staff as resistance, resulting in increased force on the individual being restrained.

¹² The Proposed Standards emphasize protecting the privacy and dignity of residents and reducing the potential for staff sexual abuse of residents: "Performance of these more intrusive strip searches and body cavity searches should be undertaken only by specially trained, designated employees of the same gender and conducted in conformance with hygienic procedures and professional practices." Proposed Standards at 12.

search of a student must meet two criteria. First, the search must be justified in its inception, that is, an official must have knowledge of at least a moderate chance of finding evidence of wrongdoing. *Id.* at 2639. Second, the search must be reasonably related in scope to the reason for the search. *Id.*; *T. L. O.*, 469 U.S. at 341-42. The scope of the search is permissible “when it is ‘not excessively intrusive in light of the age and sex of the student and the nature of the infraction.’” *Safford*, 129 S. Ct. at 2639 (quoting *T.L.O.*, 469 U.S. at 342) (noting that “adolescent vulnerability intensifies the patent intrusiveness of the exposure”). Accordingly, given the threshold necessary to justify a strip search of a teenage girl, a cross-gender strip search is justified only where the youth poses an immediate risk of danger and no one of the same gender is available to conduct the search.

Both the facility’s video and internal documentation confirm that the situation with B.B. was not emergent; in fact, B.B. was calm, non-violent, and presented no danger to herself or to anyone else. In addition, the facility’s documentation confirms that B.B. was not suspected of having contraband; she apparently was forcefully strip searched by virtue only of the fact that she was housed on the unit being searched and she refused to submit voluntarily to a strip search that would reveal nothing. Indeed, this search was so far outside the bounds of accepted juvenile justice practice that our juvenile justice consultant noted that this is one of the most disturbing videos he has seen during his thirty-six-year professional career, which has included visits, reviews, and assessments of more than 100 facilities in approximately 25 states.

IDOC’s own internal affairs investigation concluded that the incident was unjustified and violated the facility’s own policy, which also prohibited cross-gender strip searches. The report further noted that the facility’s cell extraction procedures do not provide for cutting clothes off of noncompliant youths. The report concluded that, because B.B. was non-violent and did not constitute a threat to anyone, she should have been secured to allow for a pat-down search and left alone until she complied with the strip search orders.

Disturbingly, although the State took personnel action against the staff members involved and reported the incident to the Indiana State Police and Child Protective Services, the forcible cutting off of a youth’s clothing apparently is not an isolated incident at IJCF. According to the facility’s internal affairs report, most members of the cell extraction team, as well as other staff witnesses, stated that the “forceful removing of an offenders [sic] clothing by cutting them [sic] off the body was a long standing practice dating back years.” Specifically, staff recalled a similar incident in November 2007, in which a cell extraction team restrained a male youth in the prone position and forcibly cut off his clothing after he blocked his cell window with his clothes. Similarly, on January 19, 2008 – just nine days after

the strip search incident described above – five staff, including male staff,¹³ held down a girl in the prone position on her bed and forcibly removed her shorts, bra, and underwear after the girl apparently had made a suicide gesture and refused to remove her remaining clothing to be placed in a suicide gown.

c. OC Spray

Further exacerbating the facility's culture of force and intimidation, IJCF fails to adequately manage and supervise its use of OC spray, in violation of generally accepted professional standards. OC spray contains the concentrated oil extracted from hot peppers. When inhaled, or when it comes into contact with a person's eyes, nose, or skin, OC spray typically causes intense burning pain, redness, shortness of breath, and gagging. Inhaling OC spray can cause acute hypertension, which may cause headache and increased risk of heart attack or stroke. Certain individuals should not be sprayed with OC spray, including those who have asthma or other kinds of respiratory problems, are obese, suffer from certain cardiovascular conditions, or are pregnant. Any time OC spray is deployed, decontamination should occur as soon as practicable, and the affected youth should be examined by medical personnel as soon as possible, but at least within two hours.

As with other extreme measures, OC spray may be used only when absolutely necessary for the safety and security of the facility, residents, and staff, and only when less drastic measures have been attempted and failed. See, e.g., Soto v. Dickey, 744 F.2d 1260, 1270 (7th Cir. 1984) (use of chemical agents in quantities greater than necessary or for the sole purpose of punishment or the infliction of pain in an adult facility violates the Constitution); Alexander S. v. Boyd, 876 F. Supp. 773, 786 (D.S.C. 1995), aff'd in part and rev'd in part on other grounds, 113 F.3d 1373 (4th Cir. 1997), cert. denied, 118 S. Ct. 880 (1998) (use of chemical spray on juveniles is counterproductive and such spray may be used only where there is a "genuine risk of serious bodily harm to another" and less intrusive methods are unavailable); Morales v. Turman, 364 F.Supp. at 173-74 (E.D. Tex. 1973); 383 F.Supp. 53, 77 (E.D. Tex. 1974), rev'd on other grounds, 535 F.2d 864 (5th Cir. 1976), rev'd, 430 U.S. 322 (1977); remanded for rehearing, 562 F.2d 993 (5th Cir. 1977) (use of chemical agents in a juvenile facility absent an imminent threat to human life or an imminent and substantial threat to property violates the Constitution).

¹³ From the reports, the complete gender breakdown of the team that removed the girl's clothing is unclear, but it is clear that the team included one or more males and likely included at least one female.

The spraying of two girls as part of the “spring cleaning” incident on January 10, 2008, described above provides an example of the facility’s inappropriate use of OC spray, in violation of both legal standards and its own procedures. Specifically, videos of the incident show that two girls who were to be extracted from their cells were sprayed with OC spray because they refused orders to cuff up. As was described to us on site, the girls were sprayed with OC “in an effort to convince them to cooperate.” Neither girl, however, presented a threat to herself or another. Notably, the facility’s internal review concluded that neither girl should have been sprayed because, according to facility procedures, when a youth who does not have a weapon needs to be removed from the cell, the cell extraction team should be used first, if necessary. This revelation makes the spraying of the two girls on January 10 even more disturbing, because the cell extraction team already had been assembled, albeit inappropriately, to remove the girls from their cells in the first instance. Rather than following facility policy, the team itself inappropriately sprayed the girls, who presented no danger to themselves or others.

The facility also fails to ensure that youths with certain health conditions are not subjected to OC spray; the facility’s policy fails to address this important health issue. And, in fact, we found instances where girls who had medical conditions such as asthma were sprayed. We also found no evidence that IJCF ensures that youths who are sprayed with OC are promptly seen by medical personnel. The failure to address these important issues exacerbates the constitutional violations at the facility.

d. Restraint Chair

IJCF also fails to adequately manage and supervise the use of its restraint chair, in violation of constitutional standards. A restraint chair is a full-body restraint device that immobilizes a youth in the seated position. As noted above, the use of restraint chairs in juvenile facilities is highly unusual. This is, in large part, because the restraint chair is an extreme measure that, when not carefully controlled, invites misuse. Accordingly, when a juvenile facility chooses to include a restraint chair in its behavior management system, accepted juvenile justice practices require that the facility develop, and strictly enforce, a comprehensive policy to govern the chair’s use. This policy should: limit the use of the chair to only the most critical situations where less restrictive measures fail to control the youth’s behavior, and then only under medical supervision; prohibit the use of the chair for punitive purposes; and require that a youth be released from the chair as soon as her behavior permits.

According to facility reports, IJCF’s restraint chair had been used once in the four months preceding our April 2008 visit. Unfortunately, this use of the chair did

not comply with IDOC's own policy to adequately document the use of the chair. For example, contrary to IDOC policy, the incident was not preserved on video.¹⁴ Second, the staff members involved in the incident submitted confusing and inconsistent written reports. For example, staff members provided conflicting reports regarding what time the use started. Moreover, it is not clear how long the youth was in the restraint chair before she was evaluated by a medical professional, or when the youth was released. When we inquired as to how long the restraint actually lasted, a staff member told us that it had been one hour. Some of the written reports, however, suggest that the youth was not released for several hours. Thus, the facility failed to follow its own policy regarding the restraint chair, and neither we nor IJCF administrators have any way of knowing whether or to what extent the chair may have been misused. The facility's failure to follow policy and adequately monitor the use of the restraint chair increases both the risk of injury to the youth and the risk that the youth was subjected to an abusive disciplinary technique.

5. Excessive Use of Isolation

The State also subjects IJCF youths to excessively long periods of isolation and fails to provide adequate due process to youths placed in isolation. Generally, isolation or segregation in a juvenile justice facility may be used for two main purposes. First, it may be used as an emergency intervention to control a resident who is a current threat to herself, other youths, staff, or other persons. Second, isolation may be used as a sanction for a major rule violation.¹⁵

In a juvenile facility, segregation is typically the most severe disciplinary sanction available. Generally accepted juvenile justice practices dictate that it should be used only in the most extreme circumstances, and only when less restrictive interventions have failed or are not practicable. If isolation must extend beyond twenty-four hours, a due process mechanism should be in place to ensure that the continued use of isolation is necessary. Accepted juvenile justice practices

¹⁴ In response to our request, the facility provided us with what it represented was a video of the incident, reportedly captured on a handheld recorder. The video, however, was only three seconds long. The video also did not even show a youth; instead, it depicted a few staff members standing in a hallway. Notably, although the restraint chair is housed in a room that contains a mounted, stationary camera, we were informed that no video from this camera had been preserved.

¹⁵ To a lesser extent, isolation may be used as a protective measure for a resident such as a medically ordered suicide precaution or to protect the youth from other youths (e.g., protective custody).

also limit the maximum amount of time a resident can remain in isolation to five days, although most juvenile facilities in the country cap the period at three days.

IJCF keeps youths in segregation for excessive periods – well beyond three or five days. For example, just prior to our April 2008 tour, three girls had spent 53 consecutive days in isolation each. Another girl spent approximately 52 consecutive days in isolation; two other girls spent 48 consecutive days; and one girl spent 45 consecutive days.

The examples above describe just a few of the girls who have been placed in isolation at IJCF for excessive lengths of time. In fact, we found dozens of examples of girls who were isolated for excessive periods just in the three-month period leading up to our April 2008 tour. These long lengths of stay serve no rehabilitative or therapeutic purpose and are a short-sighted way to attempt to control behavior. In the long run, placing a youth in isolation for an excessive period is likely only to exacerbate the existing problem and to create additional adjustment problems when the youth finally is released from segregation.

IJCF not only excessively isolates youths, but it also fails to provide them with adequate due process in connection with its use of segregation. See Mary, 635 F.2d at 594, 599. The State should provide a youth with a due process hearing if her segregation exceeds 24 hours. When we inquired about due process procedures for IJCF youths held in segregation, administrators provided us only with a daily summary sheet, setting forth the youth's behaviors for the previous day. The review sheet indicates that the superintendent reviewed the document, but the facility failed to provide us with any documentation regarding what, if any, action should or might have occurred as a result of the superintendent's review. Likewise, we were given no documentation regarding the justification of continuing or halting the segregation and no indication that youths are given an opportunity to be heard. In short, the due process procedures the facility purports to have in place for IJCF youths in segregation are perfunctory and inadequate.

6. Inadequate Grievance System

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

IJCF's grievance system at the time of our April 2008 tour was wholly dysfunctional. For example, to submit a grievance, a girl had to request a grievance form from a staff member. If the staff member is the subject of the girl's intended grievance, this practice would have an obvious chilling effect.

At the time of our tour, IJCF also required girls to attempt to resolve their grievances informally before permitting them to file a formal grievance. In appropriate circumstances, encouraging a youth to attempt to resolve his or her problem informally may provide the youth with an opportunity to work on her problem-solving skills. The requirement that youths attempt informal resolution, however, should not be a prerequisite to filing a formal grievance. Youths must have a direct avenue through which they can bring allegations of abuse and other serious complaints to the attention of the administration. Requiring youths to attempt an informal resolution of such serious allegations potentially exposes the youth to further abuse, as well as retaliation. Moreover, in practice, because IJCF has no system for tracking "informal" grievances, it is impossible to determine their effectiveness in resolving problems.

At the time of our tour, the policy governing IJCF's grievance system was cumbersome and overly bureaucratic, providing for a number of trivial, technical reasons a grievance could be rejected. For example, a youth's failure to include her IDOC number was grounds to reject a grievance. Likewise, including more than one issue on a single grievance form, or bringing a grievance on behalf of a group, were grounds to reject a grievance, regardless of the severity of the substantive complaint. Restrictions such as these appear to be designed to deter the submission of grievances, rather than to ensure that youths have an avenue through which to bring concerns to the attention of the administration. Indeed, according to the data provided by the State, nearly 60% of all formal grievances filed at IJCF between 2007 and March 2008 were rejected.

The State has advised us that, following our tours of IJCF, IDOC adopted a new grievance policy for its juvenile facilities. We are pleased with the new policy and look forward to assessing its implementation in the future.

7. Inadequate Programming

Youths confined in facilities like IJCF have a right to adequate rehabilitative treatment. Nelson, 491 F.2d at 357. IJCF fails to provide adequate rehabilitative programming to its residents.

Many of the youths with whom we spoke described being bored and having little motivation to behave well. Adolescents in juvenile facilities often have poor impulse control and lack the ability to make good behavioral choices. Unlike adult

prisoners, for adolescents, release from incarceration in six to twelve months is not an adequate incentive to make good choices and behave appropriately. Accordingly, it is critical that a juvenile facility have in place a behavior management system that provides immediate, consistent, and tangible reinforcement of desired behaviors. While on site, we were informed that IDOC was looking into revamping its daily behavior management program. At the time of our April 2008 tour, however, IJCF did not have a functional or effective behavior management system. This failure results in extended stays for girls at the facility, as well as an increased risk of recidivism, because systems are not in place to help girls manage their behavior.

Adequate rehabilitative programming requires that juvenile facilities for girls provide adequate assessment, case plans, and behavior management that target girls' individual competencies and special needs in the areas of education, family relationships, trauma recovery, health, substance abuse, employment, and parenting for girls who are pregnant or are parents. IJCF's rehabilitative services fail to provide adequate attention to such issues, which disproportionately affect girls. This in turn breeds an increased risk of self-harming behaviors and suicidal ideation, inappropriate sexual activity, aggressive acting out, and frequent emotional crises. Indeed, the facility had more than 600 incidents that resulted in incident reports in the three-month period between April and June 2008.

The dearth of adequate rehabilitative services is directly related to the lack of adequate staff orientation and training on psycho-social development of adolescent girls, many of whom have histories of abuse and trauma, and on appropriate behavior management, de-escalation of conflicts, and treatment of Post Traumatic Stress Disorder. We found significant deficits in the facility's staff training modules. For example, IJCF fails to provide staff with adequate information on understanding the impact of trauma and abuse on incarcerated females and the often resulting self harm, eating disorders, and mistrust of adults. The facility also fails to provide adequate staff training on suicidal ideation among teenage girls. Moreover, staff training contains gaps in relevant information about how to mitigate problems of prior abuse and trauma and how to assist girls with coping skills. IJCF also lacks training to address maintenance of a safe environment for girls who have experienced abuse and trauma in past placements. Failure to adequately train staff to address gender-specific needs of incarcerated female youths increases the risk of youth and staff injuries, exacerbates girls' mental health and trauma-related issues, and increases self harm and other aggressive behaviors.

8. Inadequate Access to Toilets

IJCF fails to ensure that youths have reasonable access to toilets. Generally accepted professional standards require that youths have unimpeded access to toilets 24 hours a day. At IJCF, however, most of the sleeping rooms do not have toilets and, therefore, youths must request that staff let them out to use the toilet. We received numerous and consistent reports from youths that staff fail to provide reasonably prompt access to toilets. Many girls described urinating in cups in their rooms out of desperation. One girl admitted defecating on herself when staff did not let her out in time to get to the toilet. Another girl described vomiting in her room when staff failed to respond to her request to go to the restroom. She also noted that a girl could get a conduct report for using the intercom button, which is the method by which a girl can seek staff's attention to ask to use the restroom. Access to restroom facilities is a basic human need. IJCF should ensure such access for all youths.

B. MENTAL HEALTH CARE

The Constitution requires that youth in juvenile justice facilities receive adequate mental health care. Youngberg, 457 U.S. at 323 n.30; Nelson, 491 F.2d at 359-60; see also K.H., 914 F.2d at 851; Luzerne County Juvenile Det. Ctr., 372 F.3d at 585 n.3.

We find that mental health care at IJCF is constitutionally inadequate. Specifically, we found serious deficiencies in the following areas: (1) mental health screening and assessment; (2) suicide risk screening and assessment; (3) provision of mental health treatment; (4) staffing; and (5) recordkeeping.

1. Inadequate Mental Health Screening and Assessment Process

IJCF's screening and assessment process contributes to the unconstitutional conditions at the facility. According to accepted juvenile justice practice, all youths entering secure facilities should receive a reliable, valid, and confidential initial screening and assessment to identify psychiatric, medical, substance abuse, developmental, and learning disorders, and suicide risks. The screening process should be sufficiently sensitive to identify cases at a level of risk, and staff then should examine those cases in further detail to determine what, or whether, further assessment is indicated.

The assessment process should be underway during the girl's initial weeks in the intake unit. It should include aggressive pursuit of previous behavioral health records; careful review of those records and assimilation of their content; contact with the girl's family to obtain developmental, clinical, and educational history;

consultation with the facility's custody, recreational, and educational staff; and several individual interviews covering the broad range of the girl's background and current condition. When indicated, the assessment also should include specialized testing to clarify ambiguous issues of cognition and/or personality functioning, as well as medical consultation in cases where previous illness or injury may affect a girl's functioning or may affect decisions about treatment.

This assessment should be documented in a full report and should conclude with a summary of relevant clinical data and a diagnostic formulation, including consideration of alternative diagnostic hypotheses and support for a specific diagnostic opinion. It also should include initial suggestions regarding treatment planning, including what specific concerns need attention, and what specific interventions are likely to be effective. Based on screening and assessment, staff should refer youth for any required care.

Additionally, because girls may develop mental health problems at any point during their detention, facilities need to have a routine method for recognizing emerging mental health issues that may not have been present upon intake. Generally, such methods include repeated formal screenings of residents or informal means, such as setting a low threshold for further mental health screening and assessment when residents are not adequately progressing through the program.

The combined screening and assessment process at IJCF fails to meet these generally accepted professional standards. Although the intake screening process is reasonably effective, the facility fails to provide any formal subsequent screening, assessment, or follow-up.

Intake screening at the facility is reasonably effective in discovering the presence of mental health disorders in girls at IJCF. All youths undergo a series of intake screenings upon admission. These screenings address overall mental health needs and suicide risk. The process includes a brief interview and the administration of the Massachusetts Youth Screening Instrument ("MAYSI-2"), a self-report checklist widely used in juvenile facilities. As of the time of our July 2008 visit, approximately half of the youths at the facility were being treated with psychotropic medication, suggesting at least that their mental needs had been noticed. This number is consistent with the general incidence of mental disorder in female juvenile populations, which is approximately two-thirds to one-half.

The assessment process at IJCF, however, is deficient, exposing girls to risk of serious harm resulting from a lack of attention to their mental health needs. Although the total sum of information the facility gathers in the intake behavioral health assessment is generally broad, it lacks a number of critical elements. The facility fails to adequately gather previous records of past assessments and

treatment, to obtain information from families and establish alliances with them, and to pay adequate attention to the specifics of girls' cognition or to the implications of learning problems for successful school functioning, self-esteem, problem solving, or growth in treatment. Interviews with mental health staff tend to ignore or gloss over the specific impacts of the many traumatic experiences girls have had, and of how the girls have coped with them. Documentation of interviews also reveals that interviews pay inadequate attention to fostering a girl's sense of commitment to change, or to generating a treatment alliance with the facility's practitioners. Moreover, the structure of the intake assessment process is too condensed and does not allow sufficient time for the mental health assessment to gather information from other sources, to consider information generated in the other intake assessments, or to take into account the girl's initial course in the facility.

As a result of these deficiencies, in most cases, the assessment process at IJCF actually constitutes only a screen and is far from an adequate assessment. When the initial screen identifies important areas of ambiguity and complexity that would take additional time and extensive inquiry to clarify, the facility fails to provide any routine, more comprehensive assessment. Although mental health staff reported that the facility's understanding of a girl's mental health needs does not rest only on the information gathered at intake, the facility fails to provide any plan for gathering additional important information, such as records, family input, the girl's initial adaptation to the facility, and results of specialized testing, into a more complete assessment that would be adequate for planning individualized treatment.

In addition to failing to provide adequate assessments at intake, IJCF fails to provide any formal mental health screening or assessment beyond the intake process. And, although behavioral staff respond to girls who take the initiative to submit health care requests, staff's actual responses do not reliably include careful attention to and assessment of presenting problems. For example, we reviewed the records of a girl who had four contacts with mental health staff over approximately 11 months. She complained first of possible bipolar disorder and later of sleeping difficulties. Although mental health staff responded to her concerns by meeting with her, our consultant found that their responses were cursory and did not adequately attend to her complaints. When she saw mental health staff for suspected bipolar disorder, the mental health professional with whom she met did not include any record review or historical inquiry of the girl or of other staff with respect to past problems that may suggest or rule out bipolar disorder. Two months later, when she saw mental health staff for trouble sleeping, staff opined that she simply appeared to be trying to get medication. During that visit, staff failed to pay any attention to her sleep. And, although the mental health staff member who saw her performed a cursory mental status evaluation, she did not document any

inquiry into the girl's emotional state or into what might be interfering with her sleep.

2. Inadequate Suicide Risk Screening and Assessment

To protect residents' constitutional right to safety and protection from harm, facilities like IJCF provide adequate suicide risk screening and assessment to girls.¹⁶ At least as of the time of our tour, the facility failed to do so. As part of the risk screening and assessment process, the facility should follow up as appropriate where a girl receives high scores on suicide risk indicators during the screening process. Where indicated as a result of the screening, the facility should provide an adequate, consistent, well-organized, and well-documented assessment. IJCF fails in this regard.

Although IJCF administers the MAYSI Suicide Ideation Scale and asks girls questions related to suicide during the medical screening process, the facility fails to follow up as appropriate or provide a targeted assessment of suicide risk where girls receive high scores on these indicators. Moreover, even when the facility does identify a girl as being at risk for suicide and refers her for assessment, the assessment is inadequate, inconsistent, poorly organized, and poorly documented. To document an assessment, the facility uses its electronic medical record ("EMR") template for a suicide observation visit. As structured in the EMR, this template is inadequate because it fails to require critical elements of the suicide risk assessment process. Specifically, the template does not require: (1) the clinician to review specific staff observations of the girl's behavior that generated the concern about her suicide risk; (2) specific inquiry into, or documentation of, the girl's current stresses, her sense of hope, and her current emotional connections with her family, staff members, or other girls, particularly including romantic connections or disappointments; or (3) a detailed mental status assessment of agitation, peaceful resolve, guilt, delusions, or hallucinations. Although some IJCF clinicians sometimes document such elements, too often, the mental status examination states: "student does not express suicidal ideation." This is grossly insufficient.

3. Inadequate Provision of Mental Health Treatment

As part of their constitutional responsibility to provide medical care, juvenile facilities must provide youths with adequate mental health treatment. Unfortunately, current provision of mental health treatment at IJCF falls far short

¹⁶ Since our tour, the State has provided us with a satisfactory new suicide prevention policy, which addresses, among other things, suicide risk screening. We look forward to reviewing the implementation of this policy at IJCF.

of those standards and, as a result, exposes girls to great risk of harm by failing to address their mental health needs. Specifically, as described below, IJCF fails to provide adequate: (1) treatment planning; (2) psychosocial treatment, including psychoeducational rehabilitation programming, mental health counseling, psychotherapy, and family therapy; and (3) psychiatric care, including psychiatric assessment and medication management.

a. Inadequate Treatment Planning

As generally accepted professional standards recognize, adequate treatment planning is essential to the provision of adequate mental health treatment for youth in juvenile facilities. Treatment planning requires the identification of symptoms and behaviors that need intervention and the development of strategies to address them. Treatment plans should be individualized and should articulate specific planned behavioral interventions. At a minimum, such interventions should consist of regularly scheduled individual psychotherapy, which should be aimed at establishing a supportive and reliable treatment alliance between the girl and mental health staff. Without adequate treatment planning, a facility cannot provide effective treatment of serious mental illness, ensure that youths are receiving appropriate services, or adequately track youths' progress.

Treatment planning at IJCF fails to meet generally accepted professional standards and contributes to the unconstitutional conditions at the facility. First, treatment plans are generic and vague, and do not adequately address girls' individual characteristics, strengths, weaknesses, and needs. For example, the treatment plan for one girl diagnosed with a series of mood disorders, including bipolar disorder, as well as substance abuse, lists generic objectives for dealing with chemical dependence and shows no individualization to help this particular youth. The treatment plan for another girl remained unchanged throughout the course of her stay, despite significant deterioration in her condition in the approximately ten and a half months she had been at the facility prior to our tour. This girl's plan failed to include her manipulative self harm as a problem and failed to include any plans to address this behavior or otherwise develop a behavior management plan for her. Her plan also failed to take into account her recognized cognitive limitations, which may preclude her from gaining any benefit from the generic program groups contemplated by her plan. Moreover, because this girl had been living primarily in isolation, it is unlikely that she even could participate in many of those groups.

Second, treatment plans at IJCF lack genuine articulation of any specific, planned behavioral health intervention. Most of the interventions offered are not specific mental health services; instead, treatment plans often list generic program groups offered by case managers as interventions. Moreover, treatment plans fail

to specify information such as the type of therapy and/or medication that should be used to address particular problems. Notes of treatment sessions generally do not show specific interventions, and treatment plans do not make clear what type of orientation should be used for mental health services (e.g., cognitive-behavioral therapy). With the exception of the area of medication management, none of the plans our consultant reviewed offered mental health treatment with any regularity, and none took into account the results of the girl's assessment in considering what particular approach to therapy was likely to be most successful.

b. Inadequate Psychosocial Treatment

The facility fails to provide adequate psychoeducational rehabilitation programming, mental health counseling and psychotherapy, and family therapy.

First, the facility fails to provide adequate psychoeducational rehabilitation programming. The main treatment the facility offers to residents in this context is standard psychoeducational programming, primarily in group contexts. Groups feature a variety of topics, including anger management, coping skills, and substance abuse. Although some girls stated that they had improved on their own in behavioral and emotional control, none of the girls we interviewed reported that they had gained anything from these groups. For example, one girl noted that, although she felt she had become more self aware and considerate, she had to "teach [her]self. [Staff who run the groups] don't explain, and half the staff are disrespectful." She noted that she continues to cut herself regularly. Girls also reported that, although they are supposed to have at least three groups per week, often, they have only one, or none.

Second, IJCF fails to provide girls with adequate mental health counseling and psychotherapy. Behavioral health staff fail to provide regularly scheduled counseling or psychotherapy; as a result, mental health care consists primarily of crisis-oriented visits. As staff explained to us, "usually, it's left up to the student to make contact."

We found that the only girls who receive regularly scheduled appointments are those on psychotropic medications, and their appointments consist only of brief medication management sessions with the psychiatrist, with no other counseling or psychotherapy. In fact, during the three months prior to our July 2008 tour, only five girls in residence at the time of our tour had participated in ten or more meetings with a mental health professional. Although two additional girls had had relatively frequent meetings, they had been discharged prior to our tour, one of them by civil commitment to a psychiatric hospital.

It is unreasonable to expect that girls at IJCF would have the assertion capacity to establish an effective therapy relationship with mental health staff without the structure of regularly scheduled appointments. Rather than proactively attending to girls' critical mental health needs, IJCF's practice of leaving to the girls the decision to make contact with a mental health clinician contributes to a crisis atmosphere at the facility. In this atmosphere, emotionally unstable, traumatized girls have no reliable expectation of attention from mental health staff, and have no opportunity to learn and practice patience and self management skills. Instead, they learn to rely on crisis-based communication, such as using suicide gestures and threats, as a basis for establishing contact with mental health staff. Further, they develop habits of marked emotional and behavioral regression, which exacerbate their existing problems, such as poor self-esteem, anxiety, and depression.

Finally, by way of technical assistance, IJCF fails to provide adequate family therapy. Family therapy often is an important part of mental health treatment for adolescents, both for addressing past family difficulty and for preparing girls to successfully transition from the facility to the community. Although one or two girls mentioned having had a family therapy meeting at some point, the records we reviewed included no accounts of any family therapy sessions at IJCF.

c. Inadequate Psychiatric Care

The Constitution requires facilities like IJCF to provide adequate psychiatric care to their residents. A psychiatrist should evaluate youths who have been identified as needing a psychiatric assessment and should appropriately manage the conditions and responses to medication for youths on psychotropic medications. To facilitate necessary communication between and among mental health staff and treatment teams and to provide adequate mental health treatment to youths, it is critical that the psychiatrist adequately document his or her assessments and medication management sessions. Psychiatric care at IJCF fails in both areas.

The psychiatric evaluations our consultant reviewed were inadequate and were missing important information. Although the psychiatrist we observed is pleasant, engaging, supportive, and elicits much useful information from girls, the documentation of many of these assessments is sparse and often fails to convey the critical information gathered in the interviews. For example:

- An initial psychiatric evaluation of a girl who arrived at the facility on four different psychiatric medications fails to include her clinical history, a mental status examination, or any summary or explanation of the psychiatrist's diagnostic findings. The evaluation further fails even to mention three of the girl's four medications or her response to them. Moreover, the evaluation is

confusing; it does not explicitly discontinue her medications because it does not acknowledge that she has been taking them. It also fails to provide any explanation for a change in her medications that apparently occurred on the day before her psychiatric assessment.

- An initial psychiatric evaluation of another girl who had Attention Deficit Hyperactivity Disorder (“ADHD”), depression, and sleep disturbance fails to include history from any source to support these diagnoses, fails to include information about the onset or course or her symptoms, and fails to discuss her history of, or response to, treatment. Although the mental status examination notes that the girl reports sleeping problems, the report contains no further characterization of these problems. It also fails to include any information about her history with, or the effectiveness of, her current medication. The report offers no opinions, but merely continues the girl’s admission medications with one change.
- An initial psychiatric evaluation of another girl who had anger, depression, and post traumatic stress disorder includes no history other than a notation of her and her parents’ previous diagnoses and her prior medications. The report contains no basis for any of the information about her prior diagnoses, no explanation of a recommendation to discontinue her medications, no attention to the possibility of an adverse reaction to the discontinuation of the medications, and no attention to the meaning or treatment of her other problems.

Similarly, medication management visits are inadequate. Most psychiatric notes of those visits lack appropriate subjective history from the girl, adequate mental status, and objective staff observations. They further fail to include any explicit attention to assessment of the girl’s condition or response to the medications prescribed. Instead, they provide only superficial, incomplete EMR template check-offs.

Indeed, using the EMR’s check-off format without additional narrative responses lends itself to documentation errors because of the ease with which a practitioner inadvertently may check off an incorrect box. For example, a note from a segregation visit with a particularly challenging girl stated:

Student was sitting on the floor of her feces-smear room, facing away from the door. She had torn clumps of hair out of her head and had made a figure out of it. She had placed the figure on the floor and had made a circle of toilet paper and corn flakes around it. She chanted

unintelligibly, and occasionally screamed that the figure was trying to kill her.

Despite this disturbing scenario, the EMR documentation associated with this visit inexplicably characterized the girl's intellect as average and her self-perception as realistic.

4. Inadequate Mental Health Staffing

IJCF's failure to provide adequate mental health care to girls appears, at least in part, to stem from grossly inadequate mental health staffing. At the time of our July 2008 visit, the facility employed two psychologists, one licensed mental health professional, and a psychiatric technician (assistant). The psychiatrist visited one day per week. In light of the high prevalence of mental health disorders in the female juvenile population, the relatively high acuity of symptoms, and the ongoing high-stress security environment, the level of mental health staffing in this facility falls far below the generally accepted professional standards for similar facilities.

In the professional opinion of our mental health consultant, adequate clinical staffing for this facility would require more than tripling the current mental health staffing. Specifically, the facility should have nine or ten psychologists, one or two additional clinical supervisors, and approximately ten days per month of psychiatry time.

5. Inadequate Recordkeeping

Adequate recordkeeping is critical to the provision of adequate mental health care to juveniles in facilities. As discussed above, the psychiatrist fails to adequately document evaluations and medication management sessions. Moreover, as discussed above, IJCF's use of the EMR results in inadequate documentation of behavioral health assessments, treatment planning, and treatment provision.

Additionally, because behavioral health staff communicate about residents largely through notes that they enter into the EMR after treatment team meetings, it is critical that the behavioral health staff member who attends a particular treatment team meeting adequately and thoroughly document the team's observations and conclusions. The behavioral health record of treatment team attendance in the EMR, however, consists of a superficial note that includes only the results of the team discussion and a mental status evaluation. This is not adequate communication to enable a behavioral health clinician to understand and respond to a resident's condition and needs.

Facility records also contain confusing and contradictory information regarding medications girls had been taking prior to their arrival at IJCF, medications they had brought to the facility with them, and orders regarding continuation of these medications.

Finally, facility records are inconsistent regarding documentation for consent for medications. Although some records indicate that information about medications is conveyed to families, records generally fail to include any careful, specific documentation of whether a parent approves of the proposed treatment. Moreover, because the facility superintendent has the ultimate authority to consent to medications on behalf of each girl, facility records should include the corresponding documentation, particularly documentation that the superintendent or his or her designee has been informed of the proposed treatment, of the girl's attitude toward the treatment, and of the risks and potential benefits of the treatment.

C. SPECIAL EDUCATION SERVICES

IJCF violates the federal statutory rights of students with disabilities. Students with certain disabilities have federal statutory rights to receive special education services under the IDEA, 20 U.S.C. §§ 1400-1482.¹⁷ In states that accept federal funds for the education of youths with disabilities, as Indiana does, the requirements of the IDEA apply to juvenile justice facilities. See 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.2(b)(1)(iv). IJCF consistently fails to provide its students with the educational services that the IDEA guarantees. On a systemic level, IJCF does not adequately attend to or measure its students' academic or behavioral progress. As a result, the facility is limited to an often unjustified and ad-hoc, rather than data-driven, approach to its students. Because of this, students at IJCF often do not receive appropriate special education services, as required by the IDEA. More particularly, IJCF is noncompliant with the IDEA with respect to: (1) child find; (2) general education interventions; (3) Individual Education Plans ("IEPs"); (4) access to the general education curriculum; (5) student behavior; (6) staffing; and (7) transition services.

1. Inadequate Child Find Procedures

The IDEA requires that the State have in place policies and procedures to ensure that all children with disabilities who are in need of special education and

¹⁷ We note that the IDEA was reauthorized and amended by the Individuals with Disabilities Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647, effective July 1, 2005.

related services and who reside in the state have been identified, located, and evaluated. 34 C.F.R. § 300.111(a)(1)(I). This is known as Child Find. IJCF does not satisfy this requirement. Although IJCF initiates both general education interventions and the process for evaluation, IJCF does not adequately observe its students, collect academic and behavioral data, or make general education interventions prior to evaluating students for special education, as detailed below.

IJCF's difficulties in Child Find begin with its Intake Questionnaire, which simply gives three options to students regarding their past education: "regular, advanced, or special education." "Special education" is not a sufficiently familiar term to assist students with identifying their past educational services; students should be asked additional questions, such as whether they previously received extra help in school or attended separate classes. IJCF's questionnaire therefore inadequately assists in identifying students in need of special education and related services.

2. Inadequate General Education Interventions

The IDEA requires that, prior to evaluation of a student for special education, the state must consider whether the student is being provided appropriate instruction by a highly qualified teacher and review data-based documentation of the student's progress. 34 C.F.R. § 300.309(b)(1)-(2). The state must further document the student's behavior in that student's learning environment, including the regular classroom setting. We found no evidence that IJCF engages in these required activities, or in any general education or pre-referral interventions, data collection, or observations.

As a result of the above deficiencies, students in need of and qualified for special education are at risk of not receiving the services guaranteed to them by federal law.

3. Inadequate IEPs

The IDEA requires that each student with a disability have an IEP to ensure that the student receives adequate special education. IJCF's IEPs and the procedures surrounding them are not in compliance with the IDEA in several areas: (1) inadequate records obtained at intake and sent out at exit; (2) timeliness of IEP reviews; (3) inadequately justified divergences between previous and current levels of special education; (4) missing parent/guardian and IEP team signatures; and (5) inadequate IEP implementation and data collection.

First, the IDEA requires that IJCF promptly obtain educational records from a student's former place of enrollment once she has entered IJCF. 34 C.F.R.

§ 300.323(g). Nearly one third of the files we reviewed at IJCF, however, were missing transcripts from the student's previous placement. Transcripts are critical in ensuring that students are enrolled in appropriate coursework. The absence of these transcripts therefore places students at substantial risk of being denied appropriate education opportunities.

Second, IJCF is not completing IEP reviews in a timely manner. Under the IDEA, the timelines for initial IEP reviews vary based on one of three possible scenarios: an initial determination of disability at a given facility; transfer of a student to the facility from within the state, and transfer of the student to the facility from another State Education Agency. See 34 C.F.R. § 300.323(c)(1), (e), (f). In any case, IEP reviews and implementation of IEPs for students with disabilities should be conducted as quickly as possible upon intake.

Nearly one third of IJCF's IEP conferences were not completed in a manner consistent with the IDEA. The facility held some conferences as late as one or two years after they were supposed to have occurred. It also recorded other conferences as having been held before enrollment had even occurred, calling into question the accuracy of IJCF's recordkeeping.

The IDEA also requires at least annual reviews of IEPs. 34 C.F.R. § 300.324(b)(1)(I). Only one third of the IEPs we reviewed satisfied this requirement. IJCF's failure to review IEPs in a timely manner is in violation of the IDEA.

Third, the IDEA requires IJCF to provide educational services comparable to those described in a student's IEP from her previous placement or to provide an adequate justification for any change in services. We found significant and inadequately justified disparities between previous and current IEPs. For example, one student, A.B., received special education more than 50% of the school week in her previous placement but, as of the time of our April 2008 tour, she was receiving special education only on a consultation basis. Similarly, A.A. was previously receiving 100% special education services in her previous placement, but at IJCF receives only 15-20 minutes of services twice a month. Another student, T.D., had been classified as having a communication disorder but had no IEP addressing this issue. And C.B. previously had an IEP that included a Behavior Intervention Plan ("BIP"), but her current IEP does not. Two students, A.A. and J.E., are classified as emotionally disturbed, which by definition means that they have behaviors that interfere with learning. Their IEPs, however, note that their behaviors do not impede their learning, a glaring inconsistency. These disparities and inconsistencies are not adequately justified by any of the students' IEPs, and therefore place the students at risk of not receiving appropriate services, in violation of the IDEA.

Fourth, the IDEA requires that IEP meetings include, to the extent possible, a student's parents or guardians and IEP team members. 34 C.F.R. §§ 300.321(1)(a); 300.322. We encountered a pervasive lack of parental and IEP team member signatures on student IEPs, far beyond the absences that could be expected due to parental decisions not to attend. Indeed, of the eleven IEPs we reviewed, nine had no signatures whatsoever, and two had only parent signatures.

Fifth, and finally, we found no evidence that student IEPs are actually being implemented. Despite our request, IJCF provided us with no student grades, and we received at least one report from a student indicating that classwork is not graded. Additionally, we found no data concerning student academic and behavioral IEP goals. The absence of grades and other monitoring data is in direct violation of the IDEA's requirements that data on student progress on annual goals be collected and reported. 34 C.F.R. § 300.320(a)(3).

4. Inadequate Access to the General Education Curriculum

The IDEA guarantees students with disabilities access to the general education curriculum. 34 C.F.R. §§ 300.304(b)(1)(I); 300.305(a)(2)(iv); 300.320(a)(2)(i)(A). IJCF fails to comply with this requirement in a number of ways.

First, IJCF delays students' enrollments in school for 14 days after intake without adequate justification. Reportedly, this time is spent in idle activities, such as listening to music, watching movies, general recreation, and cleaning, with only a few hours devoted to general orientation activities such as visiting a doctor and completing educational and other testing.

Second, IJCF fails to provide some required courses, in violation of the IDEA's requirement that students with disabilities be given access to the general education curriculum. Students with disabilities at IJCF do not have access to certain elements of the Core 40, the basis for general education in Indiana, nor do they have access to vocational education courses. IJCF also fails to provide appropriate coursework. For example, at the time of our tour, one student was enrolled in Pre-Algebra, despite the fact that she already had taken and passed Pre-Algebra 1 and Pre-Algebra 2. And, as noted above, a number of students' files are missing transcripts, making it difficult to ensure that these students are enrolled in proper coursework.

Third, students with disabilities are denied access to the general education curriculum at IJCF as a result of inadequate teacher planning, a lack of instructional adaptations, and inadequate recordkeeping. Our observations of several classes revealed no instruction taking place. Where instruction was

observed, the purpose of the lessons and their relationship to State standards was all but impossible to discern. The inadequacy of the lessons may be explained by the many reports we received that instruction had only begun approximately two weeks before our observations took place. Prior to that time, when boys also were housed at the facility, instruction had not been taking place because of the high student-to-teacher ratios in the classrooms.

IJCF should enable adequate lesson planning by giving teachers a daily planning period that is not interrupted by other duties. Teachers then should be held accountable for conducting lessons that meet State standards and are consistent with the scope and sequence of courses taught at IJCF.

Even where we observed some direct instruction, students with disabilities were denied access to the general education curriculum because of IJCF's failure to employ instructional and behavioral adaptations. The IDEA requires that teachers implement each child's IEP, including specific accommodations, modifications, and supports. 34 C.F.R. § 300.323(d)(2)(ii). Indeed, the IDEA guarantees appropriate instructional adaptations. 34 C.F.R. § 300.39(b)(3)(i)-(ii). And we note that teachers should not be developing individualized curricula, but should instead use appropriate supports and adaptations to permit access to the general education curriculum. Additionally, to comply with the IDEA, IJCF must keep records regarding the effectiveness of its instructional adaptations. Teachers must maintain accurate and complete grade books, as well as evidence of student progress with instructional adaptations. But, reportedly, class assignments at IJCF are not graded and we found no evidence to the contrary.

Fourth, IJCF fails to provide adequate instructional minutes on a daily and weekly basis. The IDEA guarantees students with disabilities the same number of instructional minutes per day and week as other students in Indiana schools. See 34 C.F.R. § 300.11. Students in Indiana schools receive six hours of instruction time per day and 30 hours per week. But IJCF provides no instructional time on Thursday afternoons so that it can hold "team meetings." To comply with the IDEA, IJCF should provide a full day of school on Thursdays.

Fifth, and finally, IJCF's treatment of students in segregation fails to comply with the IDEA requirement that it provide comprehensive educational services to students, even when the student is moved from her current placement. 34 C.F.R. §§ 300.101(a); 300.530(d)(1)(i)-(ii). Specifically, students with disabilities do not receive work in all academic subjects while in administrative segregation, and, reportedly, no school is provided to students in disciplinary segregation. Again, all students with disabilities should have ongoing and appropriate access to educational services.

Relatedly, students with disabilities in SNU, SAC, and BIC are not provided instruction in all academic content areas. Further, instruction in these placements is not provided by licensed and highly qualified teachers. Where safety or other penalogical interests are involved, IJCF should make individualized adaptations and return the student to class as quickly as is safely possible.

5. Inadequate Behavioral Supports

IJCF also fails to provide adequate behavioral supports to students with disabilities, in violation of the IDEA.

For example, because IJCF's system-wide behavior plan is not fully developed or implemented, the plan does not adequately address the needs of students with disabilities, in violation of the IDEA. 34 C.F.R. § 300.324. IJCF should work proactively to motivate students and ensure that students with emotional disturbance and other disabilities are provided with the supports they need to be educated with peers that do not have these disabilities. Our classroom observations showed that IJCF fails to meet this standard: teachers have limited options for addressing misbehaving students and must rely on in-school suspension and segregation. The documentation we reviewed does make some reference to a token system for promoting positive pro-social behavior, but the token system had yet to be enacted at the time of our April 2008 visit. As detailed below, this absence is emblematic of deficiencies in the system-wide behavior plan.

IJCF also does not make adequate use of in-school suspension ("ISS"). The token system described above is referenced in ISS documentation, but, as of our visit, had not been implemented. Nor is ISS used in a way that would benefit students with disabilities. In our direct observations of regular classrooms, ISS procedures were not employed, despite sleeping or otherwise unengaged students. Moreover, the ISS instructor does not appear to be aware of the special needs of students with disabilities, nor does IJCF have in place a method for alerting ISS instructors to these needs. The absence of adaptations for students with special disabilities, such as a parallel cognitive processing form for students with lower reading levels, further complicates this communication difficulty. IJCF also does not adequately gather and analyze data to determine whether students view ISS as a means to avoid their work, teachers, or other aspects of regular programming at the facility.

The exclusionary behavioral programs in IJCF's system-wide behavior plan do not adequately meet the needs of students with disabilities because they serve indistinct purposes. While employing ISS, SNU, SAC, and BIC as varied levels of behavior support is theoretically sound, in practice these programs have greatly diminished usefulness because IJCF has not clearly articulated a principle for

assigning a student to a given program or for moving students between programs. IJCF also has failed to clearly articulate any difference between general education students and special education students in terms of the function and purpose of these programs, increasing the risk that students with disabilities are being assigned to these programs without the supports in place to benefit them. For these students, the risk is high that they are being placed in these restrictive programs unnecessarily because IJCF lacks general education interventions, has inadequate behavioral interventions in general education classrooms, and does not provide adequate academic instruction, as described above.

Second, to adequately address student behavior, IJCF should implement secondary interventions for students who do not need individual behavior programs but need behavioral supports beyond those offered in the facility plan. Such interventions typically take place in the context of small groups, such as group counseling for rape victims, a reported need at IJCF.

Third, IJCF does not comply with the IDEA with respect to the facility's implementation of individual interventions. Specifically, IJCF again has insufficient data collection. The IDEA requires that IJCF conduct a manifest determination when it decides to change the placement of a student with disabilities because of that student's violation of the code of conduct. 34 C.F.R. § 300.530(e)(1). But IJCF does not collect or analyze the data crucial to making such a determination regarding a student with disabilities who is unsuccessful in the general population.

The IDEA also requires IEP teams at IJCF to use positive behavioral interventions and supports for students who exhibit behaviors that inhibit them from learning. The BIPs used at IJCF do not satisfy this requirement. Effective BIPs that promote positive behavior should be based on functional assessments of student behavior ("FBA"). The FBAs we reviewed at IJCF offer little useful information for behavioral interventions. The FBAs that exist at IJCF were completed shortly before our inspection and lacked accompanying BIPs. Indeed, we found a complete lack of BIP implementation and data on student behavior, a necessary element of effective BIP implementation.

Several examples illustrate the absence of, and need for, effective BIPs at IJCF. Several students noted that, prior to IJCF, they had been on medication for ADHD, a classified disability. These students now have no access to ADHD medication. Similarly, other students reported that they had behavior plans in their previous settings, but had none at IJCF. Finally, one student reported being put in segregation for eight days, despite IJCF's stated commitment to limiting disciplinary segregation to five days.

Finally, IJCF inappropriately uses segregation, in violation of the IDEA. IJCF repeatedly places students in segregation because of the facility's failures to provide adequate educational services, rather than any particular failure on the part of the students. Specifically, students should not be placed in segregation because of a lack of appropriate instruction and instructional adaptations, an adequate facility-wide behavior plan, adequate general education interventions, adequate FBAs and BIPs, manifestation determination hearings, and safety in the open population. But segregation for precisely these reasons is the consistent experience of IJCF students.

An analysis of the patterns in segregation use shows that IJCF employs segregation without attending to the needs of students with behavioral issues. Specifically, a number of students have spent between 10 and 40 total days in segregation. The time that these students spend in segregation demonstrates that they are unable to function behaviorally in the general education classroom. As such, they should be considered both for general education interventions and evaluations for special education services. No general education interventions have been implemented for these students, however. IJCF therefore has failed to appropriately address the needs of these students and identify their behavior as possibly arising from a disability.

IJCF's use of segregation for students with disabilities is particularly disturbing. Students with disabilities accounted for 43% of all segregations, but comprise only 30% of the total IJCF population. The IDEA requires that students with disabilities who are excluded through segregation receive functional behavior assessments and behavioral interventions that will address the behaviors causing their segregation. 34 C.F.R. § 300.530 (d)(1)(ii). But students with disabilities at IJCF do not receive these mandated services and have no data collected on their behaviors. We found that the students with the most segregations are generally those that are classified as emotionally disturbed; consequently, segregation is being used as a primary means to address students' behavioral disability.

The IDEA requires that students placed in segregation in excess of ten days or in a manner indicating a pattern of segregations receive manifestation determination hearings. 34 C.F.R. § 300.530(e). These hearings assess whether the conduct resulting in a student's segregation was caused by, or had a direct or substantial relationship with, the student's disability or was the result of the school's failure to implement the student's IEP. *Id.* But students at IJCF are segregated repeatedly and for longer than ten days without these hearings, in violation of the IDEA. Further, the IDEA requires IJCF to contact parents if students have been segregated in these circumstances. 34 C.F.R. § 300.530(d)(5),(e). IJCF also fails to comply with this IDEA requirement.

6. Inadequate Staffing

Records we reviewed at IJCF established that the student-teacher ratio is 20:1. This ratio is insufficient for providing youth with disabilities with appropriate access to the general education curriculum. Both the severity of student behavior and the high percentage of students with disabilities require a maximum of ten to twelve students for every teacher. Indeed, the efficacy of lower ratios has been demonstrated at IJCF: teachers and students consistently noted positive changes resulting from the departure of male students from the facility and have attributed greater instructional opportunities in the classroom to the consequently lower student-teacher ratio. IJCF should institute a staffing plan that ensures a student-teacher ratio between 10:1 and 12:1.

Commendably, the teachers at IJCF are appropriately licensed and highly qualified. IJCF should ensure that its teachers maintain this status and that it retain highly qualified teachers in those content areas that require them. IJCF also should create and implement a staff development plan that includes provision for announced and unannounced observation and evaluation of teachers. We found, however, no evidence that IJCF is currently formally observing or evaluating its teachers; such evaluations are necessary to ensure that teachers are providing appropriate instruction, following both the facility and individualized behavior plans, and implementing IEPs.

7. Inadequate Transition Services

The IDEA includes two major components in its definition of the group of activities labeled as “transition services.” First, transition services should be located within a results-oriented process focused on preparing students for a fruitful life outside of the school context. Second, the transition services a given student receives should be based on the individualized needs of that student. 34 C.F.R. § 300.43(a)(1)-(2). Contrary to this standard, IJCF does not make a clear and coordinated set of activities, including vocational education, available to its students. And, as in academics and student behavior, IJCF does not include methods for evaluating student progress in its transition plans and activities. As a result, the transition services at IJCF are not a “results-oriented process,” as the IDEA requires.

III. REMEDIAL MEASURES

A. Protection of Youths From Harm

1. Ensure that youths are provided with safe living conditions and are protected from sexual abuse and misconduct by staff.

2. Ensure that serious incidents, allegations of abuse, and allegations of staff misconduct are adequately and timely investigated by neutral investigators with no involvement or interest in the underlying event. Ensure that staff who are the subject of an allegation of abuse be removed from direct youth supervision pending the outcome of the referral or investigation.
3. Ensure that IJCF has sufficient, adequately trained staff, including adequate numbers of female staff, to safely supervise the residents at all times and provide residents with the requisite level of privacy. Ensure that such training includes training regarding the specific needs of female youths.
4. Except in cases of emergency involving an immediate and serious threat to life, health, or safety of youth or staff, ensure that cross-gender strip searches are not conducted.
5. Except in cases of emergency involving an immediate and serious threat to life, health, or safety of youth or staff, ensure that staff do not forcibly remove or otherwise cut clothing off youths.
6. Develop and implement adequate policies and procedures to ensure that youth are protected from use of excessive force, including force associated with the use of cell extractions, OC spray, and the restraint chair.
7. Develop and implement adequate policies and procedures to ensure that staff are adequately trained in safe restraint practices, that only safe methods of restraint are used, and that restraints are used only in appropriate circumstances.
8. Develop and implement adequate policies and procedures to ensure the appropriate use of isolation, to include due process protections.
9. Develop and implement adequate policies and procedures to ensure that youths have an effective and reliable process to raise grievances without exposing youth to retribution from staff, and to ensure that all grievances are reviewed and addressed in a timely manner that provides youth with notification of the final resolution.
10. Develop and implement adequate policies and procedures to ensure the availability of adequate rehabilitative programming, including gender-specific programming tailored for the needs of female youths.

11. Ensure sufficient, unimpeded, 24-hour access to toilets for all youths.

B. Mental Health Care

1. Provide adequate, comprehensive, and reliable screening and assessment services to identify youths with serious mental health needs, both at intake and throughout youths' time at IJCF.
2. Develop and implement adequate policies and procedures to provide adequate suicide risk screening and assessment in accordance with generally accepted professional standards.
3. Establish and maintain adequate formal treatment planning in accordance with generally accepted professional standards.
4. Establish and maintain adequate mental health programming and rehabilitation programming in accordance with generally accepted professional standards.
5. Establish and maintain adequate mental health counseling and psychotherapy in accordance with generally accepted professional standards.
6. Establish and maintain adequate family therapy in accordance with generally accepted professional standards.
7. Establish and maintain protocols to monitor youths who are on psychotropic medications and adequately document such monitoring, in accordance with generally accepted professional standards.
8. Establish and maintain adequate psychiatric assessments in accordance with generally accepted professional standards.
9. Establish and maintain adequate mental health care staffing.
10. Establish and maintain adequate mental health recordkeeping and communications between and among mental health staff.

C. Special Education

1. Provide prompt and adequate screening, and ongoing re-screening and referral, of youth for special education needs and ensure that all

students requiring special education services receive services in compliance with the IDEA within a reasonable time following intake.

2. Develop and implement adequate Child Find policies and procedures, as required by the IDEA.
3. Develop and implement adequate pre-referral and general education interventions, as required by the IDEA.
4. Develop and implement an adequate individualized education program, as defined in 34 C.F.R. 300.340, for each youth who qualifies for an IEP and provide necessary related services in a reasonable time period.
5. Ensure students with disabilities have sufficient access to an adequate curriculum.
6. Provide adequate behavioral supports to students with disabilities.
7. Develop and implement an education staffing plan that ensures adequate staffing to comply with the IDEA.
8. Provide adequate transition planning and services for all eligible youth with disabilities.

IV. CONCLUSION

The collaborative approach the parties have taken thus far has been productive. We hope to continue working with the State in an amicable and cooperative manner to resolve our outstanding concerns with regard to IJCF.

Please note that this findings letter is a public document. It will be posted on the website of the Civil Rights Division. While we will provide a copy of this letter to any individual or entity upon request, as a matter of courtesy, we will not post this letter on our website until 10 calendar days from the date of this letter.

Provided that our cooperative relationship continues, we will forward our expert consultants' reports under separate cover. These reports are not public documents. Although our expert consultants' reports are their work – and do not necessarily reflect the official conclusions of the Department of Justice – the observations, analyses, and recommendations provide further elaboration of the issues discussed in this letter and offer practical assistance in addressing them. We hope that you will give this information careful consideration and that it will assist you in your efforts at promptly remediating areas that require attention.

We are obliged by statute to advise you that, in the unexpected event that we are unable to reach a resolution regarding our concerns, the Attorney General is empowered to institute a lawsuit, pursuant to CRIPA, to correct deficiencies of the kind identified in this letter, 49 days after appropriate officials have been notified of them. 42 U.S.C. § 1997b(a)(1). We would prefer, however, to resolve this matter by working cooperatively with you. We have every confidence that we will be able to do so in this case. Accordingly, the lawyers assigned to this matter will be contacting your attorneys to discuss next steps in further detail.

If you have any questions regarding this letter, please call Shanetta Y. Cutlar, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-0195.

Sincerely,

/s/ Thomas E. Perez

Thomas E. Perez
Assistant Attorney General

cc: Thomas Quigley, Deputy Attorney General
Special Counsel to the Commissioner
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Edwin G. Buss, Commissioner
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