

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**THE UNITED STATES OF AMERICA,
Plaintiff
v.
THE STATE OF MISSISSIPPI, *et al.*,
Defendants**

CIVIL ACTION NO.: 3:03-cv-1354WSu

AGREEMENT

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I. INTRODUCTION

(A) On May 8, 2002, the United States notified State of Mississippi officials of its intent to investigate conditions of confinement at the Oakley Training School ("Oakley") in Raymond, Mississippi and Columbia Training School ("Columbia") in Columbia, Mississippi, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141").

(B) Between June 24 and September 27, 2002, the United States toured Oakley and Columbia with consultants in the fields of juvenile justice, medicine, mental health care, education, and sanitation.

(C) Throughout the course of the investigation, the United States received complete cooperation and access to all facilities and documents from the State of Mississippi.

(D) On June 19, 2003, the United States issued a findings letter pursuant to 42 U.S.C. § 1997(a)(1), which concluded that certain conditions at Oakley and Columbia violated the constitutional and federal statutory rights of juveniles confined in the facilities.

(E) The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 14141. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b).

(F) Defendants in this action are the State of Mississippi, and the Mississippi Department of Human Services, and their successors, contractors and agents. The State of Mississippi shall ensure that all State agencies take any actions necessary to comply with the provisions of this Agreement.

(G) For purposes of this lawsuit only and in order to settle this matter, the State of Mississippi consents to the entry of a finding that it has violated the federal rights of juveniles at Oakley and Columbia in each area addressed in Section IV of this Agreement. The State is firmly committed to providing legally adequate conditions by instituting the remedial measures required by this Agreement.

(H) The State asserts that it has made improvements in the following areas since 2002: grievance system, greater access to attorneys, religious freedom, new medical facilities, increased educational staff. The United States takes no position on the validity of the foregoing State assertions.

(I) The United States and the State of Mississippi stipulate and agree that all of the prospective relief in this Agreement is narrowly drawn, extends no further than necessary to correct violations of federal rights, is the least intrusive means necessary to correct these violations, and will aid public safety and the operation of Oakley and Columbia.

(J) The parties to this Agreement agree and represent to the Court that this Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a), and may serve as the factual and legal basis for a Court order issued pursuant to those provisions.

(K) The issue of liability has not been litigated. The parties ask the Court to approve this Agreement without a full hearing on the merits, on the basis of the United States' Complaint and the above stipulations.

(L) This Agreement is not intended to have any preclusive effect except between the parties. Should the issue of the preclusive effect of this Agreement be raised in any proceeding other than this civil action, the parties agree to certify that this Agreement was intended to have no such preclusive effect.

(M) This Agreement and the Memorandum of Agreement shall not be used against the State in any proceeding other than a proceeding between the United States and the State of Mississippi.

(N) Nothing in this Agreement or the Memorandum of Agreement shall prevent the State from modifying or closing Oakley or Columbia, or developing alternative community placements for the youth currently in the facilities.

(O) No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement or the Memorandum of Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under these agreements. These agreements are not intended to impair or expand the right of any person or organization to seek relief against the State, Division or its officials, employees, or agents for their conduct or the conduct of Division employees; accordingly, they do not alter legal standards governing any such claims, including those under Mississippi law.

II. DEFINITIONS

In this Agreement, the following definitions apply:

(P) "Columbia" means the Columbia Training School located at 1730 Highway 44, Columbia, Mississippi, and any facility that is built to replace or supplement Columbia.

(Q) "Division" means the Division of Youth Services within the Mississippi Department of Human Services that oversees the safety, treatment, and rehabilitation of juveniles residing at Oakley and Columbia.

(R) "DOJ" means the United States Department of Justice, which represents the United States in this matter.

(S) The term "Ironwood" shall refer to the stand alone building located on the Oakley campus and in use as of the DOJ's 2002 investigation.

(T) "Effective Date" means the date the Agreement is entered by the Court.

(U) "Implement" means to give practical effect and ensure actual fulfillment by concrete measures, including appropriate training of relevant staff.

(V) "Include" or "including" means "include, but not be limited to" or "including, but not limited to."

(W) "Isolation" means placement of a youth alone in a locked room. The term isolation does not apply to locking a youth in a room during the hours of 9:30 p.m. to 5:30 a.m. or a similar eight-hour period for sleep.

(X) "Oakley" means the Oakley Training School, which is also known as the Mississippi Youth Correctional Complex, and is located at 2375 Oakley Road, Raymond, Mississippi, and any facility that is built to replace or supplement Oakley.

(Y) "Memorandum of Agreement" refers to the Rule 41 Agreement between the United States and the State of Mississippi resolving the United States' education, special education, mental health, and rehabilitative services claims in this action.

(Z) "Restraints" means any chemical or mechanical device, including OC spray, used to control the behavior of a youth.

(AA) "Qualified medical professional" means a physician, nurse or other medical provider licensed and sufficiently trained to provide the services he or she undertakes to provide.

(BB) "Qualified mental health professional" means a mental health care provider licensed and sufficiently trained to provide the services he or she undertakes to provide.

(CC) "Quality Assurance Program" means a system of self-auditing and improvement to assess the implementation and effectiveness of all remedies instituted pursuant to this Agreement, to identify deficits that may exist, and to effectuate new measures to cure deficits identified.

(DD) "SIU" means the Special Intervention Units at Oakley and Columbia, designed for youth with behavioral and disciplinary problems and youth who are suicidal.

(EE) "State" means the Defendants as described in paragraph F above.

(FF) "Suicide Precautions" means any level of watch, observation or measures to prevent self-harm.

(GG) "The facilities" means Oakley and Columbia, collectively, and any residential secure facilities operated by or under contract with the Division of Youth Services.

(HH) "Train," means sufficiently instruct in the skills addressed, including ongoing assessment of mastery of instructional material.

(II) "Youth" means any juvenile or juveniles committed by a court to and residing at the facilities during the operation of this Agreement.

III. CONSTITUTIONALLY REQUIRED CARE

The purpose of this Agreement is to protect some of the constitutional rights of juveniles committed to Oakley and Columbia. The terms and requirements of this Agreement shall be interpreted to be consistent with the remedial measures necessary to protect these constitutional rights of the juveniles.

IV. SUBSTANTIVE REMEDIAL MEASURES

A. PROTECTION FROM HARM

- (1) Protection from Harm The State shall, at all times, provide youth in the facilities with reasonably safe living conditions.
- (2) Protection from Abuse The State shall ensure that youth are protected from violence and other physical or sexual abuse by staff and other youth.
- (3) Protection from Abusive Institutional Practices The State shall ensure that abusive institutional practices such as hog-tying, pole shackling, "sitting in a chair," "guard duty," making youth eat vomit, making youth run with tires around their bodies, or run with mattresses, cease immediately.
- (4) Protection from the "Dark Room" The State shall immediately cease using the "dark room" cells at Columbia for the inappropriate punitive isolation of girls in the SIU.
- (5) Ironwood Ironwood is closed and shall not be used for youth committed to the Division during the life of this Agreement.
- (6) Protection from Undue Restraints The State shall ensure that youth are not subjected to unreasonable restraints and that restraints are never used to punish youth. The State shall develop and implement policies, procedures and practices to ensure that only safe methods of restraint are used at the facilities, and only in those circumstances necessary for safety and security.
- (7) Reporting of Staff Misconduct and Other Serious Incidents The State shall develop and implement appropriate policies, procedures, and practices to ensure that all incidents of staff-on-youth and youth-on-youth violence, inappropriate staff relationships with youth, and abusive institutional practices are reported to appropriate individuals, and that such reporting may be done through confidential means, without fear of retaliation. The State shall ensure that all incidents are adequately documented and reported appropriately and with sufficient detail, including the facts of the incident, any injury that occurred as a result of the incident, and in a way that permits review.
- (8) Health Care Inquiries Regarding Injury A nurse or other health care provider shall question, outside the hearing of other staff or youth if appropriate, each youth who reports to the infirmary with an injury, regarding the cause of the injury. If, in the course of the youth's infirmary visit, a health care provider suspects staff-on-youth abuse, that health care provider shall immediately:
 - a. take all appropriate steps to preserve evidence of the injury (e.g., photograph the injury and any other physical evidence);
 - b. report the suspected abuse to the appropriate local officials;
 - c. document adequately the matter in the youth's medical record;
and
 - d. complete an incident report.

- (9) Uses of Force The State shall develop and implement comprehensive policies, procedures and practices governing uses of force, ensuring that the least amount of force necessary for the safety of staff, youth residents, and visitors is used on youth.
- (10) Investigations The State shall develop and implement an adequate system for investigation by senior management of uses of force, alleged child abuse, youth-on-youth violence, and alleged sexual contacts.
- (11) Staff Training in Behavior Management, De-Escalation and Crisis Intervention The facilities shall provide appropriate competency-based training to staff in behavior management, de-escalation techniques, appropriate communication with youth, and crisis intervention before staff may work in direct contact with youth.
- (12) Behavior Management Program The State shall develop and implement an effective behavior management program. The behavior management program shall be implemented throughout the day including during school time. The State shall develop and implement policies, procedures, and practices to ensure that mental health staff provide regular consultation regarding behavior management to custody and other staff involved in the behavior management program, and shall develop a mechanism to assess the effectiveness of interventions utilized.
- (13) Staffing The State shall ensure that there are sufficient numbers of adequately trained direct care and supervisory staff to supervise youth safely, protect youth from harm, and allow youth reasonable access to medical and mental health services, and adequate time spent in out-of-cell activities.
- (14) Isolation The State shall develop and implement policies, procedures and practices to ensure that isolation, lockdown, seclusion and other similar restrictions are used only when appropriate and in an appropriate manner, and to document fully the use of isolation. The State shall immediately cease requiring youth to strip and remain naked while in isolation.
- (15) Due Process The State shall ensure that youths confined for more than 24 hours receive an appropriate due process hearing by an impartial supervisory staff member to determine whether cause exists for continued disciplinary confinement.
- (16) Grievances The State shall develop and implement policies, procedures, and practices to ensure that the facilities have an adequate grievance system.
- (17) Admissions Intake and Orientation The State shall develop and implement policies, procedures and practices to establish a consistent, orderly admissions intake system, conducive to gathering necessary information about youth, disseminating information to staff providing services and care for youth, and maintaining their safety. Each youth entering the facility shall receive an effective orientation that shall include simple directions for reporting abuse, and assure youth of their right to be protected from harm and from retaliation

for reporting allegations of abuse. Orientation shall also clearly set forth the rules youth must follow at the facility, explain how to access medical and mental health care and the grievance system, and provide other information pertinent to the youth's participation in facility programs.

(18) Employment Practices The State shall ensure that only individuals fit to work with youth residents are employed at the institutions. The State shall utilize reasonable measures to determine applicants' fitness to work in a juvenile justice facility prior to hiring employees for positions at the facilities. Within 120 days of the Effective Date of this Agreement, the State shall conduct a criminal record check for all current employees at the facilities, taking appropriate actions where new information is obtained. Every two years thereafter, the State shall update record checks for all employees who come into contact with youth.

(19) Classification The State shall develop and implement a classification system that places youth appropriately and safely within the facility, and provides for reclassification in appropriate circumstances.

B. SUICIDE PREVENTION

(20) Development and Implementation of Policy The State shall develop and implement adequate policies, procedures, and practices relating to suicide prevention.

(21) Suicide Risk Assessments The State shall develop and implement policies, procedures, and practices to ensure that qualified mental health professionals conduct timely suicide risk assessments, using reliable assessment instruments, for a) all youth exhibiting behavior which may indicate suicidal ideation, and b) when determining whether to change the level of suicide precautions.

(22) Mental Health Response to Suicidal Youth The State shall develop and implement policies, procedures, and practices to ensure that youth who demonstrate suicidal ideation or attempt self-harm receive timely and appropriate mental health care by qualified mental health professionals. This shall include helping youth develop skills to reduce their suicidal ideations or behaviors, and ensuring that all youth discharged from suicide precautions receive adequate follow-up treatment within the facilities.

(23) Supervision of Youth at Risk of Self-Harm The State shall ensure that newly-arrived youth, youth in isolation or seclusion, and other youth at heightened risk of self-harm are sufficiently supervised to maintain their safety.

(24) Housing for Youth at Risk of Self-Harm The State shall ensure that all housing for youth at heightened risk of self-harm, including holding cells, isolation cells, seclusion cells, and housing for youth on suicide precautions, is free of hazards that would allow youth to hang themselves or commit other acts of self-harm.

(25) Restrictions for Suicidal Youth The State shall ensure that youth on suicide

precautions are not restricted in their access to programs and services more than safety and security needs dictate.

(26) Documentation of Suicide Precautions The State shall develop and implement policies, procedures, and practices to ensure that the following information is thoroughly and correctly documented, and provided to all staff who need to know such information:

- a. the times youth are placed on and removed from precautions;
- b. the levels of precautions on which youth are maintained;
- c. the housing location of youth on precautions;
- d. the conditions of the precautions; and
- e. the times and circumstances of all observations by staff monitoring the youth.

(27) Access to Emergency Equipment The State shall ensure that direct care staff have immediate access to appropriate equipment to intervene in the event of an attempted suicide.

(28) Suicide and Suicide Attempt Review The State shall ensure that appropriate staff review all completed suicides and serious suicide attempts for policy and training implications.

C. MEDICAL AND DENTAL CARE

(29) Appropriate Care The State shall provide youth adequate, appropriate, and timely medical and dental care to meet the individualized needs of youth, including treatment of acute and chronic medical conditions. The State shall develop and implement adequate medical and dental policies, procedures and protocols. The State shall ensure that there are sufficient numbers of qualified medical professionals to meet these needs.

(30) Coordination of Medical, Dental, and Mental Health Care The State shall hire a qualified health care services coordinator who shall coordinate the medical, dental, and mental health care of each youth in the facilities. The qualified health care services coordinator shall coordinate care provided by lower level practitioners, and participate in quality assurance and infection control programs.

(31) Medical Facilities The State shall ensure that the facilities are equipped with adequate medical and dental clinics and that medical equipment that could be used as weapons is not accessible to youth. Each clinic shall provide for an appropriately confidential environment in which to conduct medical and mental health assessments.

(32) Health Assessments The State shall ensure that youth receive adequate

health assessments upon admission or re-admission to the facilities.

(33) Medication Administration The State shall develop and implement training for all medical staff responsible for medication administration to prevent medication discontinuity and ensure that generally accepted professional standards are followed.

(34) Medical Referrals The State shall develop and implement policies, practices, and procedures to ensure that medical decisions to refer youth for specialty consultations or dental treatment are not overruled by non-medical personnel.

(35) Medical and Mental Health Records Retrieval The State shall develop and implement policies, procedures and practices to ensure that, consistent with State and Federal law, at a minimum, the juvenile courts in the State, all juvenile detention facilities, and all placement settings from which youth are committed, timely forward all pertinent youth records regarding medical and mental health care.

(36) Medical and Mental Health Record System The State shall develop and implement policies, procedures and practices to ensure that medical and mental health care staff have access to documents that are relevant to the care and treatment of the youth.

V. COMPLIANCE AND QUALITY ASSURANCE

(37) Document Development and Revision The State shall revise and/or develop policies, procedures, protocols, training curricula, and practices to ensure that they are consistent with, incorporate, address, and implement all provisions of this Agreement. The State shall revise and/or develop as necessary other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement.

(38) Document Review Within 30 days after the filing of this Agreement with the Court, the State shall submit a master plan to DOJ that establishes a time line of up to one year to revise and/or develop written policies, procedures, protocols, training materials, and screening and assessment tools to effectuate the provisions of this Agreement. The master plan and the policies, procedures, protocols, training materials, and screening and assessment tools shall be submitted to the DOJ for review and approval consistent with this paragraph. The DOJ shall provide prompt guidance to the State, including specific explanations as to how the provisions, policies, or procedures, if any, are inconsistent with the terms of this Agreement, and shall suggest revisions. In the event that the DOJ asserts that policies, procedures, and other written documents are not in compliance with the terms of this Agreement, the parties will agree to a schedule for the parties' experts to communicate. The State shall revise policies as necessary to conform with the terms of this Agreement. If, after the policies, procedures, and practices affected by this Agreement are implemented, either of the parties determines that a policy, procedure, or practice, as implemented, fails to effectuate the terms of this Agreement, the

parties shall consult and the policy, procedure, or practice shall be revised as necessary to conform to the terms of this Agreement. If the parties are unable to agree on revisions to the policies, etc., the parties shall submit the issue to the Monitor. If either party is unsatisfied with the Monitor's resolution, then either party may invoke mediation. If neither party requests mediation, or at the conclusion of mediation, the dispute may be submitted to the Court.

(39) Quality Assurance Programs The State shall develop and implement Quality Assurance programs consistent with generally accepted professional practices for each discipline addressed in this Agreement.

(40) Corrective Action Plans For each discipline addressed in this Agreement, the State shall develop and implement policies and procedures to address problems that are uncovered during the course of quality assurance activities. The State shall develop and implement corrective action plans to address these problems in such a manner as to prevent them from occurring again in the future.

(41) Technical Assistance DOJ will provide the State with technical assistance in the development of policies and procedures required to effectuate the terms of this Agreement. DOJ will assist the State in identifying additional financial resources to supplement those resources currently allocated to the facilities.

VI. MONITORING AND ENFORCEMENT

(42) Monitor Selection The parties have jointly selected Joyce Burrell to serve as the Monitor. Should the position become vacant and the parties cannot agree on a replacement, the parties shall recommend candidates to the Court, and the Court will select the Monitor. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitor's activities, reports, findings, or recommendations. The cost for the Monitor's fees and expenses shall be borne by the State. The selection of the Monitor shall be conducted solely pursuant to the procedures set forth in this Agreement, and will not be governed by any formal or legal procurement requirements. The Monitor may be terminated only for good cause, unrelated to the Monitor's findings or recommendations, and only with prior notice to and approval of both parties or by Court order.

(43) Monitor Qualifications The Monitor shall have experience and education or training in the field of juvenile justice. The Monitor may also have education, training, or experience in general or special education, adolescent health and mental health needs (particularly the needs of institutionalized adolescents), and institutional abuse and incident investigations.

(44) Monitor Access The Monitor shall have full and complete access to the facilities, all facility and Division records, staff, and residents. The State shall direct all employees to cooperate fully with the Monitor. All non-public information obtained by the Monitor shall be maintained in a confidential manner.

(45) Monitor Ex Parte Communications The Monitor shall be permitted to initiate and receive *ex parte* communications with all parties.

(46) Limitations on Public Disclosures by Monitor Except as required or authorized by the terms of this Agreement or the parties acting together, the Monitor shall not: make any public statements (at a conference or otherwise) or issue findings with regard to any act or omission of the State or its agents, representatives or employees, or disclose non-public information provided to the Monitor pursuant to this Agreement. Any press statement made by the Monitor regarding their employment must first be approved by the parties. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of the State, Division or any of their agents, representatives, or employees related to this Agreement, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Agreement. Reports issued by the Monitor shall not be admissible against the State in any proceeding other than a proceeding related to the enforcement of the State's agreements with DOJ. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the State or its departments, officers, agents or employees. The Monitor is not a state or local agency or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. Neither the Monitor nor any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Agreement shall be liable for any claim, lawsuit or demand arising out of the Monitor's performance pursuant to this Agreement. This paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

(47) Monitor Reports The Monitor shall file with the Court and provide the parties with reports describing the steps taken by the State to implement this Agreement and evaluate the extent to which the State has complied with each substantive provision of the Agreement. Such reports shall be issued every four months, unless the parties agree otherwise. The reports shall be provided to the parties in draft form for comment at least two weeks prior to their issuance. These reports shall be written with due regard for the privacy interests of individual youth and staff and the interest of the State in protecting against disclosure of non-public information.

(48) Monitor Budget The Monitor shall have a budget sufficient to allow the Monitor to carry out the responsibilities described in this Agreement. The Monitor may consult experts or consultants retained by either party. All parties shall receive copies of all draft reports from experts to the Monitor prior to the issuance of any Monitor's report, and shall have the option of being present at briefings from such experts to the Monitor and to the State. The Monitor may initiate and receive *ex parte* communications with the parties and with the parties' consultants.

VII. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

(49) DOJ Access The DOJ shall have full and complete access to the youth at the facilities. The DOJ shall have full and complete access to the facilities, youth records, staff records, and staff of the facilities regarding the topics addressed in this Agreement. The DOJ shall have the right to conduct unannounced visits to the facilities. The DOJ shall have the right to conduct interviews with staff, and confidential interviews with residents and former residents. State attorneys may be present at interviews of staff and tours of facilities. All non-public information obtained by the DOJ shall be maintained in a confidential manner.

(50) State Response to DOJ Questions Limited to ten succinct questions without subparts within a six month period, within 30 days of receipt of written questions from the DOJ concerning the State's compliance with this Agreement, the State shall provide the DOJ with written answers and access to any requested documents regarding the State's compliance with the requirements of this Agreement. Any dispute regarding the scope or burden of the requests shall be resolved by the Monitor.

(51) State Documentation of Compliance The State shall maintain sufficient records to document its compliance with all of the requirements of this Agreement. The State shall also maintain (so long as this Agreement remains in effect) any and all records required by or developed under this Agreement.

(52) State Compliance Reports Fourteen calendar days before each report from the Monitor is due, the State shall provide the Monitor and the United States with a status report regarding its compliance with this Agreement.

(53) Privileges This Agreement shall not be deemed to waive the attorney/client, attorney work product, deliberative process, or executive privileges. The State shall not assert physician/patient or psychotherapist/patient privileges with respect to the monitoring of this agreement and the Memorandum of Agreement by DOJ and the Monitor.

VIII. IMPLEMENTATION AND TERMINATION

(54) Information to Employees The State shall ensure that all current and future relevant State employees understand the terms of this Agreement (to the extent necessary to carry out their job duties and responsibilities) and implement the terms of this Agreement.

(55) Implementation The State shall implement all reforms necessary to effectuate this Agreement. The implementation will begin immediately upon the filing of this Agreement. The parties agree that the systemic and comprehensive nature of this Agreement will require implementation and refinement of policies and programs over a number of years. In addition, the parties agree that the State shall make continuous progress during the first three years of this Agreement to provide adequate juvenile correctional officers, counselor aides, and security officers. The parties also agree that the State shall

make continuous progress during the first eighteen months of this Agreement to provide adequate teachers, nurses, and nurse practitioners. As a separate matter, minor, inconsequential, sporadic, unintentional or isolated harmless instances of noncompliance with the Agreement shall not be a basis for enforcement, provided they do not affect a substantial interest of the youth.

(56) Integration This Agreement shall constitute the entire integrated Agreement of the parties with respect to the United States' claims concerning protection from harm and medical and dental care. The United States and the State have entered into a Memorandum of Agreement that addresses the United States' claims concerning mental health, rehabilitation, education, and special education. With the exception of DOJ's findings letter referenced in ¶D hereof, the Memorandum of Agreement, and any DOJ technical assistance recommendations, no prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in this litigation or in any other proceeding.

(57) Enforcement If DOJ believes that the State has failed to substantially comply with any obligation under this Agreement, DOJ will, prior to seeking judicial action to enforce the terms of this Agreement, give written notice of the failure to the State. The parties shall conduct good-faith discussions to resolve the dispute. If the parties are unable to reach agreement within 15 days of the DOJ's written notice, the parties shall submit the dispute to mediation. The parties shall split the cost of the mediator. In the first instance, the mediator shall be Judge Reuben Vincent Anderson. If Judge Anderson is not available, the mediator shall be Robin Rosenberg. If neither of these mediators is available, the Court shall select a mediator. Thereafter, the order in which mediators are contacted shall alternate between mediations. The parties shall attempt in good faith to mediate the dispute for a minimum of 30 days prior to initiating any court action. DOJ commits to work in good faith with the State to avoid enforcement actions. However, in case of an emergency posing an immediate threat to the health or safety of youths, the United States may omit the notice and cure requirements herein (including the provision regarding mediation), before seeking judicial action.

(58) Agreement Coordinator The State shall appoint an Agreement Coordinator to coordinate and oversee compliance with this Agreement.

(59) Termination This Agreement shall terminate four years from the date it is ordered by the Court. The Agreement may also end earlier than four years from the date it is ordered by the Court if the State has substantially complied with each of the provisions of the Agreement and has maintained substantial compliance for at least two years. The burden shall be on the State to demonstrate this level of compliance. There are three substantive sections of this agreement - protection from harm, suicide prevention, and medical and dental care. A section of the Agreement may be terminated if the State sustains its burden with respect to that section of the Agreement. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained noncompliance shall not constitute substantial compliance.

(60)Defense of Agreement The parties agree to defend the provisions of this Agreement. The parties shall notify each other of any court challenge to this Agreement. In the event any provision of this Agreement is challenged in any local or state court, removal to a federal court shall be sought.

(61) Successors This Agreement shall be binding on all successors, assignees, employees, agents and all those working for or on behalf of the State.

(62)No Waiver for Failure to Enforce Failure by either party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Agreement.

(63)Notice "Notice" under this Agreement shall be provided by courier or overnight delivery and shall be provided to the Governor of the State of Mississippi and to the Attorney General of the State of Mississippi.

(64)Unforeseen Delay If any unforeseen circumstance occurs which causes a failure to timely carry out any requirements of this Agreement, the State shall notify the DOJ in writing within 20 calendar days of the time that the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The State shall implement all reasonable measures to avoid or minimize any such failure.

(65)Non-Retaliation The State agrees that it shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement.

(66)Subheadings All subheadings in this Agreement are written for convenience of locating individual provisions. If questions arise as to the meanings of individual provisions, the parties shall follow the text of each provision.

(67)Severability In the event any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

(68)Attorney's Fees and Expenses Each party shall bear the cost of their fees and expenses incurred in connection with this cause.

FOR THE UNITED STATES:

/s/Dunn O. Lampton
DUNN O. LAMPTON

/s/R. Alexander Acosta
R. ALEXANDER ACOSTA

United States Attorney
Southern District of Mississippi

Assistant Attorney General
Civil Rights Division

/s/Bradley J. Schlozman
BRADLEY J. SCHLOZMAN
Deputy Assistant Attorney General
Civil Rights Division

/s/Shanetta Y. Cutlar
SHANETTA Y. CUTLAR
Chief
Special Litigation Section

/s/Tammi R. Simpson
JUDY PRESTON
Deputy Chief
TAMMI R. SIMPSON
JEFFREY J. RESETARITS
LAURA L. COON
MATTHEW J. DONNELLY
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

FOR THE STATE:

/s/Haley Barbour
HALEY BARBOUR
Governor
State of Mississippi

/s/Donald Taylor
DONALD TAYLOR
Executive Director
Department of Human Services

/s/Kathy Pittman
KATHY PITTMAN

Director
Division of Youth Services

/s/Jim Hood
JIM HOOD
Attorney General
State of Mississippi

SO ORDERED this _____ day of _____, 2005.

THE HONORABLE HENRY J. WINGATE
UNITED STATES DISTRICT COURT JUDGE
SOUTHERN DISTRICT OF MISSISSIPPI