

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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CHARLIE AND NADINE H., et al.	:Hon. Stanley R. Chesler, U.S.D.J.
	:Civ. Action No. 99-3678 (SRC)
	:
Plaintiffs,	:
	:
v.	:
	:
JON S. CORZINE, as Governor of	:
the State of New Jersey, and KEVIN M. RYAN,	:
as Commissioner of the New Jersey	:
Department of Children and Families,	:
	:
	:
Defendants.	:

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**MODIFIED SETTLEMENT AGREEMENT**

**PREAMBLE**

This Modified Settlement Agreement (the “Agreement”) shall supercede all previous agreements, oral and written, and resolve all disputes in the case captioned Charlie and Nadine H., et al., v. Corzine, et al., Civil Action Number 99-3678 (SRC) including without limitation, the claims of the named plaintiffs and the plaintiff classes as of the date of original Settlement Agreement and Plaintiffs’ Motion for Contempt and Noncompliance of December 1, 2005.

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

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

In the event that the legislation currently known as the “Federal Consent Decree Fairness Act” is enacted into law, Defendants agree that they will not invoke their right under that Act to modify or vacate the Consent Decree resulting from this Agreement. Nothing in this section limits the Defendants’ ability to seek to modify or vacate the provisions of

this Agreement under caselaw not interpreting the legislation that is currently known as the Federal Consent Decree Fairness Act, and this provision is not intended to affect in any way other Consent Decrees that have been or will be entered into by the State.

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

As set forth above, it is the intent of the parties to this Agreement that the Court retain jurisdiction over this Agreement and that this Agreement shall be enforceable by the Court as provided herein. It is also the intent of the parties that, notwithstanding the preceding sentence, the parties shall apply their best efforts to effectuate the purposes of this Agreement and make every reasonable effort to resolve disputes prior to seeking Court intervention. Plaintiffs agree not to seek relief for isolated or minor violations, or for violations relating solely to an individual child, unless that child is a named plaintiff in this litigation.

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

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

## **I. PRINCIPLES OF MODIFIED SETTLEMENT AGREEMENT**

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

- A. Children in out-of-home care should be protected from harm.
  1. Foster care should be as temporary an arrangement as possible, with its goal being to provide to children in out-of-home placements a safe, nurturing, and permanent home quickly.
  2. If at all possible, children in out-of-home placements should be quickly and safely reunified with their biological families. If this cannot be accomplished, children need to be placed with an adoptive family, or in the permanent legal custody of an appropriate kinship family, in a timely fashion.
  3. Families should be provided with the services they need to keep them together whenever possible. Families should be provided

with the services they need to allow for safe and speedy reunification whenever possible.

4. In making determinations about plans and services, the child's interests are paramount.
5. Children in out-of-home placement should be in the least restrictive, most family-like setting appropriate for their needs.
6. Children in out-of-home placement should be placed in settings that promote the continuity of critical relationships: together with their siblings; with capable relatives whenever possible; and in their own communities.
7. Children in out-of-home placement should have stable placements that meet their needs, and should be protected from the harm caused by multiple placement moves.
8. Children in out-of-home placements should have the services necessary to address their medical and psychological needs, including those services needed to address problems arising from the child's removal from his or her biological family.
9. Children in out-of-home placement must have timely decision-making about where and with whom they will spend their childhood, and timely implementation of whatever decisions have been made.
10. Children in out-of-home placement should be protected from abuse and neglect and, to this end, investigations of allegations of abuse and neglect in out-of-home placements should be timely, thorough and complete.
11. Adolescents in out-of-home placements should be provided with the skills, opportunities, housing and permanent connections with caring adults they need to successfully make the transition to adulthood.
12. The State shall make every effort to ensure that all children shall receive equal and appropriate access to services without regard to race, religion, sexual identity or ethnic origin.

B. Decisions about children in out-of-home placement should be made with meaningful participation of their families and of the youth themselves to the extent they are able to participate.

C. In order to protect children and support families, New Jersey's child welfare system should operate in partnership with the neighborhoods and communities from which children enter care.

D. New Jersey's child welfare system should be accountable to the public; to other stakeholders; and to communities throughout the State.

E. Services to children in care and their families should be provided with respect for and understanding of their culture. No child or family should be denied a needed service or placement because of race, ethnicity, or special language needs.

F. New Jersey's child welfare system should have the infrastructure, resources, and policies needed to serve the best interests of the children in its care.

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

## **II. PHASE I - JULY 2006 TO DECEMBER 2008**

### **A. NEW CASE PRACTICE MODEL**

1. The parties acknowledge that high-quality case practice is essential to children in the plaintiff class; that it will take several years to achieve the necessary level of performance; and that progress towards this goal must be measured regularly. Accordingly, the State shall, in collaboration with the Monitor, develop and implement a new case practice model consistent with the Principles in this Agreement and sufficient to meet the needs and purposes of this Agreement, as follows.
2. The case practice model shall address at least the issues listed below:
  - a. effective engagement of the family and its natural supports;
  - b. quality assessment of family and child strengths and needs;
  - c. the quality of protective services screening and protective services and IAIU investigations and decision-making;
  - d. the occurrence and timeliness of regular case planning meetings and reviews, with participation by the family and by the child if of age;
  - e. the development of individualized service plans built on the strengths and needs identified in the assessment;
  - f. the provision of services called for in the service plan;
  - g. the ongoing tracking and adjustment of service plans;

- h. the quality of permanency planning, including appropriateness of permanency goals;
  - i. placement standards and the appropriateness of placements for children in out-of-home care;
  - j. placement of children in their own communities, in order to allow them to maintain contact with family and friends and to continue to attend the same school, unless such a placement would not be in the child's best interests;
  - k. regular contact between siblings who have been separated from one another, unless such contact would be inappropriate;
  - l. meeting the educational needs of children in out-of-home care;
  - m. the development and implementation of child-specific recruitment plans for children needing adoptive homes; and
  - n. the provision of services to prepare adolescents for adulthood, including both life skills and ongoing connections to caring adults.
- 3. The State shall develop the case practice model by December 2006 and shall then begin to implement it.
  - 4. Beginning January 2007, the Monitor shall, in consultation with the parties, identify the methodology to be used in tracking successful implementation of the case practice model. This methodology may be phased in over time, such that baselines will be created as soon as practicable, but baseline data will be available for the key case practice elements no later than December 2007.
  - 5. In reporting during Phase I on the State's compliance with the commitments set forth in this section, the Monitor shall focus primarily on the quality of the case practice model and the actions taken by the State to implement it.

## **B. TRAINING**

- 1. Pre-Service Training
  - a. By September 2006 and continuing thereafter, the State shall institute a quality Pre-Service Training program that is consistent with the Principles in this Agreement and sufficient to meet the needs and purposes of this Agreement and that is at least 160 class hours; such training shall include training on intakes and investigations and, beginning January 2007, supplemental training on the new case practice model.

- b. By September 2006 and continuing thereafter, 100% of all new case carrying workers shall be enrolled in Pre-Service Training, including training on intake and investigations, within two weeks of their start date.
- c. By September 2006 and continuing thereafter, no case carrying worker shall assume a full caseload until completing pre-service training and until after she has passed competency exams.

2. In-Service Training

- a. By April 2007 and continuing thereafter, the State shall develop, in collaboration with the Monitor, and institute a quality In-Service Training program that is consistent with the Principles in this Agreement and sufficient to meet the needs and purposes of this Agreement for case carrying staff, supervisors and case aides.
- b. By December 2007, 100% of all case carrying workers and supervisors shall have taken a minimum of 20 hours of In-Service Training and shall pass competency exams. State management shall be responsible for deciding the subject areas that are mandatory for particular staff or types of staff.
- c. Beginning January 2008 and continuing thereafter, 100% of all case carrying workers and supervisors shall take a minimum of 40 hours of annual In-Service Training and shall pass competency exams. DCF management shall be responsible for deciding the subject areas that are mandatory for particular staff or types of staff.
- d. By September 2006 and continuing thereafter, the State shall implement in-service training on concurrent planning for all existing staff. Such training can be utilized to satisfy in part the requirement set forth in 2b and 2c, above.
- e. Beginning April 2007 and continuing through December 2007, 100% of case carrying staff, supervisors and case aides that had not been trained on the new case practice model shall have received this training. The training may take place as part of mandatory annual In-Service Training.

3. Investigations/Intake Training

- a. By September 2006 and continuing thereafter, all new staff responsible for conducting intake or investigations shall receive specific, quality training on intake and investigations process, policies and investigation techniques that is consistent with the Principles in this Agreement and sufficient to meet the needs and purposes of this Agreement. The staff shall pass competency exams before assuming responsibility for intake/investigation cases.
  - b. Beginning September 2006 with completion by June 2007, all staff currently responsible for conducting intake or investigations who have not yet received investigations training shall receive specific training on intake and investigations process, policies and investigation techniques.
4. Supervisory Training
- a. By September 2006, the State shall develop, in collaboration with the Monitor, a quality Supervisory Training Program for all supervisors that is consistent with the Principles in this Agreement and sufficient to meet the needs and purposes of this Agreement and that consists of at least 40 class hours. The State shall institute this training program thereafter.
  - b. Beginning December 2006 and continuing thereafter, 100% of all staff newly promoted to supervisory positions shall complete their 40 hours of supervisory training and shall have passed competency exams within 3 months of assuming their supervisory positions.
  - c. 100% of supervisors promoted to supervisory positions before December 2006 who had not previously received supervisory training shall receive their 40 hours of the supervisory training and shall have passed competency exams by June 2007.

**C. SERVICES FOR CHILDREN AND FAMILIES**

- 1. By December 2006, the Division of Children’s Behavioral Health Services (“DCBHS”) will complete an assessment of the continuum of services needed to best meet the needs of the children and families served by the DCBHS. DCBHS will use the information gathered through this assessment to inform the development of new services.

2. By June 2007, the State shall seek from the federal government approval for a Medicaid rate structure to support the use of new services for children and families, including community-based and evidence-based, informed, or support practices, such as Functional Family Therapy and Multi-Systemic Therapy.
3. By June 2007, the State will amend its policies and procedures to better promote family preservation and reunification by permitting the utilization of flexible funds for birth families involved with DYFS, as follows: (i) the amount of expenditures that may be made without obtaining consent for an exception to the rule shall be increased from \$1,500.00 annually per parent to \$8,6340.00 annually, and (ii) the current limitation that payments made on behalf of birth parents may not be made for a period exceeding three months shall be extended to twelve months.
4. By June 2007, the State will develop a plan for appropriate service delivery for lesbian, gay, bisexual, transgender and questioning youth, and thereafter begin to implement the plan.
5. By June 2007, the State shall promulgate and implement policies designed to ensure that the State continues to provide services to youth between ages 18 and 21 similar to services previously available to them unless the youth, having been informed of the implications, formally requests that the Department close his case.
6. By December 2008, the State shall provide mental health services to at least 150 birth parents whose families are involved with the child welfare system.
7. By December 2008, the State shall expand its preventive home visitation program by 250 slots above the baseline of slots available as of June 2006. This program shall provide home visitation by professionals to pregnant women and families of newborns and young infants who have been identified as at higher risk, and may also provide home visitation for new parents under the age of 20 with a child under the age of 6 months.
8. By June 2008, the State will support an additional 250 child care slots for children whose families are involved with DYFS above the baseline available as of June 2006.
9. By June 2008, the State will expand its support of the violence prevention and child therapy initiative, "Peace: A Learned

Solution” (PALS) to four additional counties above the number of counties where PALS operates as of June 2006.

10. By June 2008, the State will increase the flexible funding available to meet the unique needs of children and birth families, above the amount available as of December 2006, in order to facilitate family preservation and reunification where appropriate.
11. By June 2008, the State will add 18 transitional living program beds for youth between the ages of 16 and 21, above the number of beds available in June 2006.
12. By June 2008, the State will increase substance abuse services to DCF-involved parents and children to include (i) 30 new residential treatment slots for parents; (ii) 50 new intensive outpatient care slots for parents; and (iii) 20 new residential treatment slots for youth. All expansion will be above the number of supported slots as of June 2006.
13. Nothing in Section C shall limit the State’s responsibility with regard to the commitments made in this Agreement involving the State’s needs assessments and the provision of placements and services consistent with those assessments, as described in sections II.C.1, II.H.13 and III.C.7 of this Agreement.

**D. FINDING CHILDREN APPROPRIATE PLACEMENTS**

1. By December 2006 and continuing thereafter, the State shall implement an accurate real time bed tracking system to manage the number of beds available from the DCBHS and match those beds with children who need them.
2. By October 2006 and continuing thereafter, the State shall create a process to ensure that no child shall be sent to an out-of-state congregate care facility unless (i) the placement to which the child is being sent is closer to the child’s family than any appropriate in-state placement; or (ii) the child (a) cannot reasonably be served by any appropriate in-state placement, including a foster home or group facility, even with the addition of any available individualized services to the child; and (b) the out-of-state placement can appropriately meet the child’s individualized service needs. In either instance, the child’s placement must be approved in writing by the Director of DCBHS. The process shall also ensure that for any child who is sent out-of-state, the State shall ensure an appropriate plan to maintain contacts with family and return the child in-state as soon as appropriate.

3. By June 2007, the State shall evaluate the needs of the children in custody who are currently in out-of-state congregate placements to determine what additional services are necessary to serve children with these needs in-state and shall develop action steps with timetables to develop those services and placements. The State shall implement the action steps according to the timetables.
4. By September 2007 the State will assess the efficacy of a separate division for children's behavioral health for meeting the behavioral health needs of children in the custody of the State. Based on that assessment, the State will, by June 2008, make whatever structural changes are indicated from the assessment to improve the delivery of behavioral health services to children in the custody of the State.
5. By December 2006 and continuing thereafter, the State shall implement an automated system for identifying youth in its custody being held in juvenile detention facilities post-disposition pending a placement and implement a placement process that ensures that these youth are placed within 30 days of disposition.
6. By September 2006, the State shall develop a methodology for identifying children in custody who are in out-of-state congregate care who are potentially ready to return to New Jersey and step down to a lower level of care. By October 2006, the State shall implement the methodology.
7. Beginning July 2007, the State shall not place a child under the age of 13 in a shelter.
8. By June 2007, DYFS will eliminate the inappropriate use of shelters as an out-of-home placement for children in its custody. Appropriate use means: (i) an alternative to detention; or (ii) a short-term placement of an adolescent in crisis which shall not extend beyond 45 days; or (iii) a basic center for homeless youth pursuant to the New Jersey Homeless Youth Act. N.J.S.A. 9:12A-2 et seq. Notwithstanding this provision, the State will comply with all court orders requiring placement in a shelter.
9. By December 2008, the State shall, in consultation with the Monitor, set forth, and shall thereafter (in Phase II) implement, a placement process consistent with the Principles of this Agreement and sufficient to meet the needs and purposes of this Agreement.

**E. CASELOADS**

1. By December 2006 and continuing thereafter, the State shall develop an interim reporting system to track actual caseloads by

office and type of worker and, for permanency and adoption workers, that tracks children as well as families. Such reporting shall include only caseload carrying staff and shall not include trainees who are not yet eligible to carry a full caseload.

2. By December 2006 and continuing thereafter, the State shall provide accurate caseload data to Plaintiffs and the public, via the DCF website, on a quarterly basis.
3. By December 2006, DCF shall hire a new Human Resources Director.
4. By December 2006 and continuing thereafter, DCF shall make Safe Measures accessible to all staff.
5. By December 2006 and continuing thereafter, DCF shall train all staff on the use of Safe Measures.
6. By December 2006, 60% of offices shall have average caseloads for the permanency staff at the caseload standard of 15 families or less and 10 children in out-of-home care or less.
7. By December 2006, 42% of offices shall have average caseloads for the intake staff at an interim caseload standard of 15 families or less and 10 new referrals per month or less.
8. By December 2006, 80% of offices shall have sufficient supervisory staff to maintain a 5 worker to 1 supervisor ratio.
9. By June 2007 and thereafter, 79% of offices shall have average caseloads for the permanency staff at the caseload standard of 15 families or less and 10 children in out-of-home care or less.
10. By June 2007, 58% of offices shall have average caseloads for the intake staff at an interim caseload standard of 15 families or less and 10 new referrals per month or less.
11. By June 2007, 85% of offices shall have sufficient supervisory staff to maintain a 5 worker to 1 supervisor ratio.
12. By December 2007 and thereafter, 95% of offices shall have average caseloads for the permanency staff at the caseload standard of 15 families or less and 10 children in out-of-home care or less.

13. By December 2007, 63% of offices shall have average caseloads for the intake staff at an interim caseload standard of 15 families or less and 8 new referrals per month or less.
14. By December 2007, 90% of offices shall have sufficient supervisory staff to maintain a 5 worker to 1 supervisor ratio.
15. By June 2008, 95% of offices shall have average caseloads for the permanency staff at the caseload standard of 15 families or less and 10 children in out-of-home care or less.
16. By June 2008, 74% of offices shall have average caseloads for the intake staff at the caseload standard of 12 families or less and 8 new referrals per month or less.
17. By June 2008, 95% of offices shall have sufficient supervisory staff to maintain a 5 worker to 1 supervisor ratio.
18. By December 2008, 95% of offices shall have average caseloads for the permanency staff at the caseload standard of 15 families or less and 10 children in out-of-home care or less.
19. By December 2008, 95% of offices shall have average caseloads for the intake staff at the caseload standard of 12 families or less and 8 new referrals per month or less.
20. By December 2008 and thereafter, 95% of offices shall have sufficient supervisory staff to maintain a 5 worker to 1 supervisor ratio.

**F. PROVISION OF HEALTH CARE (MEDICAL AND MENTAL HEALTH)**

1. By August 2006, the State shall hire a new chief medical officer.
2. By December 2006, the State shall provide (i) pre-placement assessments to children entering out-of-home care; (ii) a full medical examination for children entering out-of-home care within 60 days of the day the child entered care; (iii) annual medical examinations for children in out-of-home care according to the Early and Periodic Screening, Diagnosis, and Treatment (“EPSDT”) guidelines (the full medical examination detailed under (ii) can serve as partial or full satisfaction for this requirement as applicable); (iv) semi-annual dental examinations for children ages 3 and older; (v) mental health assessments for children with a suspected mental health need, and (vi) such follow up care as appropriate for the needs identified in (i), (ii), (iii), (iv) and (v).

For 2006, the State shall provide such care to the best of its ability and document provision of such care.

3. By December 2006, 70% of children entering out-of-home custody shall have pre-placement assessments in a setting other than an emergency room.
4. By December 2006, the State shall have gathered data collected pursuant to paragraph 2 above by utilizing case file reviews, review of electronic databases (such as Medicaid's), and any other applicable methodologies sufficient to ensure it has the information necessary to establish a baseline for provision of medical and dental services for 2007 and thereafter.
5. By January 2007, the State shall share the data with the Monitor and shall consult with the Monitor to analyze the data and establish baselines from 2006 and set targets for 2007 and thereafter for: (i) pre-placement assessments to children entering out-of-home care; (ii) full medical examinations for children entering out-of-home care within 60 days of the day each child entered care; (iii) annual medical examinations for children in out-of-home care according to the EPSDT guidelines (the full medical examination detailed under (ii) can serve as partial or full satisfaction for this requirement as applicable); (iv) semi-annual dental examinations for children ages 3 and older; (v) mental health assessments for children with a suspected mental health need, and (vi) such follow up care as appropriate for the needs identified in (i), (ii), (iii), (iv) and (v). The target shall be 98% and the State shall work with the Monitor to define, by April 2007, the staging of compliance and methodology for tracking compliance.
6. By April 2007, the State shall have established targets for the provision of medical and dental care detailed in paragraph 2 above and those targets shall be incorporated by reference into this Agreement.
7. Beginning June 2007, 90% of children entering out-of-home custody shall have pre-placement assessments in a setting other than an emergency room.
8. By June 2007, the State shall identify a statewide coordinated system of health care including a provision to develop a medical passport for children in out-of-home care.

## **G. PERMANENCY PLANNING AND ADOPTION**

1. The process of freeing a child for adoption and seeking and securing an adoptive placement shall begin as soon as the child's permanency goal becomes adoption but in no event later than as required by federal law. The adoption process shall begin immediately for all children for whom a diligent search has failed to locate the whereabouts of both parents and for whom no appropriate family member is available to assume custody.
2. By December 2006, the State shall develop and begin implementation of permanency practices that include a minimum of:
  - a. Five month permanency reviews: When a child has been in custody for five months, the State shall hold a five month permanency review. The following individuals shall be invited, with ample notice given of date and time of the review: the child's parents; the child (when age appropriate); foster parent(s) or caretakers; other interested adults as indicated in the case file. The caseworker and the supervisor on the case shall attend the five month permanency review. The review shall focus on progress towards achieving the case plan, including a review of the completion of permanency tasks (such as completing searches for missing parents); review of the effectiveness of services already provided; identification of any additional service needs for the child, family, and foster parent; and review of the appropriateness and stability of the placement. The State shall then initiate any of the additional services identified during the review. If, due to abandonment or other issues, it is appropriate to fast-track the adoption process, the State shall identify the issue at the five month review (or earlier if appropriate) and petition the court for an early permanency hearing. Such exceptions shall trigger the processes identified as part of the ten month review process, set forth below.
  - b. Ten month placement reviews: In preparation for the 12 month permanency hearing, the State shall hold a ten month placement review. That review shall include the caseworker, supervisor, deputy attorney general, casework supervisor and when appropriate, the area office concurrent planning specialist. At this review, the State shall decide if the child is a candidate for a change in goal to adoption. In the event the child is a candidate for a change in goal to adoption, the State shall: i) identify the adoption worker who will assume responsibility for the case in the event the court approves the change in goal; ii) introduce the adoption worker to the child and critical adults; iii) review the checklist of preparatory tasks the permanency worker will be

responsible for completing prior to the permanency hearing; iv) assign a recruiter to engage in child specific recruitment for those children who lack an identified adoptive family; and v) initiate the drafting and filing of the termination of parental rights petition.

c. When adoption becomes the approved goal at the permanency hearing (whether at ten months, or earlier, or later), the child's case shall be transferred to the adoption worker within five business days of the approval of the goal change by the court. The State shall complete a child specific recruitment plan for children needing an adoptive family within thirty days of the approved goal change.

d. The termination of parental rights petition shall be filed within six weeks of the permanency hearing.

e. The State shall complete the consent package for the adoption of children who are being adopted by their foster or relative parents within 90 days post termination of parental rights.

f. For the children awaiting an adoptive home, the State shall hold monthly reviews to assess progress towards identifying an adoptive family. The adoption worker, the supervisor and the area office recruiter shall attend these reviews.

3. By December 2006, the State shall build an adoption tracking system that sets adoption targets based on milestones and finalizations for each office and area.
4. By December 2006, the State shall design an adoption process tracking system to record the completion of: five month reviews, ten month reviews and permanency hearings; the transfer of cases to adoption staff and identification of assigned adoption staff; termination of parental rights petition filings; terminations of parental rights; appeals of terminations; adoption placements; and adoption finalizations.
5. By December 2006, the State shall continue to provide paralegal support and child case summary writer support for adoption staff in the local offices.
6. By December 2006, the State shall institute Adoption Impact Teams which consist of permanent full-time employees with adoption training who shall

(a) be under the direction of the statewide Adoption Director;

(b) focus first on the 100 longest waiting children who are waiting for an adoptive home and develop individualized recruitment plans for each of those children;

(c) work towards permanency for those children, which includes regular reviews of progress;

(d) identify common barriers and proposed solutions for the Adoption Director to utilize in modifying statewide adoption practice; and

(e) upon completion of their initial task, assist in further special projects to achieve the adoption targets set forth in this Agreement.

7. By December 2006, the State shall develop local office plans to address the adoption backlog in each office. The State shall commit the necessary resources to address the backlog.
8. By December 2006, the State shall designate for each area office at least one resource family recruiter to conduct child specific recruitment for children with a goal of adoption who are awaiting adoptive families.
9. By December 2006, the State shall identify designated adoption workers for each local office. The State shall have provided adoption training to those designated adoption workers. The State shall transfer cases with a goal of adoption to those adoption workers and by December 2006, the adoption staff in 88% of local offices shall have responsibility for all of the children in that office with a goal of adoption, with the exception that a child who has an established relationship with a permanency worker can remain on that permanency worker's caseload with the permanency worker taking responsibility for adoption work for that child with support from an assigned adoption staff worker.
10. By December 2006, 35% of offices will have average caseloads for the adoption staff consisting of 18 or fewer children.
11. By December 2006, the State shall have finalized 1100 adoptions during the calendar year 2006.
12. By June 2007, the State shall complete the adoption case transfer process, described above, across 100% of offices.

13. By June 2007, 60% of offices will have average caseloads for the adoption staff consisting of 18 or fewer children.
14. By June 2007, the State shall implement the adoption process tracking system.
15. By December 2007, the State shall issue reports based on the adoption process tracking system.
16. By December 2007, 81% of offices will have average caseloads for the adoption staff consisting of 18 or fewer children with a subset of 35% of total offices achieving average caseloads for adoption staff of 15 or fewer children.
17. By December 2007, the State shall have finalized 1400 adoptions for calendar year 2007.
18. By June 2008, 95% of offices will have average caseloads for adoption staff of 18 or fewer children, with a subset of 60% of total offices achieving average caseloads for adoption staff of 15 or fewer children.
19. By December 2008, 95% of offices will have average caseloads for adoption staff of 15 or fewer children.

#### **H. RESOURCE FAMILIES**

1. By December 2006, the State shall incorporate the function of licensing resource families into the Department of Children and Families.
2. By September 2006, the State shall appoint a person to run the Resource Family Recruitment and Retention Program statewide.
3. By December 2006, the State shall designate the point person in each area office who shall focus on resource family recruitment and support.
4. By December 2006, the period for processing resource family applications through licensure shall be 150 days. The 150 days begins to run upon receipt of the resource family's completed application. The intent of this provision is to reduce pressure on potential resource families to complete training, home studies and licensing requirements.

5. By December 2006, the State shall create and utilize “Impact Teams.” The Impact Teams shall:
  - a. Focus on applications pending for more than 150 days.
  - b. Involve staff from both the field offices and licensing units.
  - c. Work on a sample of those applications to complete processing through licensing.
  - d. Identify potential structural challenges to completing licensing within 150 days.
  - e. Continue their work until the majority of applications can be resolved within 150 days.
  - f. Provide assistance to support the State’s ability to meet the targets for new resource families set forth in this Agreement.
6. By December 2006, the State shall implement, in collaboration with the Monitor, a quality methodology that is consistent with the Principles in this Agreement and sufficient to meet the needs and purposes of this Agreement to ensure applications resolve within 150 days, absent exceptional circumstances.
7. By December 2006, the State shall establish targets for numbers of new resource families to license by office.
8. By December 2006, the State shall establish an accurate baseline of available resource family homes that reports non-kin and kin homes separately.
9. By June 2007, the State shall create an accurate and quality tracking and target setting system for ensuring there is a real time list of current and available resource families. This system shall distinguish between non-kin and kin licensed homes.
10. By June 2007, the State shall have licensed 1030 non-kin resource family homes between July 2006 and June 2007.
11. By December 2007, the State shall establish new targets for numbers of new resource families to license by office.
12. By December 2007, the State shall have licensed 1071 non-kin resource family homes between January 2007 and December 2007.

13. By December 2007, the State shall have created a methodology for setting annualized targets for resource family non-kin recruitment based on a needs assessment for such homes by county throughout the State of New Jersey. By January 2008, the State shall implement that methodology. By December 2008, the State shall meet the targets established through the needs assessment.
14. Beginning June 2008 and thereafter, the State shall provide flexible funding, meant to ensure that families are able to provide appropriate care for children and to avoid the disruption of otherwise stable and appropriate placements, at the same level or higher than provided in FY 07.
15. The State shall continue to close the gap between current resource family support rates (foster care, kinship care, and adoption subsidy) and the United States Department of Agriculture's ("USDA") estimated cost of raising a child in a two-parent, middle-income family in the urban northeast, according to the following dates:
  - a. By January 2007, the State shall reduce the gap by a further 25%.
  - b. By January 2008, the State shall reduce the gap by a further 25%.
  - c. By January 2009, the State shall reduce the gap by a final 25%.
16. By January 2009 and annually thereafter, the State shall adjust the resource family care support rates to maintain them at the USDA estimated rates for the following State Fiscal Year.
17. Once the resource family board rate approaches the level of the USDA rate, the State shall review the Special Home Service Provider ("SHSP") resource family board rates, to ensure the continued availability of SHSP families as resources for children with special needs and shall make adjustments as necessary.

**I. INSTITUTIONAL ABUSE INVESTIGATIONS UNIT ("IAIU")**

1. By July 2006, the State shall locate IAIU within DCF.
2. By December 2007, the State shall maintain a continuous quality improvement ("CQI") unit within IAIU to screen all corrective action plans and ensure follow up.

3. By June 2007, the State shall complete 80% of IAIU investigations within 60 days.
4. By June 2007, the State shall provide all IAIU investigators specific training on intake and investigations process, policies, and investigative techniques.
5. By June 2008, the State shall hire sufficient IAIU field investigators such that 95% of investigators shall have no more than 8 new cases per month and 12 open cases at a time.

**J. DATA**

1. By August 2006 and continuing thereafter, the State shall identify an initial key set of indicators, ensure the accuracy of such indicators and publish these indicators.
2. By September 2006 and continuing thereafter, the State shall initiate management reporting based on Safe Measures.
3. By November 2006 and continuing thereafter, the State shall identify and ensure the accuracy of additional key management indicators and shall publish these indicators.
4. By July 2006, the State shall implement New Jersey Spirit Release 2, Phase 1.
5. By February 2007 and continuing thereafter, the State shall identify additional indicators, ensure their accuracy and shall publish these indicators.
6. By February 2007 and annually thereafter, the State shall produce DCF agency performance reports with a set of measures approved by the Monitor. The accuracy of these reports shall be confirmed by the Monitor.
7. By February 2007, the State shall implement New Jersey Spirit Release 2, Phase 2 (case practice).
8. By May 2007, the State shall train all case carrying workers on New Jersey Spirit.
9. By August 2007, the State shall issue regular, accurate reports from Safe Measures.

10. By December 2007 and continuing thereafter, the State shall produce caseload reporting that tracks actual caseloads by office and type of worker and, for permanency and adoption workers, that tracks children as well as families.
11. By December 2007 and continuing thereafter, the State shall maintain an accurate worker roster.
12. By December 2007, the State shall implement New Jersey Spirit Release 3.

### **III. PHASE II - JANUARY 1, 2009 UNTIL TERMINATION**

#### **A. TARGETED PERFORMANCE LEVELS FOR CRITICAL OUTCOMES**

The State shall attain the performance levels indicated below.

1. *Outcome 1: Children Are Safe*
  - a. *Indicator 1a: Children in custody are not abused or neglected.*
    - (i) *Measurement:* Number of children in custody in out-of-home placement who were victims of substantiated abuse or neglect by a resource parent or facility staff member during a period, divided by the total number of children who have been in care at any point during the period.
    - (ii) *Targeted Performance Levels:* for the period beginning July 2009, no more than 0.53%; for the period beginning July 2010 and thereafter, no more than 0.49%.
  - b. *Indicator 1b: Children who remain with their families after being abused or neglected do not suffer repetition of abuse or neglect.*
    - (i) *Measurement:* Of all children who remain at home after substantiation of abuse or neglect, the percentage who have another substantiation within the next twelve months.
    - (ii) *Targeted Performance Levels:* for the period beginning July 2009 and thereafter, no more than 7.2%
  - c. *Indicator 1c: Children reunified with their families are not*

subject to abuse or neglect after they go home.

(i) *Measurement*: Of all children who are reunified during a period, the percentage who are victims of substantiated abuse or neglect within one year after the date of reunification.

(ii) *Targeted Performance Levels*: for the period beginning July 2009 and thereafter, no more than 4.8%

## 2. *Outcome 2: Children Have Permanent, Stable Families*

- a. *Indicator 2a*: Children in custody achieve timely permanency through reunification, adoption, or legal guardianship.

(i) *Measurements and Targeted Performance Levels*: The specific measures to be used will be developed by the Monitor in consultation with the parties by September 2006. The parties agree that there may be separate measures related to reunification and adoption; that the State will determine the baseline level of performance for these indicators by June 2007; that the final target levels will be ambitious ones, reflecting an expectation that children entering custody will attain permanency in a timely manner; and that interim targets will be set at a level designed to promote a significant but realistic amount of annual progress towards the final target levels. Interim and final targets will be set by June 2008.

- b. *Indicator 2b*: Children who leave custody do not later have to re-enter it.

(i) *Measurement*: Of all children who leave custody during a period, except those whose reason for discharge is that they ran away from their placement, the percentage that re-enter custody within one year of the date of exit.

(ii) *Targeted Performance Levels*: for the period beginning July 2009, no more than 14%; for the period beginning July 2010, no more than 11.5%; for the period beginning July 2011 and thereafter, no more than 9%.

## 3. *Outcome 3: Children in Out-of-Home Care Have Placements That Meet Their Needs*

a. *Indicator 3a:* Children have no more than two placements.

(i) *Measurement:* Of the number of children entering care in a period, the percentage with two or fewer placements during the twelve months beginning with the date of entry.

(ii) *Targeted Performance Levels:* by June 2009 and thereafter, at least 88%.

b. *Indicator 3b:* Siblings are placed together.

(i) *Measurement:* Of sibling groups entering custody at the same time or within 30 days of one another, the percentage in which all siblings are placed together, measured separately for (A) groups of 2 or 3 siblings and (B) groups of 4 or more siblings.

(ii) *Targeted Performance Levels for sub-group (A):* for siblings entering custody in the period beginning July 2009, at least 65%; in the period beginning July 2010, at least 70%; in the period beginning July 2011, at least 75%; in the period beginning July 2012 and thereafter, at least 80%.

(iii) *Targeted Performance Levels for sub-group (B):* for siblings entering custody in the period beginning July 2009, at least 30%; in the period beginning July 2010, at least 35%; in the period beginning July 2011 and thereafter, at least 40%.

c. *Indicator 3c:* Children are placed with families rather than in congregate settings.

(i) *Measurement:* the percentage of children currently in custody who are placed in a family setting.

(ii) *Targeted Performance Level:* Beginning July 2009 and thereafter, at least 85%.

For all measurements for which the Monitor is to establish interim and/or final performance targets, such targets shall be established no later than December 2008 unless otherwise specified above. The Monitor's report analyzing compliance with the targeted performance levels, which will begin July 2009, shall be released in December 2009 or later.

## **B. TARGETED PERFORMANCE LEVELS FOR CRITICAL PROCESSES**

1. *Caseloads.* By June 2009 and thereafter, the State shall meet the caseload standards set forth in subsections (a) through (d) below. Compliance will be defined as having at least 95% of offices with average caseloads meeting the standard *and* at least 95% of individual workers with caseloads meeting the standard.
  - a. *permanency workers:* no more than 15 families and no more than ten children in out-of-home care;
  - b. *intake workers:* no more than 12 open cases and no more than eight new case assignments per month;
  - c. *IAIU investigators:* no more than 12 open cases and no more than eight new case assignments per month;
  - d. *adoption workers:* no more than 15 children.
2. *Commencement of Protective Services Investigations.* The State will require by policy that allegations of abuse or neglect be classified as to their type and the required response time. Response times for reports classified as requiring abuse/neglect investigation may range from immediate to not more than 48 hours. For periods beginning July 1, 2009 and thereafter, 98% of such investigations shall commence within the required timeframes.
3. *Completion of Protective Services Investigations.* By a date to be determined by the Monitor in consultation with the parties, 98% of all abuse/neglect investigations shall be completed within 60 days. The Monitor shall also establish interim targets set at a level designed to promote a significant but realistic amount of annual progress towards the final target.
4. *Investigations by IAIU:* Completion of investigations by IAIU shall continue to meet the final standards described in Section II.I.3 of this Agreement.
5. *Number of Resource Families:* The State shall continue to establish, in consultation with the Monitor, annual targets for the number of resource families to be licensed, including targets for specific geographic areas and/or homes for particular sub-populations. Findings of the periodic needs assessments described in Section III.C.7 below shall be taken into account in establishing the targets. The State shall meet such targets.

6. *Placement in Shelters.* The State shall continue to meet the restrictions concerning use of shelters set forth in Section II.D.10 above. Beginning January 1, 2009 and thereafter, placements of adolescents in crisis in shelters pursuant to subsection II.D.10 (ii) shall be limited to no more than 30 days.
7. *Caseworker Contacts With Children:* By a date to be determined by the Monitor in consultation with the parties, caseworkers shall have face-to-face contact with children in custody as follows:
  - a. during the first two months of a placement, whether the child's initial placement or a subsequent placement, at least two visits per month with at least 95% of children;
  - b. during all other parts of a child's time in out-of-home care, at least one visit per month with at least 98% of children.

The Monitor shall also establish interim targets set at a level designed to promote a significant but realistic amount of annual progress towards the final target.

8. *Caseworker Contacts With Families:* By a date to be determined by the Monitor in consultation with the parties, caseworkers shall have face-to-face contact with the parent(s) or other legally responsible family member of children in custody as follows:
  - a. for children with a permanency goal of reunification, at least two visits per month with at least 95% of families;
  - b. for children with other permanency goals, at least one visit per month with at least 85% of families, unless parental rights have been terminated, in which case there shall be no requirement for such contacts with parents.

Contacts made by private providers shall count towards these requirements. The Monitor shall also establish interim targets set at a level designed to promote a significant but realistic amount of annual progress towards the final target.

9. *Visits Between Parents and Children in Out-of-Home Care.* By a date to be determined by the Monitor in consultation with the parties, at least 85% of children in custody shall have in-person visits with their parent(s) or other legally responsible family member at least bi-weekly and at least 60% of children in custody shall have such visits at least weekly. Cases in which parental

rights have been terminated and cases in which the Family Court has restricted visiting may be excluded from these calculations. The Monitor shall also establish interim targets set at a level designed to promote a significant but realistic amount of annual progress towards the final target.

10. *Visits Between Siblings.* By a date to be determined by the Monitor in consultation with the parties, at least 85% of children in custody who have siblings with whom they are not residing shall visit with those siblings as appropriate. The Monitor shall also establish interim targets set at a level designed to promote a significant but realistic amount of annual progress towards the final target.
11. *Provision and Timeliness of Medical and Mental Health Care.* The State shall attain and continue to meet the final standards for provision and timeliness of medical and mental health care set forth in Section II.F. of this Agreement. Beginning January 1, 2009 and thereafter, the standard for timely completion of full medical examinations for children entering out-of-home care shall be that at least 85% of children receive such examinations within 30 days and at least 98% of children receive such examinations within 60 days.
12. *Adoption Milestones.* For periods beginning July 1, 2009 and thereafter,
  - a. of the children in custody whose permanency goal has been changed to adoption by court order during the period,
    - (i) at least 90% shall have a petition to terminate parental rights filed within six weeks of the date the goal was changed to adoption;
    - (ii) at least 90% of children for whom an adoptive home had not been identified at the time of termination of parental rights shall have a child-specific recruitment plan developed within 30 days of the date the goal was changed to adoption;
    - (iii) at least 75% of children for whom an adoptive home had not been identified at the time of termination shall be placed in an adoptive home within nine months of the termination of parental rights.

- b. of adoptions finalized during the period, at least 80% shall have been finalized within nine months of adoptive placement.
13. *Quality of Case Practice.* The State shall continue to implement the case practice model set forth in Section II.A of this Agreement. Beginning July 2009, the Monitor shall regularly measure and report on the extent to which the State has implemented the case practice model, utilizing the methodology developed pursuant to Section II.A.4 of this Agreement and addressing the key practice elements set forth in section II.A.

### **C. OTHER STANDARDS**

1. *Resource Home Capacity.* By June 2009, placements of children in resource homes shall conform to the following limitations: no child shall be placed in a resource home if that placement will result in the home having more than four foster children, or more than two foster children under age two, or more than six total children including the resource family's own children. Exceptions to these limitations may be made as follows:
  - a. No more than 5% of resource home placements may be made into resource homes with seven or eight total children including the resource family's own children, but such placements may only be made so long as the other limitations set forth above are adhered to.
  - b. Any of the limitations set forth above may be waived if needed and appropriate to allow a group of siblings to be placed together.
2. *Protection From Harm.* By June 2009, the State shall promulgate and implement policies designed to ensure that psychotropic medication is not used as a means of discipline or control and that the use of physical restraint is minimized.
3. *Training and Staff Development.* The State shall continue to meet the final standards for pre-service and in-service training of front-line staff and supervisors, as described in Phase I of this Agreement.
4. *Training of Resource Families.* The State shall continue to meet the final standards for pre-licensure and ongoing training of resource families, as described in Phase I of this Agreement.
5. *Performance Standards for Contracts.* By June 2009, the State

shall incorporate into its contracts with service providers performance standards consistent with the Principles of this Agreement.

6. *Quality Improvement.* By June 2009, in consultation with the Monitor, the State shall develop and implement a well-functioning quality improvement program consistent with the Principles of this Agreement and adequate to carry out the reviews of case practice set forth in section II.A. above.
7. *Annual Needs Assessments.* By June 2009 and thereafter, the State shall regularly evaluate the need for additional placements and services to meet the needs of children in custody and their families, and to support intact families and prevent the need for out-of-home care. Such needs assessments shall be conducted on an annual, staggered basis that assures that every county is assessed at least once every three years. The State shall develop placements and services consistent with the findings of these needs assessments.
8. *Resource Family Reimbursement.* By June 2009 and thereafter, reimbursement rates for resource families shall equal the median monthly cost per child calculated by the United States Department of Agriculture for middle-income, urban families in the northeast

#### **IV. MONITORING**

A. The parties agree that the Center for the Study of Social Policy, under the direction of Judith Meltzer, shall be the Monitor of the State's compliance with the goals and principles of this Agreement.

B. The Monitor's duties shall be to: confirm independently the data reports and statistics provided pursuant to this Agreement; conduct independent case record and other qualitative reviews; review all plans and documents agreed to be developed and produced by the State pursuant to this Agreement; and report on the State's progress in implementing the terms of the Modified Settlement Agreement and the achievement of the improved outcomes set forth herein. Among the Monitor's responsibilities, the Monitor shall specifically review whether case practice reflects the components of the Case Practice Model referred to throughout this Agreement. The Monitor shall prepare reports that will address these issues and be released periodically but no less than every six months, unless the parties and the Monitor agree otherwise. In order to avoid duplication and to build capacity within the agency, the Monitor will look first to the State's data and data analysis. Accordingly, the State shall provide the Monitor with copies of all regular data reports respecting topics covered by this Agreement. Notwithstanding the existence of State data, data analysis and reports, however, the Monitor shall have the authority to prepare new reports on outcome measures and all

other enforceable topics covered by this Agreement, to the extent the Monitor deems necessary.

C. The State agrees to: provide the Monitor with free access to all individuals within DCF and its Divisions, any successor agencies or divisions, and persons within the Executive Branch, as the Monitor chooses; to assist the Monitor in gaining free access to other stakeholders in the child welfare system (including but not limited to the staff of contract providers); and to provide the Monitor with free access to all documents and data it deems relevant to its work (including but not limited to documents and data from contract agencies). The Monitor agrees to respect the confidentiality of all information related to individually identifiable clients of the Department and its Divisions, subject to applicable law. The Monitor further agrees to respect the confidentiality of any documents that are in draft form or otherwise privileged.

D. The reports of the Monitor shall be public documents, except that any individually identifiable information (as that term is understood under New Jersey law) and any other confidential information protected from disclosure by law, including without limitation any protected health information and/or individually identifiable health information (as those terms are understood under HIPAA) shall be redacted or otherwise removed from any public report. The Monitor shall have a sufficient, reasonable budget (the funding of which shall be the responsibility of the State), staff and access to information, including access to State employees, that the Monitor deems necessary to fulfill his or her duties. Any such information received by the Monitor, unless already public, shall not be made public without the State's prior written permission, except as incorporated into a public report of the Monitor.

E. Plaintiffs shall have access, through the Monitor, to all information made available to the Monitor, and to all other information related to ensuring compliance with and enforcing this Agreement, subject to the existing confidentiality order in effect in this case.

F. The parties may request that the Monitor review and issue recommendations regarding the provision of services to the named plaintiffs in this case.

G. The intent of the parties is that the Monitor shall develop a plan to transfer the primary monitoring function to DCF's quality assurance unit upon the termination of this Agreement, or at such earlier time as the parties may agree. The Monitor shall work in collaboration with the State in building DCF quality assurance capacity.

H. The Monitor may periodically meet privately with the Court concerning issues related to this case, provided the parties are made aware of the occurrence of such a meeting.

I. If at any point the Monitor can no longer serve, the parties shall agree on another Monitor, with input and recommendations from the outgoing Monitor.

## V. DISPUTE RESOLUTION

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

A. Plaintiffs shall, prior to seeking judicial relief, notify the Defendants and the Monitor, in writing, of the compliance issue.

B. Within 10 calendar days of Plaintiffs' notification, the State shall respond in writing, to Plaintiffs and the Monitor, as to what actions, if any, it proposes to take with regard to the issue of alleged non-compliance.

C. Regardless of whether the State agrees with the Plaintiffs' assertion of non-compliance, the parties shall meet with the Monitor within 15 calendar days of the Plaintiffs' notice, unless otherwise agreed by the parties. The purpose of this meeting shall be for the parties to engage in good faith negotiations with the assistance of the Monitor, to determine whether additional actions are necessary to address Plaintiffs' assertion of non-compliance. The parties shall engage in negotiations for a period not to exceed 30 calendar days, unless extended by mutual agreement of the parties.

D. If, at the end of the 30 day negotiation period, or the period as extended by mutual agreement of the parties, Plaintiffs determine that judicial action is necessary, Plaintiffs may seek further relief from the Court.

E. At the conclusion of the dispute resolution process, if the parties have failed to come to an agreement, the Monitor shall analyze the issues raised by Plaintiffs and the State's response during the mediation process and shall prepare and issue a report with recommendations concerning the dispute. This report shall be issued no later than 10 calendar days after the dispute resolution process has ended. This report shall be provided to the parties and the Court and shall be considered a public document.

F. If Plaintiffs believe that Defendants have violated this Agreement and, as a result, have caused or are likely to cause immediate and irreparable harm to children's well-being in the State's custody, they may seek emergent judicial relief. Before taking such action, however, Plaintiffs must give Defendants written notice with respect to any such harm, including with such notice any documentation that Plaintiffs believe supports their decision to invoke the provisions of this paragraph. Defendants will respond to this notice, in writing, within 3 business days. The parties must then invoke the provisions in sections A, B, C, D and E above, provided that the entire mediation process is completed within 10 business days of Defendants' response to Plaintiffs' notice, unless extended by mutual agreement of the parties.

G. Notwithstanding the provision in section D. and F. above, Plaintiffs agree that in order to encourage the restructuring and reform of child welfare services in New Jersey, there will be a defined period of limitation from further litigation during Phase I, where Plaintiffs agree not to return to court unless the Defendants unreasonably fail to

take the actions agreed to in Phase I, as set forth in this Agreement. Before seeking court intervention, Plaintiffs shall first utilize the dispute resolution process set forth herein.

H. In Phase II, Plaintiffs may seek court intervention for Defendants' failure to comply with the terms of any of the enforceable actions from Phases I or II. Before seeking court intervention, Plaintiffs shall first utilize the dispute resolution process.

I. In Phase II, Plaintiffs may fully enforce all phases of the Agreement and both sides reserve their legal rights to make all applicable legal arguments.

J. In an action in federal court to remedy an alleged failure to comply with any terms of this Agreement, Plaintiffs shall have the burden of demonstrating that Defendants have failed to comply with specific terms of the Agreement and that they are entitled to relief. Factors that may be included in any defense, which may be considered by the Court but are not dispositive, are:

1. Conclusions and findings in the independent monitoring reports;
2. Constraints, including legal constraints, upon Defendants' ability to comply;
3. The interests at stake;
4. The progress that has been made towards achieving compliance with the specific term in dispute.

## **VI. TERMINATION AND EXIT**

After June 2010 or the last deadline set by the Monitor, whichever is later, Defendants may seek a ruling from the Court terminating the Court's jurisdiction over this Agreement based on Defendants' demonstrating that they have achieved and maintained compliance with this Agreement for a continuous period of at least two years. In order to demonstrate that they have achieved and maintained compliance for a continuous period of at least two years, Defendants may prove compliance with the Agreement during the period from June 2010 and thereafter, as long as Defendants also prove that they have achieved and sustained compliance with the applicable interim and final measures. Defendants may not, however, seek such a ruling if there are any pending motions before the Court, if there are then in effect any remedial Court orders based on noncompliance with any enforceable provisions of this Agreement, or there are any notices of non-compliance or action plans still in effect pursuant to the dispute resolution section of this Agreement. If, in response to such an application by Defendants, Plaintiffs can show that Defendants have failed to satisfy their burden outlined above, the Court shall retain jurisdiction. If Plaintiffs can show continued Court jurisdiction is necessary to accomplish the purposes of this Agreement, the Court may also retain jurisdiction. Neither side may argue that any change in the exit standard from the Settlement Agreement of September 2, 2003 to this Modified Settlement Agreement is intended to reflect agreement on a change to the applicable legal standard.