

# COMPLIANCE EVALUATION STANDARDS

## Ligas Consent Decree

July 17, 2012

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## **Introduction**

These draft standards were developed by the Monitor in accordance with ¶ 32 of the June 15, 2011 Consent Decree (Decree). The Decree requires the Monitor to “submit to the Parties and Intervenor a set of objective standards to guide the Monitor in evaluating the Defendants’ compliance with the Decree.”<sup>1</sup>

On February 15, 2012, the Court also approved the *Ligas Implementation Plan* (Implementation Plan) which has now become supplemental to the Decree.<sup>2</sup> The Monitor will, accordingly, track and report on activities called for in the Implementation Plan as they apply to each area of compliance listed below.

There are nine (9) distinct areas of compliance for which the Monitor has established objective and measurable standards. These areas include:

1. Resources and Capacity
2. Class Member List(s)
3. Transition Service Plans
4. Transition for Class Members in ICFs/DD
5. Crisis Services
6. Transition for Class Members on Waiting List
7. Outreach
8. Implementation Plan
9. Data Reports

Each area of compliance is listed below in a separate section that includes: a description of the requirement in the Consent Decree; timeframes or deadlines for compliance; related activities described in the Implementation Plan; measure(s) for compliance and; the proposed methodology for measuring compliance. These compliance standards will be considered the benchmarks for compliance and used as the measures for compliance findings in the Monitor’s

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<sup>1</sup> ¶ 32 of June 15, 2011 Consent Decree at page 17.

<sup>2</sup> ¶ 29 of June 15, 2011 Consent Decree at page 16.

annual report to be filed with the Court. The first annual report will be filed no later than September 30, 2012.

In areas where the Monitor finds non-compliance or in areas where the Monitor finds that, based on the status of progress thus far, non-compliance is likely to occur, the Monitor will notify the parties (and the intervenors if the non-compliance relates to the provisions of Paragraphs 4-10, 24 or 25 of the Decree) in writing, propose recommendations and, where appropriate, schedule a meeting to confer with the parties (and the intervenors if the non-compliance relates to the provisions of Paragraphs 4-10, 24 or 25 of the Decree) in an effort to agree on necessary steps toward achieving compliance.

This document was disseminated to the parties and intervenors and discussed at the March 29, 2012 parties' meeting. Written comments were received and changes made, and a final draft of compliance standards was provided to the parties and intervenors at the June 21, 2012 parties meeting. Additional input was received and subsequent changes have been made. These Standards will be made available to the public and included in the DDD Ligas webpage.

On an ongoing basis, the Monitor will seek and encourage class members, families and guardians of class members, the private provider community and members of the general public to provide written information and verbal feedback on issues related to compliance with the Decree. Informal meetings and conference calls will also be conducted with defendants' counsel and staff, class counsel and intervenors' counsel regarding their respective experiences as well as information they may have with regard to compliance activities.

**Area of Compliance – Resources and Capacity**

**Requirements** - Resources for community services will be provided consistent with the choice of a class member and the requirements of paragraphs 17 through 19 and 21 through 23 of the Decree. Resources necessary to meet the needs of individuals with developmental disabilities who choose to receive services in ICFs/DD shall be made available and such resources will not be affected by Defendants’ fulfillment of their obligations under the Decree. Funding for services for individuals with developmental disabilities will be based on the individual’s needs using federally approved objective criteria regardless of whether the individual chooses to receive services in an ICF/DD or in a community-based setting. Amendments to the state Medicaid plan will continue to include ICF/DD services as an alternative choice for long term services.<sup>3</sup>

Annual budgets will be sufficient to fund the services necessary to comply with the Decree consistent with the choices of individuals with developmental disabilities, including class members.<sup>4</sup>

**Deadline/Timeframe** – To be reviewed at least annually, consistent with budget submission cycle beginning for FY 2013 and continuing through FY 2021. Initial needs assessments, budget assumptions, revenue enhancement strategies, projected services and corresponding proposed budgets will be provided to the Monitor and the parties and intervenors no later than December 31 of each calendar year, but prior to submission of the proposed budget to the Governor.

**Implementation Plan Activities** – The Implementation Plan calls for a continuation of activities to develop new community services providers and the voluntary conversion of ICFs/DD to community-based services.<sup>5</sup> The Implementation Plan also calls for the development of annual budget proposals to incorporate the necessary resources to carry out the provisions of the Decree. The plan also includes resources for a listing of specific contractual agreements

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<sup>3</sup> ¶ 4 of June 15, 2011 Consent Decree at page 7

<sup>4</sup> ¶ 5 of June 15, 2011 Consent Decree at pages 7 and 8.

<sup>5</sup> Ligas Implementation Plan, 12/15/11, Section IV, Page 13.

necessary to address the anticipated increase in demand for services, additional DDD staff to be hired in order to manage compliance and prepare compliance-related reports and funding for direct services for class members as they are identified to receive community services.<sup>6</sup>

**Measures** – Needs assessments are conducted on an annual basis to determine the number of class members to be served in the upcoming fiscal year, projected costs for class members and the method utilized to establish the basis for the cost.

Proposed budget requests will incorporate proposed growth in administrative structure to include new positions within DHS, DCFS or other state agencies as well as outside consultants and contactors to be hired to facilitate compliance with the Decree.

Proposed budgets will include annualized costs of services and supports that were initiated the previous year and other projected costs and increases, based on the previous year's experience. Proposed budgets will also include the annualized cost of ongoing services to individuals with disabilities residing in ICFs/DD and those residing in community-based settings. Rates for community-based services, services in community-based settings and ICF/DD services are adequate.

Proposed budgets designed to comply with the Decree are separate and distinct from other budgets of the defendants in order for the parties, intervenors and the Monitor to track expenditures and possible shortfalls which may have an effect on compliance with the Decree. Defendants will provide the Monitor, class counsel and intervenors information showing separately the annualized cost of providing services to individuals with disabilities residing in ICFs/DD and the annualized cost of providing services to individuals residing in community-based settings to permit the parties, intervenors and the Monitor to track expenditures and compliance with the Decree.

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<sup>6</sup> Ligas Implementation Plan, 12/15/11, Section X, Page 20-22.

**Methodology** – The defendants will provide the proposed annual budget and cost assumptions to the parties, intervenors and Monitor that specify spending plans for all activities related to compliance with the Decree in sufficient detail to permit an evaluation of defendants' compliance with the Decree. At each of the scheduled parties' meetings, the defendants will provide an update of expenditures and budget projections in sufficient detail to permit evaluation of compliance and any implications such expenditures and projections may have regarding compliance with the Decree.

The Monitor will review and analyze the needs assessment data and proposed budget to ensure that they are sufficient to comply with the requirements of the Decree and Implementation Plan.

The Monitor will also review public comments on the proposed budget(s) and seek input from the parties, intervenors, and the public on the sufficiency of the proposed budget.

The Monitor will review the State Medicaid plan to ensure the ability of individuals with developmental disabilities to choose services in community-based settings or in an ICF/DD.

**Area of Compliance – Class Member List(s)**

**Requirement** - Defendants shall maintain a statewide database in which all Class Members are enrolled.<sup>7</sup> Defendants will promptly revise the class member database and waiting list data.<sup>8</sup>

**Deadline/Timeframe** - Initial class member lists shall be provided to the Monitor by December 31, 2012.

**Implementation Plan Activities** – The Implementation Plan incorporates the process for the development and maintenance of a class member list that will be accessible to the Monitor and Class Counsel. Intervenor’s counsel will have access to the class list as provided in the Implementation Plan. DDD will use its PUNS database to maintain a list of class members. The Plan also calls for DDD to review the adequacy of the PUNS database.

**Measure** – There will be two distinct class member lists to include:

1. Class members residing in ICFs/DD as described in ¶12.a. of the Decree; and
2. Class members who reside in a family home as described in ¶12.b. of the Decree

Each class member list will be reviewed and updated at least monthly.

DDD will identify an individual who will be primarily responsible for the maintenance of the class list and answer inquiries for class members and/or their families to confirm class membership.

Defendants must update all enrollment information on annual basis.

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<sup>7</sup> ¶18 June 15, 2011 Consent Decree at Page 8.

<sup>8</sup> ¶19 June 15, 2011 Consent Decree at Page 9.

**Methodology** – Beginning June 30, 2012, defendants will provide the Monitor with an electronic database of the two class lists on the last day of each month. On an annual basis, the Monitor will evaluate the class list through a 10% random sampling of direct review of records of class members residing in ICFs/DD as described in ¶2.a. of the Decree and a 5% random sampling of class members who reside in a family home as described in ¶2.b. of the Decree.

By August 31, 2012, the defendants, in conjunction with the Monitor, will also develop a method to verify class data with PAS agencies through certification that the appropriate requests for services are present and maintained on file. The Monitor will review these certifications and conduct an annual random sampling to verify the completeness and accuracy of the certifications.

The defendants have described the prioritization method consistent with ¶19 of the Decree in the Implementation Plan. The Monitor will include prioritization selection of class members in the sampling review described above.

Defendants will identify an entity within DDD to maintain the class member lists and respond to inquiries from people with developmental disabilities and their families to determine class membership. The Monitor will evaluate the responsiveness of this entity through a review of contact and follow-up logs and to ensure that individuals are made aware of their class membership status and rights as a class member.

**Area of Compliance – Transition Service Plans**

**Requirements** – Transition plans are developed for all class members who are selected to be served pursuant to the Decree. Transition plans shall describe all services required, how they will be developed and obtained and a timetable for transition.<sup>9</sup> Transition plans will be developed by a Qualified Professional in conjunction with the class member and guardian and others, as appropriate.<sup>10</sup>

The process for transition planning will include the class member’s personal vision, preferences, strengths, and needs in home, community and work and shall reflect the value of supporting relationships, productive work, participation in community life and personal decision making.<sup>11</sup>

Services and supports will be integrated into the community and consistent with choices of class members and guardians. Transition plans shall not be limited by the current availability of services but be within the confines of the waiver and State Plan.<sup>12</sup>

Transition plans for class members who are determined to be in crisis will be developed.<sup>13</sup>

**Deadline/Timeframe** – Within no more than 12 months prior to the development of a transition plan, defendants will present to the class member, in an objective manner, all of his or her service alternatives, determine whether, after such presentation, the class member requests community-based services or placement in a community-based setting and obtain from the class member a completed and executed request form as described in the Decree. Upon receipt of the request form, a transition plan will be developed specific to and centered upon the class member.<sup>14</sup> Transition plans will be completed with sufficient time to provide an orderly transition.

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<sup>9</sup> ¶11 June 15, 2011 Consent Decree at Page 9.

<sup>10</sup> ¶12 June 15, 2011 Consent Decree at Page 9.

<sup>11</sup> ¶13 June 15, 2011 Consent Decree at Page 9 & 10.

<sup>12</sup> ¶14 June 15, 2011 Consent Decree at Page 10.

<sup>13</sup> ¶21.(b) June 15, 2011 Consent Decree at Page 12.

<sup>14</sup> ¶10 June 15, 2011 Consent Decree at Page 9

By December 15, 2012, the defendants will provide to the Monitor and parties a proposed transition planning format and process. The process will include the method for training PAS agencies on transition planning and a method for evaluating the quality of transition plans.

**Implementation Plan Activities** – The Implementation Plan calls for a phase-in process for the completion of a transition service plan for each class member seeking services in a community-based setting. The Plan outlines an 18-month long process that includes a pilot trial period, re-evaluation and state-wide implementation by July 1, 2013. This process ensures coordination required between PAS/ISC agencies and class members.<sup>15</sup>

**Measure** – A score of 1-5 will be assigned for each transition plan addressing the areas described in methodology. Plans with an overall score of less than 4 or plans that are not person centered will be considered not in compliance. If there is less than 90% compliance with plans reviewed in the sample, the monitor will conduct a more comprehensive review to determine overall compliance.

**Methodology** - The Monitor will evaluate and report on all activities toward the development of a service transition plan. The Monitor will evaluate and report on the defendants' compliance with its obligation to present to class members in an objective manner all service alternatives and determine whether the class member requests community-based services or placement in a community-based setting by completing the appropriate forms prior to the development of a transition plan.

Once the service transition plan has been developed, the Monitor will conduct a random selection of 10% class members in 2.a category and 5% of class members in the 2.b category. The selected samplings will also be stratified to have reasonable representation for all PAS agencies. The Monitor will establish a compliance score for each transition plan in the five areas to include: timeliness; completeness; person-centeredness; participation and; description of services and supports in the most integrated setting.

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<sup>15</sup> Ligas Implementation Plan, 12/15/11, Section VI, Page 15

**Area of Compliance – Transition for Class Members living in ICFs/DD**

**Requirement** - All class members in ICFs/DD will transition to community services or community-based settings consistent with their transition plans if, at the time of transition, the class members request placement in a Community-Based Setting as confirmed and documented in accordance with the Decree.<sup>16</sup>

**Deadline/Timeframe -**

- One third of class members in this category will transition by 12/15/2013. The number of class members to transition during this period will be determined by June 15, 2013.
- Two thirds of class members in this category will transition by 12/15/2015. The number of class members to transition during this period will be determined by June 15, 2015.
- All class members in this category will transition by 6/15/2017. The total number of class members to transition from ICFs/DD will be determined by June 15, 2017.

**Implementation Plan Activities** – The Implementation Plan calls for the identification and referral of these class members to the PAS/ISC agencies for assistance in transition to community-based settings. The number of people identified for transition from ICFs/DD is expected to change, pursuant to the results of the outreach process described below. PAS/ISC agencies will monitor the adjustment and resolve issues as they are identified.<sup>17</sup>

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<sup>16</sup> ¶17 June 15, 2011 Consent Decree at Page 10.

<sup>17</sup> Ligas Implementation Plan, 12/15/11, Section V, Page 14 -15

**Measure** – Within no more than 12 months prior to the development of a transition plan, defendants will present to the class member residing in an ICF/DD, in an objective manner, all of his or her service alternatives, determine whether, after such presentation, the class member continues to request community-based services or placement in a community-based setting and obtain from the class member a completed and executed request form as described in the Decree. Upon receipt of the request form, Transition plans for class members in ICFs/DD will be completed no more than 12 months prior to their transition.

Class members in the ICF/DD category will have moved from their respective ICF/DD and will have begun community-based services by the required due date.

Community-based services will be provided consistent with those services and supports described in the individual transition plan.

PAS/ISC agencies will complete four weekly visits during the first month of transition and quarterly visits thereafter and document the results of these visits.

**Methodology** – The initial list of class members living in ICFs/DD will be provided to the Monitor by 6/30/12. A list of class members living in ICFs/DD will be provided to intervenors' counsel as provided in the Implementation Plan.<sup>18</sup> A list of class members who transition from ICFs/DD will be maintained by DDD and made available to the Monitor. DDD will also make available to the Monitor the post-transition site-visit reports generated by the PAS/ISC agency for each class member who has moved from an ICF/DD to a community-based setting.

The Monitor will evaluate and report on the defendants' compliance with their obligation to present to class members residing in ICFs/DD in an objective manner all service alternatives and determine whether the class member requests community-based services or placement in a community-based setting by completing the appropriate forms prior to the development of a transition plan.

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<sup>18</sup> Ligas Implementation Plan, 12/15/11, Section II, Page 7

The Monitor will conduct a 5% random selection of ICF/DD class members who have transitioned to community-based settings. The Monitor will review services in person for each class member and determine: 1) Whether a transition plan was developed consistent with the requirements; 2) Whether services are being provided consistent with the transition plan and the stated needs of the class member; and 3) Whether services were provided of placements in community-based settings occurred within the required timelines.

**Area of Compliance – Crisis Services**

**Requirement** – Class members who meet the crisis criteria described in ¶21 (a) of the Decree and who request community services or placement in a community-based setting expeditiously.<sup>19</sup> Services and/or placement will be provided in a manner consistent with the transition plan.

**Deadline/Timeframe** – Community-based services or placement in a community-based setting will begin expeditiously so as to effectively alleviate the crisis and maintain safety, health and stability. The expected timeframe for services to be in place for class members in crisis will be 24-72 hours, although this timeframe may vary, depending on the individual circumstances, or if temporary services are in place to address the immediate crisis.

**Implementation Plan Activities** – The Implementation Plan calls for the PAS/ISC agencies to continue to submit requests for services from individuals in crisis situations. DDD will ensure that class members are served expeditiously.<sup>20</sup>

**Measures** – Determination of crisis was provided immediately based on the information available at the time.

A crisis transition plan was developed by the service coordinator in conjunction with the individual, guardian, as applicable and appropriate professionals. The crisis transition plan includes a monitoring component and follow-up activities necessary once the crisis has been addressed.

Community services or a community-based setting was authorized and made available expeditiously in accordance with the transition plan.

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<sup>19</sup> ¶21.(C) June 15, 2011 Consent Decree at Page 12.

<sup>20</sup> Ligas Implementation Plan, 12/15/11, Section VIII, Page 19

**Methodology** - The defendants will provide the Monitor with a list of all class members who were determined to be in crisis that will include the name, nature of the crisis, PAS agency responsible for the coordination of services, date(s) new services began and a crisis transition plan. The Monitor will conduct a document review of 100% of class members served in crisis.

The Monitor will also select a 5% random sampling and conduct an in-person or telephone review of individuals living at home who have been determined to be in crisis. The Monitor will contact the class member and/or the guardian, as well as the service coordinator to verify the information provided and confirm whether the crisis has been adequately addressed, in accordance with the transition plan.

The Monitor will also review all requests for crisis services that were deemed not eligible for crisis. These requests and denials will be reviewed for their consistency with the requirements in the Decree.

**Area of Compliance – Transition for Class Members on Waiting List**

**Requirement** - Class members described in ¶2.b of the Decree will transition to community-based services. These class members are referred to in the Decree as "Waiting List Class Members."<sup>21</sup>

**Deadline/Timeframe** – Class members described in ¶2.b and ¶22 (a) and ¶22 (b) will transition in accordance with the following schedule:

- Community-based services or placement in a community-based setting for 1,000 Waiting List class members will begin by June 15, 2013.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2014.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2015.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2016.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2017.
- Following June 15, 2017, Waiting List class members will receive community-based services or placement in a community-based setting at a reasonable pace.

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<sup>21</sup> ¶22.(c) June 15, 2011 Consent Decree at Page 13.

**Implementation Plan Activities** – The Implementation Plan incorporates the criteria for prioritization for selection of class members who are on the waiting list to receive funding for community-based services or services in a community-based setting. Within each category, selections will be made based on the length of time on the waiting list database.<sup>22</sup>

**Measure** – Services for Waiting List class members have begun in accordance with the required schedule above.

**Methodology** - Beginning September 15, 2012 and each six months thereafter, defendants will provide the Monitor with a list of Waiting List class members who have begun receiving community-based services or services in a community based setting. The list will include the class member's name, the date services began, the location of services, the name and contact information of the services coordinator, the name and contact information of the community services provider and the Transition Service Plan. Beginning August 1, 2012, the Monitor will conduct a 5% sampling to verify that services were initiated on the date provided and are being provided in accordance with the Transition Service Plan. The sampling process will include direct contact with the class member or their family, as appropriate. Issues identified and recommendations to address these issues with regard to community transition of class members from the waiting list will be reported for the parties.

By June 15, 2015, the Monitor will confer with the parties to determine the monitoring standard for reasonable pace to be applied after June 15, 2017 in accordance with the Decree.

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<sup>22</sup> Ligas Implementation Plan, 12/15/11, Section VII, Page 17-19

**Area of Compliance – Outreach**

**Requirement** – Defendants shall maintain a fair and accessible process by which individuals or their guardians can affirmatively request services and maintain records of those requests.<sup>23</sup>

**Deadline/Timeframe** – Consistent with timelines set forth in the Implementation Plan.

**Implementation Plan Activities** - The Implementation Plan outlines numerous activities designed to identify individuals throughout the state who are or will be in need of home and community based services and services in a community based setting. These activities include training and information sessions as well as the development and distribution of written materials to broad based audiences.

For potential class members living in ICFs/DD, the Plan provides a detailed description and requirements for the development of a Request for Proposals (RFP) to secure the services of an outside contractor(s) to contact all potential class members and determine and document an informed decision on whether they are requesting services in a community-based setting.

**Measure** – The Implementation Plan will delineate the specific methodology to be utilized to address outreach to individuals who may request community-based services, placement in a community-based setting or ICF/DD services. Based on the Outreach activities proposed in the Implementation Plan, the Monitor will evaluate these areas:

- The information provided to potential class members is comprehensive and is based on current possible options within the HCBS Waiver or ICF/DD limitations;
- The information is presented in a fair and objective manner;

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<sup>23</sup> ¶22 June 15, 2011 Consent Decree at Page 14

- Written information is provided in a respectful and consumer/family friendly fashion, minimizing professional jargon wherever possible.
- Outreach communication includes information on individual rights as a class member and recipient of Medicaid services, including the right to an informed decision;
- The opportunity to visit community-based settings and to meet other people with disabilities and their families; and
- The option to consider and not choose immediately should be provided and, if requested, revisited at a later time.

**Methodology** - The Monitor will review and evaluate all written materials and website information developed by the defendants to be used for outreach activities. This information will also be shared with the parties and intervenors, who will be given full opportunity for input. The Monitor will also evaluate all information sharing activities and report on their completeness, objectivity, fairness and effectiveness in the annual compliance report.

For Outreach to potential class members in ICFs/DD, the Monitor will participate in the development of the RFP with the defendants as well as representatives from the Class Counsel and Intervenors. The Monitor will also evaluate the process for the states' selection and oversight of the contractor.

As the Outreach process begins, the Monitor will meet with the defendants and the independent contractor to review progress and possible barriers to implementation.

**Area of Compliance – Implementation Plan**

**Requirement** – Defendants must finalize the Implementation Plan, with input from the parties and intervenors.<sup>24</sup>

**Deadline/Timeframe** - Implementation Plan to be filed with the Court by December 15, 2011.

The Implementation Plan shall be updated and amended at least annually.<sup>25</sup>

The *Ligas Implementation Plan* was filed with the court by the defendants on December 15, 2011. There was joint agreement by all parties, the Intervenors and the Monitor on the initial Implementation Plan. The Plan was ordered as a supplement to the Decree on February 15, 2012.

**Measure:** The defendants will update and amend the Implementation Plan by December 15, 2012 and each year thereafter, with input from class counsel, intervenors and the Monitor.

**Methodology** - The Monitor will evaluate all activities of the Implementation Plan and provide the findings in the annual Monitoring Report which will include the status of each activity as listed in each section of compliance described above.

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<sup>24</sup> ¶27 June 15, 2011 Consent Decree at Page 15.

<sup>25</sup> ¶28 June 15, 2011 Consent Decree at Page 15

**Area of Compliance - Data Reports**

**Requirement** – Defendant shall provide the Monitor, Plaintiffs, Class counsel, Intervenors and Intervenors' Counsel and make publicly available, a detailed report containing data and information sufficient to evaluate Defendants' compliance with the Decree and Defendants' progress towards achieving compliance.<sup>26</sup>

**Deadline/Timeframe** – Not less than every six months. First report due March 15, 2012.

**Implementation Plan Activities** – The Implementation Plan calls for the submission of data reports. The defendants provided a draft data report format to the parties and intervenors and have received their input.

**Measure** – Data reports will be provided to the parties to begin March 29, 2012 and each 6 months thereafter.

**Methodology** - Annual compliance reports submitted by the Monitor pursuant to ¶34 of the Decree will include an evaluation of data reports relative to each requirement of the Decree and activities in the Implementation Plan.

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<sup>26</sup> ¶ 33 of June 15, 2011 Consent Decree at page 1.