UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LASHAWN A. by her next friend, Evelyn Moore, et al., Plaintiffs,	:	
v.	:	89-CV-1754 (TFH)
ADRIAN M. FENTY, as Mayor of the District of Columbia, et al., Defendants.	:	

PLAINTIFFS' MOTION AND SUPPORTING MEMORANDUM FOR A FINDING OF CIVIL CONTEMPT

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Plaintiffs, by their attorneys, Children's Rights, Inc. and the American Civil Liberties Union of the National Capital Area, respectfully move for a judicial finding of civil contempt against Defendants for their failure to comply with the clear and unambiguous provisions of the November 18, 1993, Modified Final Order ("MFO") (attached as Ex. A) and the February 2007 Amended Implementation Plan ("AIP") (attached as Ex. B) as approved and entered by this Court. In support of their motion, Plaintiffs state as follows:

INTRODUCTION

The child welfare system in the District of Columbia is at a crossroads. After years of planning, reorganization, investment of additional resources and capacity building to improve the system, the District's executive leadership has allowed the child welfare system to return to a dysfunctional state. As a consequence, the reform effort in the District has stagnated and begun to retreat. For the children who depend on the child

welfare system for their basic protection and care, this return to the past means a future filled with uncertainty, instability and further harm. Once again, the Plaintiff Children find themselves lingering in foster care for long periods of time, moving between multiple foster homes too frequently, missing out on essential medical, dental and mental health services and reaching the age of majority without ever having known a stable family. And, most visibly, that part of the system responsible for responding to reports of abuse or neglect of children – whose lives may be in danger – has record-breaking backlogs in the number of such reports that are not being investigated on a timely basis. Just two weeks ago, a six-month-old child died while awaiting an overdue visit from a Child Protective Services ("CPS") worker with a significantly excessive caseload.

Thus, the Plaintiff Children seek to enforce the very constitutional and statutory rights to adequate care and protection that are embodied in the prior remedial orders of this Court.

Since the entry of the MFO, Defendants have operated the District of Columbia's child welfare system, now administered by and through the Child and Family Services Agency ("CFSA"), subject to a court-supervised and court-enforceable plan of reform.[1] Entry of the MFO took place only after this Court had conducted a trial on the liability issues raised in Plaintiffs' class action complaint and found Defendants to be in violation of the federal constitutional and federal and local District of Columbia statutory rights of the Plaintiff Class. This Court determined that the myriad systemic failings proven to

[1] For a period of time from 1995 into 2001, the District's child welfare program was overseen by a court-appointed receiver. As of its exit from receivership in 2001, the District has managed its child welfare system through its own city-employed management team.

exist within the District's child welfare system exposed children to an ongoing threat of harm requiring relief from the Court.

Though significant strides have been made to improve the quality of services and outcomes provided to the abused and neglected children in the District over the past 15 years, the District has never achieved compliance with the applicable court orders and now even these advances are at grave risk. The current reality, as fully described in interim monitoring reports submitted by the Court Monitor, is that CFSA's performance in many areas of child welfare practice is substandard or declining or both. This erosion in CFSA performance directly flows from an unstable and deteriorating management situation within CFSA. Due to constant changes in leadership, the lack of continuity of purpose that accompanies such volatility at the top and the absence of executive branch oversight, child welfare performance has suffered and is now stumbling.

The downward trajectory of overall child welfare performance in the District has manifested itself in (1) untimely and poor quality CPS investigations for children both at home and already in foster care and (2) a foster care system that is too frequently unable to provide children with well-matched and adequately supported foster care providers, with essential medical, dental and mental health services and with timely and permanent placement with stable families.

The deficiencies in CPS practice within CFSA became a matter of great public attention earlier this year following the January discovery of four deceased children, ages 5, 6, 11 and 17, in the home of Benita Jacks (*See* Executive Office of the Mayor press release, January 11, 2008, attached as Ex. C). Ms. Jacks had been known to CPS investigators within CFSA for over a year before this gruesome discovery was made. (*Id.*

at 3). More recently, the Washington Post reported that six-month-old Isiah Garcia had died of an undetermined cause on June 25, 2008, almost three months after becoming the subject of a report of child neglect to CFSA. (*See* July 8, 2008, Washington Post article, attached as Ex. D). The CPS investigator assigned to the Garcia referral by CFSA had never visited the infant or his home. (*Id.*). She reportedly was carrying 50 open investigative cases at the time of Isiah's death and had not visited 17 of those 50 children. (*Id.*).

The Jacks and Garcia tragedies have brought public attention to CPS shortcomings already known to CFSA management for some time. In both its January 2006 "Assessment of the Quality of Child Protective Services Investigations in the District of Columbia" ("the January 2006 CPS Report") (attached as Ex. E) and its November 2007 "Assessment of the Quality of Child Abuse and Neglect Investigative Practices in the District of Columbia" ("the November 2007 CPS Report") (attached as Ex. F), the Court Monitor identified critical deficiencies in CPS practice that required correction. To date, CFSA still has not taken the action steps, as mandated in the MFO and AIP and as identified by the Court Monitor, to ensure timely, complete and safe CPS investigations.

Though perhaps less subject to recent media scrutiny, CFSA performance in the provision of basic foster care services has similarly stagnated or declined. From an insufficient mix and number of approved foster homes to a failure to deliver required medical and dental health services to children in foster care to the inadequate training of caseworker staff, CFSA is in noncompliance with the MFO and AIP in numerous essential respects. These areas of noncompliance continue to cause harm to Plaintiff

Children who are too often experiencing multiple placement moves, unaddressed service needs and lengthy stays in foster care.

Just one week ago, on July 16, 2008, Mayor Adrian M. Fenty announced that he had accepted the resignation of Dr. Sharlynn E. Bobo as CFSA Director and that he had named Dr. Roque Gerald to serve as Interim CFSA Director. Though the Mayor's announcement may evidence a recognition that child welfare reform in the District has stalled, if not gone into retreat, this latest change in agency leadership will not alone be adequate to rectify CFSA's noncompliance with the MFO, the accompanying April 2003 Implementation Plan ("IP") (attached as Ex. G) and the subsequent February 2007 AIP.

Indeed, a lack of stability and continuity of leadership has been a long-standing problem for the District's child welfare system since it emerged from receivership in 2001, and Dr. Gerald's recent appointment by the Mayor is only on an interim basis. Since April 2004, CFSA leadership has changed hands multiple times: from Olivia Golden to Brenda Donald to Uma Ahluwalia to Dr. Sharlynn Bobo and now to the new Interim Director, Dr. Roque Gerald. The important reform work necessary to protect children cannot succeed without stable and focused leadership dedicated to driving home and embedding improvements over the long run. Without a doubt, the District's child welfare system experienced stress when public reaction to the discovery of the deceased Jacks children in January caused reports of abuse or neglect to rise. But the essence of competent management is its ability to manage both when things are going smoothly and when there are crises, such as occasionally occur in child welfare systems. The Jacks crisis hit a system already weakened by the absence of consistent leadership and the continued failure to accomplish necessary reforms.

Absent a finding of contempt to once again make the protection of children a high priority for the executive leadership of the District and to make clear that this Court's orders are to be respected, and if not, that they will be fully enforced, the Plaintiff Children will not benefit from the vital gains that have been made under this Court's watch since 1991. Nor will they receive the full benefits promised by this Court's remedial orders. Most importantly, children will continue to be exposed to a very real and ongoing threat of harm.

PROCEDURAL HISTORY

On August 27, 1991, following a trial on the merits, this Court entered its Final Order which required Defendants to cure the constitutional and statutory failures found to exist in the District's child welfare system. After subsequent litigation and noncompliance by Defendants, this Court approved and entered its MFO on January 27, 1994. The MFO specified exactly what Defendants must do in order to provide adequate services and protection to the children in its care. The MFO mandated that Defendants "fully comply with all provisions of this order." (Ex. A at Section XX, Par. B(5)(b)). In order for Defendants to achieve compliance, the MFO required the parties and the Court Monitor to create an implementation plan that "shall be implemented, shall be fully binding on the defendants, and *shall be enforceable by the court*." (Ex. A at Section XX, Par. B(5)(a) (emphasis added)).

When Defendants failed to comply with their obligations, this Court granted Plaintiffs' motion to hold them in contempt and placed the District's child welfare agency into receivership. *See LaShawn A. v. Kelly*, 887 F.Supp. 297 (D.D.C. 1995). From 1995 to 2003, the District engaged in significant reform efforts while under the federal court

receivership and during a post-receivership probationary period. Although Defendants did not achieve compliance with the MFO during this period, the District's treatment of children improved in many respects.

On May 16, 2003, this Court approved the IP, a post-receivership plan designed to bring the District into full compliance with requirements of the MFO. The IP required Defendants to fully comply with its provisions no later than December 31, 2006, with many requirements coming due for full compliance at earlier specified dates. Defendants made certain improvements while the IP was in effect – for instance, the backlog of abuse or neglect investigations not completed in 30 days was reduced from a high of 685 children to 89. (2007 Court Monitoring Report at 12, attached as Ex. H). However, the last report issued by the Court Monitor prior to the expiration of the IP on December 31, 2006, indicated that Defendants remained out of compliance with numerous IP requirements.

In spite of Defendants' continued noncompliance as of December 31, 2006, Plaintiffs did not seek contempt because the District's performance had improved in numerous respects and because Defendants vowed to achieve full compliance, if given more time. Consequently, Plaintiffs, Defendants and the Court Monitor agreed to the AIP, which was approved by this Court on February 27, 2007. The AIP provided that it "*shall be judicially enforceable* and shall govern implementation of child welfare reform under the [MFO] through December 31, 2008." (Ex. B at Preamble (emphasis added)).

The AIP required the development of an "Annual Strategy Plan with identified action steps designed to achieve safety, permanency and well-being for children and to reach and sustain the performance goals of the Amended LaShawn Implementation

Plan." (Ex. B at Section III). The parties and the Court Monitor agreed, and this Court ordered, that the action steps set forth in the Annual Strategy Plan "are enforceable by the Court but can be changed or deleted with the approval of the Court Monitor." (Ex. B at Section III). The AIP also contemplated that Defendants, in consultation with the Court Monitor and Plaintiffs, would annually develop an updated Annual Strategy Plan during the effective period of the AIP. (Ex. B at Section III).

Defendants have failed to comply with the mandatory terms of the initial Annual Strategy Plan submitted to this Court on February 14, 2007 (Ex. B at Section III; March 21, 2008, Court Monitor Letter and Progress Memo to the Court *and* Court Monitor Status Report on Six-Month Stabilization Plan at 16-35, attached as Ex. I). Moreover, Defendants failed to formulate an updated Annual Strategy Plan satisfactory to Plaintiffs and the Court Monitor for implementation beginning on January 1, 2008. Therefore, the parties submitted a six-month Stabilization Plan to the Court on March 21, 2008 to cover the period January 1, 2008, through June 30, 2008, and further agreed to extend the end-date of the AIP from January 1, 2009, to June 30, 2009. (Ex. I at 36). Defendants are currently in noncompliance with the terms of the six-month Stabilization Plan. (Ex. I at Table 2, Status of Action Steps).

The AIP requires the Court Monitor to furnish "interim performance report[s]," which include "findings regarding whether Defendants are making acceptable progress toward the final performance benchmarks." (Ex. B at Preamble). Since the approval of the AIP, the Court Monitor has produced two interim performance reports (Ex. H and Ex. I) along with a separate report evaluating the District's Child Protective Services, the November 2007 CPS Report (Ex. F). Not only do these reports find unacceptable

progress, but they reveal that Defendants are instead backsliding and that prior progress is being undone.

The Court Monitor's March 21, 2008, letter to this Court (in advance of an April 1, 2008 hearing) made clear that the District was moving in the wrong direction. (*See* Ex. I). Defendants were not in compliance with over 60% of the measurable AIP benchmarks and the CPS investigations backlog had ballooned to 885 cases. (Ex. I at 2, 16-35). Nonetheless, Plaintiffs agreed to extend the AIP through June 30, 2009, instead of immediately seeking contempt because Plaintiffs accepted Defendants' claims that the District would act with urgency to stabilize the system and to make measurable and sustainable strides toward achieving full compliance. The Court then entered the six-month Stabilization Plan.

Defendants agreed to formulate by July 1, 2008, an acceptable 12-month strategy plan for reaching compliance with the AIP and the MFO. (Ex. I at 1). In the more than three months since the parties extended the AIP on April 1, 2008, Defendants have failed to come forward with an acceptable strategy plan that sets forth a clear path, including measurable benchmarks, for curing all areas of CFSA noncompliance. Moreover, CFSA performance has continued to deteriorate and the investigation backlog has skyrocketed to 1,690. (July 14, 2008, Testimony of Judith Meltzer to The Committee on Human Services of the Council of the District of Columbia at 3, attached as Exhibit J).

ARGUMENT

DEFENDANTS ARE OUT OF COMPLIANCE WITH THE CLEAR TERMS OF MFO AND AIP AND, THEREFORE, IN CONTEMPT

I. THE STANDARD APPLICABLE TO CIVIL CONTEMPT

The Supreme Court has stated that civil contempt citations are an integral part of judicial power. *Shillitani v. United States*, 384 U.S. 364, 370 (1966); *Cooper v. Aaron*, 358 U.S. 1 (1958); *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 450 (1911). Civil contempt is properly invoked to compensate for losses sustained due to a defendant's noncompliance with a court order and, as here, to coerce future compliance with enforceable orders. *McDonald's Corp. v. Victory Invs.*, 727 F. 2d 82, 87 (3rd Cir. 1984); *see Halderman v. Pennhurst State Sch. & Hosp.*, 154 F.R.D. 594 (E.D. Pa. 1994) (holding state and county in civil contempt for failing to comply with most provisions of consent decree concerning care and services for mentally retarded citizens).

A party moving for contempt bears the burden of proving, by clear and convincing evidence, that the opposing party has violated a clear and unambiguous order of the court. *Armstrong v. Executive Office of The President*, 1 F.3d 1274, 1289 (D.C. Cir. 1993). The underlying court order is to be construed through its plain language and the circumstances surrounding its issuance; therefore, an order is less likely to be found ambiguous when it "was proposed and consented to by the contemnor." *Cobell v. Babbitt*, 37 F. Supp. 2d 6, 16 (D.D.C. 1999). In addition, the alleged violation need not be intentional in nature, and the contemnor's state of mind is irrelevant in a civil contempt proceeding. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191; *N.L.R.B. v. Blevins Popcorn Co.*, 659 F.2d 1173, 1184 (D.C. Cir. 1981). Once the moving party has come forward with sufficient evidence to establish a *prima facie* case of

noncompliance, the respondent then must carry the burden to establish a justification for the violation to avoid a contempt finding. *Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 103 F.3d 1007, 1017 (D.C. Cir. 1997); *S.E.C. v. Bilzerian*, 112 F. Supp. 2d 12, 16 (D.D.C. 2000).

In *LaShawn A.*, 887 F. Supp. 297, this Court previously found defendants in contempt of court by clear and convincing evidence, and imposed a full receivership over the District's child welfare system. This receivership remained in place from 1995 through 2001. Prior to that order, in October 1994, this Court likewise had found Defendants in contempt and entered an order establishing a limited receivership. *See* October 4, 1994 Order of Judge Thomas F. Hogan (attached as Ex. K). Similarly, in *G.L. v. Zumwalt*, No. 77-0242-CV-W-1, slip op. (W.D. Mo. Dec. 2, 1992), a class action child welfare case, a federal district court found clear and convincing evidence of excessive and inaccurately counted caseloads, understaffing, inadequate training (including but not limited to failure to track who had been trained), insufficiently frequent visits of foster children by caseworkers and a lethargic adoption process (attached as Ex. L). Accordingly, the Court found defendants out of compliance with the consent decree and in contempt. *Id.* at 43. *See also Dixon v. Barry*, 967 F. Supp. 535, 551-54 (D.D.C. 1997) (citations omitted) (appointing a receiver over the District's Commission of Mental Health Services because the District repeatedly failed to comply with the court's orders and experienced multiple changes in leadership); *Carty v. Farrelly*, 957 F. Supp. 727, 744 (D.V.I. 1997) (holding governmental officials in contempt for failing to conform with most elements of settlement agreement requiring conditions at prison complex to be

raised to constitutional minima and finding defendants noncompliant, despite improvements, because their efforts were isolated and superficial).

In the instant case, the Monitoring Reports and other evidence presented herein prove numerous violations of the MFO and AIP and consequent harm to children.

II. DEFENDANTS ARE OPERATING THE DISTRICT'S CHILD WELFARE SYSTEM IN NONCOMPLIANCE WITH THE CLEAR TERMS OF THE MFO AND THE AIP AND ARE FAILING TO CONDUCT ADEQUATE INVESTIGATIONS OF REPORTED ABUSE OR NEGLECT TO CHILDREN AT HOME OR IN FOSTER CARE

Among any child welfare system's principal reasons for being is the obligation to protect children who are at risk of abuse or neglect – whether while living at home or in a foster home or institutional setting – by screening and then investigating complaints from concerned members of the public. Defendants' core commitment to and responsibility for children's safety is encapsulated in Section II of the MFO entitled "Protective Services." (Ex. A at Section II). The provisions of Section II require Defendants, among other affirmative obligations, to develop and implement policies and procedures for receiving and responding to reports of abuse or neglect (*Id.* at Section II, Par. A), to develop policies and procedures for the proper screening of abuse and neglect reports (*Id.* at Section II, Par. D), to initiate all investigations of alleged abuse or neglect within 48 hours and to complete all such investigations within 30 days (*Id.* at Section II, Par. G), and to develop policies and procedures and to conduct risk assessments so that abuse or neglect investigations and removal decisions are based on a full and systematic analysis of all factors relating to existing or potential risks to the child (*Id.* at Section II, Par. H).

The requirements of Section II of the MFO are further reflected and made subject to court-enforceable action steps in the IP and the AIP. Thus, Section II of the IP

required Defendants to initiate 90% of all abuse or neglect investigations within 48 hours by June 30, 2005, and to be in full compliance with this timeliness measure by December 31, 2005 (Ex. G at Section II, Par. 2), to complete 90% of all abuse or neglect investigations within 30 days by December 31, 2005, and to be in full compliance with this timeliness measure by June 30, 2006 (*Id.* at Section II, Par. 3), to complete 95% of all abuse or neglect investigations relating to children in foster care in conformance with all applicable investigation policies and within 30 days by December 31, 2005, and to be in full compliance with this measure by December 31, 2006 (*Id.* at Section II, Par. 5), and to routinely conduct quality investigations of abuse or neglect in 80% of cases by December 31, 2005, and to be in full compliance with this measure by December 31, 2006. (*Id.* At Section II, Par. 4).

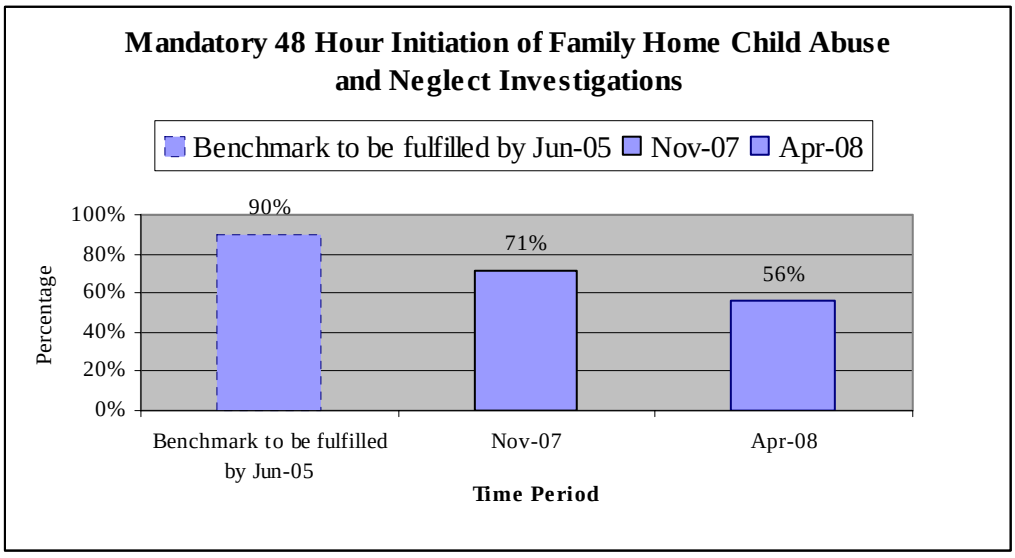
Because Defendants failed to meet the above IP requirements by the established deadlines, these provisions of Section II were reincorporated into the AIP at Section I, Paragraph 1, *Investigations* and Section I, Paragraph 2, *Acceptable Investigations*. (Ex. B). Under the AIP, it remains the court-enforceable obligation of Defendants to assure the safety of all children made subject to allegations of abuse or neglect whether at home or in foster care settings. Defendants are failing to meet this primary obligation as reflected in the clear and unambiguous orders of this Court. (April 1, 2008, Court Monitor Performance Update at 1-2, attached as Ex. M).

A. Child Protective Services Investigations Are Not Being Timely Initiated

The Court Monitor, has issued updated findings in relation to Defendants' performance on the AIP, Section I, Pars.1 and 2 requirements as of April 2008. (Ex. M).

These findings not only establish that Defendants are in clear violation of the MFO and AIP, but further reveal that Defendants' performance is in decline.

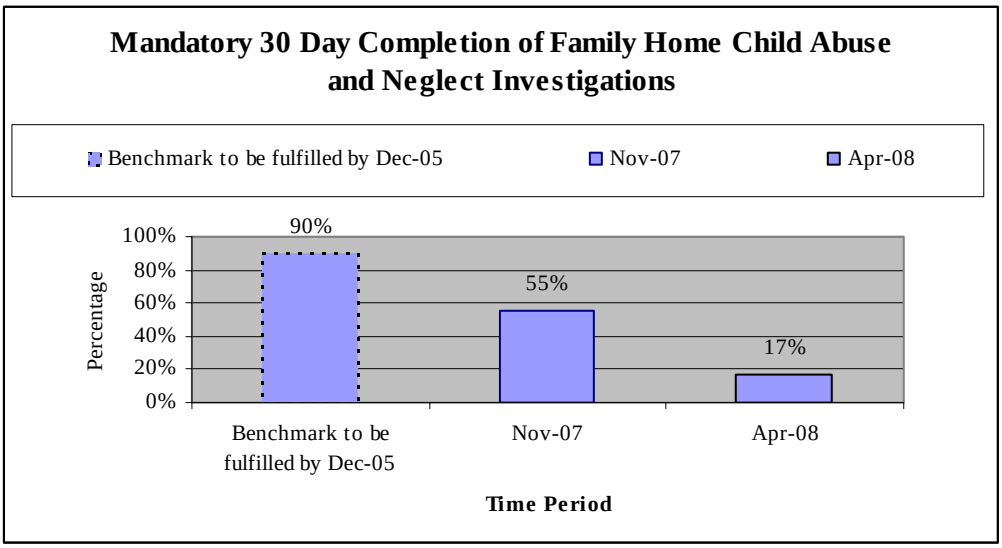
Specifically, in relation to AIP Section I, Par. 1(a), the Court Monitor determined that only 56% of all abuse or neglect investigations relating to children residing in their family homes were being initiated within the mandatory 48 hour time period. (Ex. M at 1). This performance measure represents a sharp decline from the 71% rate of compliance reported by the Court Monitor in November 2007, though this latter performance measure also failed to meet the interim performance benchmark of 90%, which Defendants were to have achieved by June 30, 2005. (Ex. G at Section II, Par. 2; Ex. M at 1).



B. <u>Child Protective Services Investigations Are Not Being Timely Completed</u>

Likewise, in relation to AIP Section I, Par. 1(b), the Court Monitor determined that, as of April, 2008, only 17% of all abuse or neglect investigations relating to children residing in their family homes were being completed within the mandatory 30 day time

period. (Ex. M at 1). This level of performance constitutes a retreat from the 55% rate of compliance reported by the Court Monitor in November 2007, though again this latter performance measure failed to meet the interim performance benchmark of 90%, which Defendants were to have achieved by December 31, 2005. (Ex. M at 1; Ex. G at Section II, Par. 3).

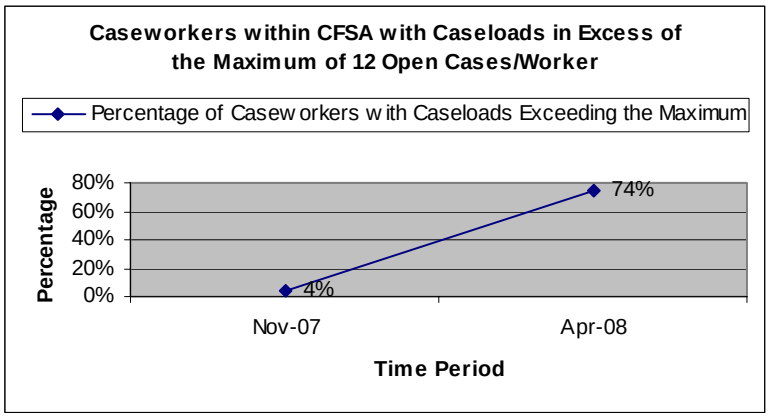


C. CPS Investigations of Alleged Abuse or Neglect in Foster Care Are Not Being Timely Completed

Similarly, in relation to AIP Section I, Par. 1(c), the Court Monitor determined that, as of April, 2008, only 20% of all abuse or neglect investigations relating to children residing in foster homes, group homes or institutions were being completed within the mandatory 30 or 60 day time period. (Ex. M at 1). This performance represents a dramatic decline from the 80% rate of compliance reported by the Court Monitor in November 2007. (Ex. M at 1). The interim performance benchmark of 85% was to be achieved by December 31, 2005. (Ex. G at Section II, Par. 4(d)).

D. Child Protective Services Caseworker Caseloads Are Out of Compliance with MFO and AIP Mandates

The above areas of serious noncompliance are predictably connected with the increasing caseworker caseloads within CFSA. As of January 2007, the Court Monitor reported that only 4% (2 of 50 workers) of child protective services investigators within CFSA carried a caseload in excess of the maximum of 12 open cases per worker, as required under the MFO and AIP. (Progress on Key *LaShawn* Protective Services Requirements at 2, attached as Ex. N; Ex. B, Section I, Par. 28(a)). In stark contrast, as of June 30, 2008, fully 74% (63 of 85 workers) of CPS investigators carried over 12 cases. (Ex. M at 14). Nevertheless, Defendants have not taken the steps necessary to address this urgent resources need. Defendants further have not met their obligation under the February 14, 2007, Annual Strategy Plan to "continue 'overstaffing' in Child Protective Services (CPS) to maintain low investigator caseloads (not to exceed 1:12) …" (Ex. B, Section III, Par. A(1)(a)).



E. Child Protective Services Investigations Are of Inadequate Quality to Assure Safety

Not only are investigations of abuse or neglect taking place far too slowly to ensure basic child safety, but even when completed, they lack the requisite quality and depth. Thus, in the November 2007 CPS Report, the Court Monitor reported:

> The Monitor remains concerned about the overall quality of investigative frontline practice. The intensive focus on timeliness of investigations has not been accompanied by an equal emphasis on the quality of decision-making and service linkage during the investigative process. The investigation record reviewers judged that only 20 of 40 investigations included the five core contacts required by policy and that 26 of the 40 investigations were of quality. (Ex. F at 23).

This 2007 finding mirrored an earlier finding by the Court Monitor in its January 2006 CPS Report. There, the Monitor reported:

> Both the quantitative and qualitative evaluations reveal uneven quality in investigations practice. In addition to instances of not meeting standards related to making core contacts, closing investigations in a timely manner, conducting joint investigations with MPD and documenting the work, investigation workers are also not routinely connecting families to services and conducting thorough risk assessments. (Ex. E at 5).

The Court Monitor's November 2007 CPS Report and January 2006 CPS Report presaged the very kind of harms to children that now have befallen the Jacks children and Isiah Garcia.

The past and continuing absence of overall quality in CPS investigations and practice cannot be rectified in an environment in which caseworker caseloads routinely exceed the maximum of 12 cases and in which a substantial backlog of overdue investigations burdens overworked caseworkers even further. Notwithstanding the nature and scope of the remedial measures required to cure this systemic failing, Defendants clearly are in noncompliance with AIP Section I, Par. 2 which requires "acceptable investigations" of abuse or neglect referrals, as defined in the clear terms of the AIP. (Ex. B at Section I, Par. 2).

III. DEFENDANTS ARE OPERATING THE DISTRICT'S CHILD WELFARE SYSTEM IN NONCOMPLIANCE WITH THE CLEAR TERMS OF THE MFO AND THE AIP AND ARE FAILING TO ENSURE THE SOUND AND SAFE OPERATION OF THE DISTRICT'S FOSTER CARE PROGRAM

As determined by this Court at the liability trial in this case, Defendants' legal obligations to every child removed into CFSA custody extend well beyond the initial CPS investigation and removal decision to include the provision of a safe and stable placement, the delivery of basic medical and dental care and the provision of timely and effective permanency planning. None of these agency obligations can be reliably fulfilled absent a well-trained caseworker staff, regular contact and visitation between caseworkers and the children and families they serve, regular visitation between siblings and children and their parents, and a well-designed system of quality assurance and quality improvement. Defendants are in noncompliance with the clear provisions of the MFO and AIP that address these vital elements of the District's foster care program. This noncompliance applies to the child welfare services being provided both directly by CFSA and through private child placing agencies under contract with CFSA. Indeed, CFSA is required by the MFO and AIP to develop and implement a performance based contracting system to assure the quality of private agency case management and service delivery. CFSA currently remains at square one in terms of instituting a proper performance based contracting system.

A. Defendants Have Violated the Clear Terms of the MFO and AIP Relating to the Provision of Stable Placements for Children in Foster Care

Defendants are in noncompliance with the MFO and AIP requirements relating to the provision of stable placements for children who have been removed into foster care. As this Court previously determined, the provision of unstable and multiple placements

to children in foster care causes them additional psychological harm and deprives them of the ability to attach with a trusted caretaker. The MFO and AIP provided for remedial action steps to address this reality.

Pursuant to the AIP, Defendants are obligated to ensure that 65% of children who are in out-of-home care for at least 12 months, but less than 24 months, have two or fewer total placements. (Ex. B, Section I, Par. 13(b)). As of April 2008, as reported by the Court Monitor, CFSA ensured the requisite two or fewer placements to only 56% of the children in this demographic. (Ex. M at 7).

Likewise, pursuant to the AIP, Defendants are obligated to ensure that 50% of children who are in out-of-home care for at least 24 months have two or fewer total placements. (Ex. B, Section I, Par. 13(c)). As of April 2008, as reported by the Court Monitor, CFSA ensured the requisite two or fewer placements to only 37% of the children in this demographic. (Ex. M at 7).

B. <u>The Lack of Placement Stability is Exacerbated by CFSA's Failure to Recruit an Adequate Placement Array to Meet Known Needs</u>

In its "2007 Needs Assessment Report (attached as Ex. O)," CFSA acknowledged numerous areas of need in relation to the development of a foster care placement array designed to meet the characteristics of the current and anticipated foster care population in the District. CFSA found that its existing array of foster care settings was particularly inadequate to meet the needs of teens, teen parents and children presenting behavioral or medical issues that called for specialized foster care homes. (Ex. O at 45, 50-53). The absence of sufficient numbers of homes and accompanying child and foster parent supports in these placement categories is well-understood by CFSA management to contribute to unnecessary placement disruptions and to children going AWOL.

Yet, as reported by the Court Monitor in its March 21, 2008 report to the Court, "CFSA continues to lack an appropriate array of placements for children. There is insufficient diversity in placement options in terms of skill, geographic location and treatment level to meet the needs of children in foster care." (Ex. I at 10). The Court Monitor further observed that an increase in the number of children entering foster care in 2008 is threatening to stretch the existing placement array well beyond its limits and cautioned that "[q]uick action must be taken to avoid returning to a situation that the District has worked hard over many years to rectify – of over-placed foster homes, young children in congregate care and children waiting in office buildings for appropriate placements." (Ex. I at 10).

According to the Court Monitor's most recent data regarding CFSA performance, as of April 2008, twenty-six children under the age of 12 were placed in congregate care settings for more than 30 days, an exponential increase from the 5 children in this cohort as of November 2007, and a violation of the AIP and MFO. (Ex. B at Section I, Par. 9(a); Ex. M at 6). Moreover, although the AIP requires that no more than 82 children be placed more than 100 miles from the District, as of April 2008, 126 children were in such placements. (Ex. B at Section I, Par. 21; Ex. M at 11). The placement array in the District clearly is not meeting the need or the provisions of this Court's orders, nor have Defendants taken adequate steps to address this long-documented problem.

In the unsuccessful negotiations over the past three months with Plaintiffs and the Monitor regarding a 12-month Annual Strategy Plan to become effective on July 1, 2008, Defendants came forth with no reasonable action plan to address the identified gaps in the CFSA placement array.

C. Defendants Have Violated the Clear Terms of the MFO and AIP Relating to the Provision of Medical and Dental Care to Children in Foster Care

Defendants have also failed to provide children in CFSA custody with the adequate mental and dental care that the children are entitled to under the AIP and MFO. The AIP requires that CFSA provide all children with a health screening prior to placement. (Ex. B at Section I, Par. 24(a)). As of October 2007, only 59% of children received a health screening prior to placement. (Ex. M at 12). By comparison, the last interim benchmark on this measure in the IP was 90%, a benchmark to have been met by December 31, 2005. (Ex. G at Section VI, Par. 4)).

The AIP requires that children in foster care receive a full medical and dental evaluation within 30 days of placement. (Ex. B at Section I, Par. 24(b); Ex. M at 12). Defendants are not even able to provide reliable data as to whether these evaluations are taking place.

Similarly, the AIP requires CFSA to provide all caregivers with documentation of Medicaid coverage within 5 days of placement and to provide caregivers with Medicaid cards within 30 days of placements. (Ex. B at Section I, Par. 24(c); Ex. M at 13). Sampling of documentation and medical cards provided to caregivers in January of 2008 revealed that 33% of foster parents received documentation of Medicaid coverage within 5 days, and less than 27% of foster parents received a Medicaid Card within 30 days. (Ex. M at 13).

TABLE 1—SUMMARY TABLE OF MEDICAL OUTCOMES TO BE ACHIEVED-AIP Requirement 24				
	AIP Requirement	**Last IP Interim Benchmark**	**CFSA Performance**	**AIP Compliance**
AIP Requirement 24(a)	CFSA provide all children with a health screening prior to placement.	90%	59% (as of Oct-07)	FAILURE TO

				COMPLY
AIP Requirement 24(b)	Children in foster care must receive a full medical and dental evaluation within 30 days of placement.	90%	Defendants unable to provide data	FAILURE TO COMPLY
AIP Requirement 24(c)	CFSA must provide all caregivers with documentation of Medicaid coverage within 5 days of placement.	95%	33%	FAILURE TO COMPLY
AIP Requirement 24(c)	CFSA must provide caregivers with Medicaid cards within 30 days of placement.	95%	Less than 27%	FAILURE TO COMPLY

D. Defendants Have Violated the Clear Terms of the MFO and AIP Relating to the Provision of Permanency Services for Children in Foster Care

Defendants are additionally in noncompliance with enforceable provisions of the MFO and AIP in relation to achieving timely permanency for children who have been removed into foster care. As this Court determined at the liability trial in this case, a lack of permanency and stability in their adult relationships and homes causes harm to children.

The AIP requires Defendants to make all reasonable efforts to ensure that children placed in an approved adoptive home have their adoptions finalized within 12 months of placement in the approved adoptive home. (Ex. B at Section I, Par. 16(c)). Though the AIP requires full compliance with this measure (and though the IP required 85% performance on this measure by December 31, 2005), CFSA performance was only 10% as of April 2008. (Ex. G at Section VIII, Par. C; Ex M. at 9).

The AIP further requires that children with a goal of adoption should be in an approved adoptive placement within nine months of their goal becoming adoption. (Ex. B at Section I, Par. 16(a)). Though the AIP requires full compliance with this measure (and though the IP required 85% performance on this measure by December 31, 2005), CFSA

performance was only 53% as of April 2008. (Ex. G at Section VIII, Par. 1(a); Ex. M at 8).

Similarly, the AIP requires that children with the permanency goal of adoption shall have legal action commenced to free them for adoption within 45 days of their goal becoming adoption. (Ex. B at Section I, Par. 15). Though the AIP requires full compliance with this measure (and though the IP required 75% performance on this measure by June 30, 2004), CFSA performance was only 50% as of November 2007. (Ex. G at Section VIII, Par. 1(b), Ex. M at 8).

TABLE 2—SUMMARY TABLE OF ADOPTION OUTCOMES TO BE ACHIEVED

	AIP Requirement	Last IP Interim Benchmark	Defendants' Performance	AIP Compliance
AIP Requirement 16(c)	Defendants must make all reasonable efforts to ensure that children placed in an approved adoptive home have their adoptions finalized within 12 months of placement in the approved adoptive home.	85%	10% (as of April 2008)	FAILURE TO COMPLY
AIP Requirement 16(a)	Children with a goal of adoption should be in an approved adoptive placement within nine months of their goal becoming adoption.	85%	53% (as of April 2008)	FAILURE TO COMPLY
AIP Requirement 15	Children with the permanency goal of adoption shall have legal action commenced to free them for adoption within 45 days of their permanency goal becoming adoption.	75%	50% (as of November 2007)	FAILURE TO COMPLY

The noncompliance by CFSA with the above AIP permanency requirements has caused a decline in the number of adoptions that are finalized each year in the District. As reported by the Court Monitor on March 21, 2008:

> [i]n 2007, 132 children exited foster care through adoption. This is a decrease from 2006 when 196 children were adopted and continues a trend of fewer adoptions over the past several years. Far too many children with

a goal of adoption -- over 500 children – are still waiting for a permanent family or for their adoptions to be finalized. (Ex. I at 8).

E. Defendants Have Violated the Clear Terms of the MFO and AIP Relating to Essential Foster Care Visitation Practices

The AIP includes several provisions requiring that CFSA take steps to assure that necessary visitation occurs between caseworkers and children, siblings in separate foster homes and caseworkers and parents. Visitation is widely understood to be an essential element of good child welfare practice because it ensures that children are safe and allows caseworkers to determine whether their needs are being met, and promotes the continuity of family relationships and facilitates the exchange of critical information about unmet needs and potential safety issues.

The AIP mandates that CFSA take action to ensure weekly social worker visits with children experiencing a new placement during the first month of the placement and twice monthly visits thereafter. (Ex. B at Section I, Par. 6(a)). Though the AIP requires full compliance with this measure (and though the IP required 90% performance on this measure by June 30, 2005), CFSA performance was only 65% as of April 2008. (Ex. G at Section IX, Par. 1(a); Ex. M at 5).

The AIP also mandates that CFSA take action to ensure that sibling visitation occurs at least twice per month. (Ex. B at Section I, Par. 20(b)). Though the AIP requires full compliance with this measure (and though the IP required 75% performance on this measure by June 30, 2006), CFSA performance was only 59% as of April 2008. (Ex. G at Section VI, Par. 1(d); Ex. M at 11).

Similarly, the AIP mandates that CFSA take action to ensure weekly visitation between children in foster care with a goal of reunification and their parents. (Ex. B at

Section I, Par. 11). Though the AIP requires full compliance with this measure (and though the IP required 85% performance on this measure by June 30, 2005), CFSA performance was only 33% as of April 2008. (Ex. G at Section VII, Par. 3; Ex. M at 6).

Finally, the AIP mandates that CFSA take action to ensure twice monthly visitation between caseworkers and the parents of children in foster care with a goal of reunification. (Ex. B at Section I, Par. 10). Though the AIP requires full compliance with this measure (and though the IP required 80% performance on this measure by June 30, 2005), CFSA performance was only 50% as of April 2008. (Ex. G at 7-4, Ex. M at 6).

TABLE 3—SUMMARY OF VISITATION OUTCOMES TO BE ACHIEVED

	AIP Requirement	**Last IP Interim Bench mark**	**CFSA Performance (as of April 2008)**	**AIP Compliance**
AIP Requirement 6(a)	CFSA must take action to ensure weekly social worker visits with children experiencing a new placement during the first month of the placement and twice monthly visits thereafter.	80%	65%	FAILURE TO COMPLY
AIP Requirement 20(b)	CFSA must take action to ensure that sibling visitation occurs at least twice per month.	75%	59%	FAILURE TO COMPLY
AIP Requirement 11	CFSA must take action to ensure weekly visitation between children in foster care with a goal of reunification and their parents.	85%	33%	FAILURE TO COMPLY
AIP Requirement 10	CFSA must take action to ensure twice monthly visitation between caseworkers and the parents of children in foster care with a goal of reunification.	80%	50%	FAILURE TO COMPLY

F. Defendants Have Violated the Clear Terms of the MFO and AIP Relating to the Training of Workers and Supervisors

The decline in CFSA's overall child welfare performance is connected in part to Defendants' failure to ensure that basic training is provided to frontline and supervisory staff as required in the MFO and AIP. This training is required for both CFSA employees and private agency staff responsible for the care of children in CFSA custody. It is axiomatic that an ill-prepared staff cannot reliably provide competent care and services to children in foster care. The IP and AIP explicitly require that proper mandatory training be furnished to both CFSA and private agency workers.

The AIP mandates that all caseworkers receive 80 hours of pre-service training before assuming responsibility for a case. (Ex. B at Section I, Par. 30(a)). Though the AIP requires full compliance with this measure (and though the IP required 90% performance on this measure by September 30, 2003), CFSA performance was only 52% as of November 2007. (Ex. G at Section XIV, Par (1); Ex. M at 17).

The AIP likewise mandates that 40 hours of pre-service training be completed by new supervisors within three months of assuming supervisory responsibility. (Ex. B at Section I, Par. 30(b)). Though the AIP requires full compliance with this measure (and though the IP required 90% performance on this measure by December 31, 2004), CFSA performance was only 27% as of November 2007. (Ex. G at XIV, Par. 6; Ex. M at 17).

The AIP also mandates that 30 hours of in-service training be competed annually by all previously hired frontline workers. (Ex. B at Section I, Par. 31(a)). Though the AIP requires full compliance with this measure (and though the IP required 85%

performance on this measure by June 30, 2006), CFSA performance was only 36% as of November 2007. (Ex. G at XIV, Par. 5; Ex. M at 17).

Finally, the AIP mandates that 24 hours of in-service training be completed by all previously hired supervisors. (Ex. B at Section I, Par. 31(b)). Though the AIP requires full compliance with this measure (and though the IP required 85% performance on this measure by June 30, 2005), CFSA performance was only 52% as of November 2007. (Ex. G at XIV, Par. 7; Ex. M at 17).

Training of CFSA agency staff and assuring training of private agency staff are matters that rest well within the control of CFSA management. Defendants' noncompliance with the basic training requirements of the MFO and AIP manifest an unfortunate level of disregard and disrespect for the orders of this Court.

TABLE 4—SUMMARY TABLE OF TRAINING OUTCOMES TO BE ACHIEVED

	Requirement	Last IP Interim Benchmark	CFSA Performance (as of November 2007)	AIP Compliance
AIP Requirement 30(a)	CFSA must provide 80 hours of pre-service training for new workers.	90%	52%	FAILURE TO COMPLY
AIP Requirement 30(b)	CFSA must provide 40 hours of pre-service training for new supervisors within three months of assuming supervisory responsibility.	95%	27%	FAILURE TO COMPLY
AIP Requirement 31(a)	CFSA must annually provide 30 hours of in-service training for previously hired frontline workers.	85%	36%	FAILURE TO COMPLY
AIP Requirement 31(b)	CFSA must annually provide 24 hours of in-service training to previously hired supervisors.	85%	52%	FAILURE TO COMPLY

G. Defendants Have Violated the Clear Terms of the MFO and AIP Relating to Quality Oversight of Child Welfare Service Delivery and Outcomes

The MFO and AIP require Defendants to establish and maintain certain structures and systems by which the quality of services provided to children in foster care can be routinely and adequately monitored and any identified deficiencies addressed. The two basic structures to be established are (1) a quality assurance unit or function within CFSA to assure agency conformance with policies and procedures and continuous quality improvement (Ex. B at Section I, Par. 33) and (2) a performance based contracting system that couples private agency incentives to the achievement of acceptable outcomes for children placed under their supervision (Ex. B at Section I, Par. 35). As of April 2008, CFSA had not fully implemented these systems even though the IP required that a fully operational performance based contracting system be achieved by September 30, 2005 and that a fully operational quality assurance unit be functioning by December 31, 2004. (Ex. G at Section XVI, Par. 2, Section X, Par. 2). Indeed, the District has yet to even issue a request for proposal ("RFP") on its performance based contracting model after a series of planning processes and false starts over the last several years. (Ex. I at 12). Defendants do not expect to issue the requisite RFP until later this year, some three years after performance based contracting was to be fully implemented under the IP.

H. Defendants Have Violated the Clear Terms of the MFO and AIP Relating to Other Essential Child Welfare Services

In addition to the violations discussed above, Defendants are out of compliance with many other AIP requirements. This noncompliance is particularly egregious with respect to the following requirements: a comprehensive and appropriate case planning

process, sibling placement together in foster care whenever reasonably possible and supervisors shall not be responsible for day-to-day case management of any open cases.

TABLE 5—SUMMARY TABLE OF OTHER ESSENTIAL CHILD WELFARE SERVICES TO BE PROVIDED				
	Requirement	**Last IP Interim Benchmark**	**CFSA Performance (as of April 2008)**	**AIP Compliance**
AIP Requirement 17(a)	Defendants to develop case planning process	90%	71%	FAILURE TO COMPLY
AIP Requirement 20(a)	CFSA to ensure sibling placement together in foster care whenever reasonably possible.	80%	57%	FAILURE TO COMPLY
AIP Requirement 29(b)	CFSA must ensure that no supervisor is responsible for day-to-day case management of any open cases.	100%	85%	FAILURE TO COMPLY

CONCLUSION

Plaintiffs file this motion for a finding of contempt and further formal court action with reluctance at this stage of this litigation. As this Court observed in making its finding of contempt in 1995:

> [The Court] has repeatedly expressed its reluctance to impose contempt sanctions and to interfere in the operations of local government by imposing broad receiverships or issuing flurries of micromanaging orders. The plaintiffs have also expressed their reluctance to seek a finding of contempt. However, as the Court has warned the defendants with increasing frequency, it cannot tolerate widespread noncompliance with its orders. (May 22, 1995, Memorandum Opinion Holding Defendants in Contempt at 48-49, attached as Ex. P).

More than fifteen years after the trial in this case, the parties and the Court ought to be looking to successes that have been achieved rather than reviewing failures and the need for further court orders. In fact, successes have been achieved; but they are not sufficient, and they are not being sustained. The District's child welfare system, for

whatever reasons, is still not providing the protections and benefits that this Court ordered following the liability trial in this case.

Given the current status of noncompliance and the deteriorating performance of the child welfare system, Plaintiffs can no longer rely on District government to act on its own, and again must turn to the Court for help.

Plaintiffs respectfully request that the Court make a judicial finding of contempt against Defendants for their noncompliance with the clear terms of the MFO and the AIP.

A proposed order is filed herewith, as required by local rules.

Respectfully Submitted,

/s/ *Marcia Robinson Lowry*

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LASHAWN A. by her next friend, Evelyn Moore, et al., Plaintiffs,	:	
v.	:	89-CV-1754 (TFH)
ADRIAN M. FENTY, as Mayor of the District of Columbia, et al., Defendants.	:	

Order Holding Defendants in Contempt of Court

Upon consideration of Plaintiffs' Motion for an Order Holding Defendants in Contempt of Court, it is this _____ day of _____, 2008,

ORDERED that Defendants have been and are found in contempt of this court's orders.

_____
Thomas F. Hogan
United States District Judge

Pursuant to Local Rule 7(k), this appendix to the Plaintiffs' proposed order lists the counsel for the parties whom are to be notified of the entry of this order: