

FILED
DISTRICT COURT
DISTRICT OF MARYLAND
OCT 11 2009 P 12:20

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

L.J., et al.,

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Plaintiffs,

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v.

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Civil Action No. JFM-84-4409

RUTH MASSINGA, et al.,

*

Defendants.

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MODIFIED CONSENT DECREE

PART ONE

I. GENERAL PROVISIONS

A. This Court has jurisdiction over the subject matter of this Consent Decree. In the event of subsequent litigation relating to the matters in this litigation other than in an action to enforce this Decree, Defendants retain and have the right to contest jurisdiction, venue, and/or assert other defenses. The parties agree that the Court shall retain jurisdiction over this case until the terms of this Decree are fully implemented for the purposes of (1) assuring implementation and (2) allowing any party at any time to move for an order seeking interpretation, implementation, enforcement or modification of this Decree.

B. The provisions of this Decree shall revise the Consent Decree approved by this Court September 27, 1988, and effective August 6, 1988, as modified December 12, 1991; the order appointing a "monitor" dated May 2, 1989; and the orders relating to Gay Street. Upon entry of an order approving the terms of this Decree, the provisions of each of these orders shall no longer be in effect.

C. This Decree shall apply to and be binding upon the parties to this civil action, and upon their employees, heirs, successors-in-interest, and assigns.

D. The undersigned representatives of the Plaintiffs and Defendants certify that they are fully authorized subject to the Federal Rules of Civil Procedure to enter into and to execute the terms and conditions of this Decree and to legally bind the parties, including all members of the certified plaintiff class.

E. The parties agree that the Defendants' obligation to give notice of this Decree to the Plaintiff class is restricted to giving notice to their undersigned counsel by their signing and receipt of this Decree, receipt of which is hereby acknowledged. In addition, Defendants will

ATTACHMENT A

send out notice of this Decree to all foster parents, to all relatives with whom the Baltimore City Department of Social Services ("BCDSS") has placed children, to all parents known to Defendants as having children in foster care or placed with relatives, and to the organizations to which the notice of the 1988 Consent Decree was sent or their successors. The parties agree that the expense and delay of publishing this Decree in area newspapers is not beneficial to the Plaintiff class based on the experience of the parties prior to the entry of the 1988 Consent Decree. The parties agree to urge the Court to adopt a streamlined and inexpensive notice and approval process for this Decree.

F. This Decree shall apply only to those children certified as members of the Plaintiff class, which consists of all children and youth placed in the custody of the Baltimore City Department of Social Services. This Decree creates no rights in favor of any other person. Where the Decree addresses services, procedures, rights, and benefits to third parties, such as the biological parents or the caregivers of members of the Plaintiff class, those provisions accrue to the benefit of the Plaintiff class and therefore are fully enforceable by Plaintiffs. This Decree creates no obligations or duties on the part of Defendants other than as stated specifically in the Decree. A violation of this Decree shall not create a new, independent private cause of action for anyone. The parties agree that this Decree does not permit enforcement proceedings on behalf of individual children.

G. The United States District Court for the District of Maryland shall have continuing jurisdiction to enforce the terms of the Decree. This Decree shall be enforceable to the same extent as any other consent decree, except for the Statements of Principle set forth in subsection A of each substantive section (Part Two, Sections I-V) of this Decree, which shall be used to interpret the Decree's terms and requirements. The Court retains the power to modify the terms of the Decree if the Court finds that current provisions are not adequate to achieve the objectives of the Decree. If the Court ever finds that any Defendant, or any successor of any Defendant, has failed to satisfy his, her, or its obligation under this Decree, the Court shall not order any sanction (including the imposition of a fine or imprisonment) against or respecting that Defendant or against any Defendant (either to punish a Defendant for alleged non-compliance or to stimulate future compliance) unless the Court first finds by a preponderance of the evidence that the Defendant(s) failed to meet his, her, their or its obligations due to some willful fault or lack of good faith on the part of the Defendant(s).

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

I. Upon (1) approval of this Decree by the Court, (2) entry of an Order entering the Decree as a binding order upon the parties, and (3) the expiration of any appeal period, Plaintiffs shall file a motion, consented to by Defendants, voluntarily dismissing the Consolidated Petition for Orders of Enforcement and to Show Cause Why Defendants Should Not Be Held In Contempt of Consent Decree and Motion for Modification of Consent Decree.

J. The parties have not resolved issues pertaining to Plaintiffs' rights to recover attorney's fees and costs pursuant to 42 U.S.C. § 1988, and reserve without prejudice all rights to negotiate and, if necessary, litigate those issues at a later time.

K. Every provision of this Decree is severable. If any part of this Decree is determined by a court to be void, illegal, unconstitutional, or otherwise unenforceable for any reason, that decision shall not affect the validity or legality or otherwise affect the other provisions of the Decree, all of which shall remain in full force and effect.

L. The terms of Part One of this Decree (i.e., General Provisions, Verification Activities and Information Sharing, Dispute Resolution, Communication and Problem-Solving, and Termination and Exit) are substantive in nature, are binding upon the parties, and are as fully enforceable as are all other provisions of this Decree.

M. Where an additional commitment contemplates that Defendants will enter into a contract, any such additional commitment is subject to the condition that Defendants must secure all necessary approval required by law. Defendants agree to make best efforts to secure any necessary approval from the Maryland Department of Budget and Management and Maryland Board of Public Works that is required by law.

N. Except as otherwise provided in this paragraph, prior to January 1, 2011, Plaintiffs shall not seek relief from the Court concerning Defendants' alleged non-compliance with any Outcome or Additional Commitment of this Decree except in accordance with subsection F of Part One, Section IV, "Dispute Resolution Process." This limitation does not apply to any Additional Commitments as to which Defendants have not reached compliance within six months of a stated deadline for completion.

II. VERIFICATION ACTIVITIES AND INFORMATION SHARING

A. The parties agree that a contractor or contractors (the "Independent Verification Agent") shall be retained at Defendants' expense with sufficient and reasonable budget to verify independently that Defendants' reports of compliance with the requirements of the Substantive Requirements, Internal Success Measures, and Exit Standards sections in Part Two of this Decree are accurate, valid, and reliable. All contracts, agreements, bills, and payment information related to the Independent Verification Agent shall be provided to Plaintiffs. The Independent Verification Agent is Mark Testa.

B. Verification activities will have two key functions: (1) to provide accurate, independent information to the Court and the parties about system performance to implement the requirements of this Decree; and (2) to provide feedback to Defendants that supports self-correcting measures and ongoing quality improvement by Defendants. Verification activities are not intended to supplant the day-to-day management and oversight responsibilities of Defendants. No party, nor any employee or agent of any party, shall have any supervisory authority over the activities, findings, and recommendations of the Independent Verification Agent.

C. The Independent Verification Agent shall be authorized to verify that: (1) the data and other information reported by Defendants are accurate, valid, and reliable; (2) the measures and methods used by Defendants to report data and other information are accurate, valid, and reliable; (3) Defendants have in place sufficient quality control and review processes to verify accurately and regularly the accuracy of data provided through its management information systems; and (4) Defendants' case review process is accurate, valid, and reliable. Where the Independent Verification Agent determines that the Defendants have not provided sufficiently reliable and accurate information to measure Defendants' performance on the requirements of this Decree, the Independent Verification Agent may conduct additional information-gathering activities to obtain information to measure performance. These may include, but are not limited to, case record reviews, quality service reviews, interviews, surveys of children and other stakeholders, and review of data available to Defendants. If, after receiving notice from the Independent Verification Agent of this decision, Defendants disagree with any of these additional activities by the Independent Verification Agent, they may present the issue to the Communication and Problem-Solving Forum, as provided in Part One, Section III. Upon the conclusion of the Forum, Defendants shall accept the final decision of the Independent Verification Agent.

D. Subject to the provisions set forth in subsections B and C above, Defendants agree to provide the Independent Verification Agent with timely and reasonable access to (1) all individuals within the Department of Human Resources ("DHR"), BCDSS, and any successor agencies or divisions as necessary to perform its duties; and (2) all documents, data, and interested persons, within the control of Defendants and/or accessible by Defendants, that the Independent Verification Agent deems relevant to its work (including but not limited to documents and data from contract agencies or partner public agencies). The Independent Verification Agent agrees to respect the confidentiality of all information that is otherwise privileged or confidential under Maryland law. The Independent Verification Agent will work with Defendants to ensure that its requests for access are not unduly burdensome or disruptive.

E. Where an Exit Standard for an Outcome uses a defined term for that Outcome, the meaning shall be incorporated into the Exit Standard for that Outcome. The provisions of the Definitions reflect policies, procedures, and practices to achieve compliance with the requirements of this Decree. The parties recognize that evidence of the Defendants' actions or inaction concerning these policies, procedures and practices may be relevant in a proceeding involving a petition by Plaintiffs for a determination of non-compliance with the relevant Outcome under subsection C of Part One, Section V "Termination and Exit," or in a judicial proceeding concerning the Defendants' compliance with this Decree. In establishing a remedy for non-compliance with an Outcome, the Court may compel compliance with policies, procedures and practices in the relevant Definition.

F. The Plaintiffs shall have access to the following:

1. Through the Independent Verification Agent, Plaintiffs' counsel shall have access to all information considered by the Independent Verification Agent, for purposes of ensuring compliance with, and enforcing, the Decree.

2. In connection with a proceeding on behalf of the class or a group of class members to enforce this Decree, Plaintiffs' counsel shall have timely access to those class members' case files and the case files for the class members' foster homes and families of origin, whether in paper or electronic copy, and any other documents referencing or concerning the class members with redactions only for identity of named reporters of abuse or neglect or for good faith assertions by Defendants of work product or attorney client privilege.

3. If Plaintiffs' attorneys present a dispute arising under this Decree involving a group of class members, Plaintiffs may request access to those class members' case files and the case files for the class members' foster homes and families of origin, whether in paper or electronic copy, and any other documents referencing or concerning the class members with redactions only for identity of named reporters of abuse or neglect or for good faith assertions by Defendants of work product or attorney client privilege. If Defendants object to producing those case files, Plaintiffs shall bring their request to the Communication and Problem-Solving Forum for the process described in Part One, Section III.

4. Within one working day, Plaintiffs' counsel shall be notified of the serious injury or death of any class member and shall be provided timely the incident report, any reports of the investigative outcomes, and access to the child's case file.

5. Defendants shall promptly provide to the Independent Verification Agent and to Plaintiffs' counsel all publicly available reports that Defendants receive indicating that they are not in compliance with a requirement of this Decree.

6. Plaintiffs will not use the Public Information Act ("PIA") to seek information available to Plaintiffs pursuant to subparagraphs F (1)-(5) of this Section II. Before filing a request for information under the PIA, Plaintiffs shall bring their request to the Communication and Problem-Solving Forum for the process described in Part One, Section III and for the Forum Facilitator to confirm that the request meets the requirements of this subparagraph. This paragraph shall not apply if Plaintiffs' counsel has a good faith belief that a group of class members is suffering or will suffer irreparable harm, and the PIA request seeks information that is relevant to that harm.

G. Any reports by the Independent Verification Agent shall be public documents, except that any individually identifiable information (as that term is understood under Maryland law) and any other confidential or privileged 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.

H. The parties shall promptly submit to the U.S. District Court the terms of a protective order providing the Independent Verification Agent, the Forum Facilitator (as necessary to carry out his or her duties as set forth in Part One, Section III), Plaintiffs' counsel, their agents, and their employees access to confidential information concerning the class members and their families, except as otherwise provided in this Decree. The parties shall also

submit to the Baltimore City Circuit Court, sitting as a Juvenile Court, a protective order to allow and provide the Independent Verification Agent and Plaintiffs' counsel with access to QUEST records for class members as required by this Decree. Either party may advise the courts of any potential issue relating to the lawfulness of the proposed protective orders, but both parties shall otherwise advocate for entry of the proposed protective orders.

I. If at any point the Independent Verification Agent can no longer serve, the parties shall agree on another Independent Verification Agent, with input and recommendations from the outgoing Independent Verification Agent. If the parties are unable to come to a joint decision on a successor Independent Verification Agent within thirty days, or longer by agreement of the parties, the parties shall consult with the Forum Facilitator in an attempt to reach an agreement. If the parties still cannot agree, the Court will have the authority to make a final decision. Either party may report to the Court a recommendation of the Forum Facilitator.

J. Every six months, Defendants shall submit to the Court, with a copy to the Plaintiffs, a report addressing their performance under the Internal Success Measures and Exit Standards and compliance with the Additional Commitments of Part Two of this Decree, based upon data reflecting performance for the six-month period covered by that report. The report shall contain a certification by the Independent Verification Agent as to the accuracy of the report or a statement by the Independent Verification Agent of the portions of the report that are not certified and the reasons why they have not been certified.

K. The parties will use the Communication and Problem-Solving Forum (described in Part One, Section III) immediately following the issuance of a report by the Defendants to address concerns that Plaintiffs may have regarding the report. In those circumstances when the Forum does not resolve Plaintiffs' concerns, Plaintiffs may file a responsive report with the Court without going through the Dispute Resolution process (described in Part One, Section IV below). Plaintiffs' decision not to bring an issue to the Forum or not to file a responsive report with the Court shall not act as a waiver of any kind and shall not be construed as acquiescing to the Defendants' report.

III. COMMUNICATION AND PROBLEM-SOLVING FORUM

A. The Parties agree that regular communication between them is critical to the successful resolution of this case and further agree to establish a communication and problem solving forum (the "Forum") for the purpose of addressing issues that arise relating to the Decree. The parties agree to use the Forum in good faith to negotiate resolutions of issues and disputes within the scope of the Forum.

B. Membership in the Forum shall include Plaintiffs' counsel and Defendants' counsel and representatives, and an identified outside facilitator(s) (the "Forum Facilitator"). The Independent Verification Agent may attend meetings as it deems relevant to its work and shall attend meetings related to its findings or analyses or at the request of either party or the Forum Facilitator.

C. Forum meetings will occur quarterly to discuss progress related to the Decree, and if, upon request by a party, the Forum Facilitator determines that a particular issue requires an

immediate Forum meeting. The Forum Facilitator will chair the Forum meetings and take minutes of the meetings. From time to time, other employees of Defendants and other child welfare stakeholders may be invited to the meetings upon the request of either Plaintiffs or Defendants. Where there is disagreement, the Forum Facilitator will decide whether to exclude external stakeholders.

D. In addition to Forum meetings, the parties agree to hold regular communications about the Decree, compliance issues, violations, and other issues of importance to Plaintiffs. Forum meetings should not replace these regular communications between the parties. The Forum Facilitator will be copied on all regular and electronic mail between the parties.

E. By December 31, 2009, Defendants, after consultation with the Internal Verification Agent, Plaintiffs' counsel and stakeholders, shall establish a standardized process for resolving issues related to individual class members. This process shall be widely publicized and accessible and shall permit individuals or their counsel to raise concerns about problems in their individual cases without retaliation (or fear of retaliation). Records shall be kept of the issues raised and their resolutions, and summary reports shall be provided to the Internal Verification Agent and Plaintiffs' counsel every six months.

F. The Forum Facilitator shall be selected by mutual agreement of the parties to serve for a term of one calendar year, subject to renewal by mutual agreement of the parties. If the agreement with the Forum Facilitator is not renewed, the parties shall mutually agree upon a new Forum Facilitator. If the parties are unable to reach agreement within thirty days of the end of the agreement, unless extended by mutual agreement of the parties, they shall mediate the dispute with the assistance of the Court.

G. The Forum Facilitator shall be retained at Defendants' expense. All contracts, agreements, bills, and payment information related to the Forum Facilitator shall be provided to Plaintiffs. No party, nor any employee or agent of any party, shall have any supervisory authority over the Forum Facilitator.

IV. DISPUTE RESOLUTION

In the event that Plaintiffs identify an area in which they assert Defendants are not in compliance with the Decree:

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

B. Within twenty calendar days of Plaintiffs' notification, Defendants shall respond in writing to Plaintiffs and the Forum Facilitator as to (1) whether they disagree with any of the facts and issues raised in Plaintiffs' written notice; (2) the basis for each such instances of disagreement; and (3) what actions, if any, they propose to take with regard to the issue of alleged non-compliance.

C. Regardless of whether Defendants agree with Plaintiffs' assertion of non-compliance, the parties shall meet with the Forum Facilitator within fifteen calendar days of the Defendants' response, unless otherwise agreed to by the parties. The purpose of this meeting shall be for the parties to engage in good faith negotiations with the assistance of the Forum

Facilitator 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 twenty calendar days, unless extended by mutual agreement of the parties.

D. At the conclusion of the dispute resolution process, if the parties have failed to come to an agreement, either party may request the Forum Facilitator to analyze the issues raised by Plaintiffs and the Defendants' response, and prepare and issue a report with recommendations concerning the dispute. The report shall be issued no later than ten days after the dispute resolution process has ended. This report shall be provided to the parties and, at the request of either party, to the Court.

E. At the end of the dispute resolution period, or the period as extended by mutual agreement of the parties, either party may seek relief from the Court.

F. Notwithstanding the dispute resolution process described above, if immediate and irreparable harm to a group of children will result from Defendants' non-compliance with the Decree, Plaintiffs may directly petition the Court for appropriate relief without following the process required by this Section IV.

V. TERMINATION AND EXIT

A. Defendants shall be in compliance with an Outcome of this Decree after Defendants have submitted periodic certified reports showing, with certification by the Independent Verification Agent, that Defendants have met the identified Exit Standards for that Outcome for three consecutive six-month reporting periods.

B. Once certified compliance with an Outcome has been achieved, the periodic reports required by subsection J of Part One, Section II, "Verification Activities," will no longer be required, nor will verification by the Independent Verification Agent of compliance with the Outcome be required. Instead, the Defendants will continue to measure compliance with the Outcome and will incorporate reporting on the Outcome in quarterly public management reports. Defendants shall notify the Independent Verification Agent, with a copy to Plaintiffs, if their compliance with an Outcome or the methodology for reporting on an Outcome changes.

C. If, following Defendants' achievement of certified compliance with an Outcome, Defendants' performance falls eight points below the Exit Standards (for example, 82 percent if the metric for the Exit Standard is 90 percent) for two successive six-month reporting periods, Plaintiffs may petition the Independent Verification Agent to determine non-compliance. If the Independent Verification Agent determines that Defendants have failed to maintain compliance with the Outcome, the Defendants shall be deemed to no longer be in certified compliance with that Outcome and shall again be required to report on that Outcome under subsection J of Part One, Section II, "Verification Activities," until the requirements for certified compliance under paragraph A of this Section have been met.

D. The Defendants shall continue to report on their compliance with the Additional Commitments until the Court vacates the Decree.

E. After January 1, 2011, Defendants may petition the Court to modify or remove an Exit Standard on the grounds that it should not be required due to significantly changed or unforeseen circumstances.

F. Upon application of the Defendants, the Decree shall be vacated by the Court when Defendants are in certified compliance with each Outcome.

PART TWO: SUBSTANTIVE REQUIREMENTS AND EXIT STANDARDS

I. PRESERVATION & PERMANENCY PLANNING

A. Statement of Principle: Children should remain with their families if they can do so safely. Out-of-Home Placement (“OHP”) should be temporary, with a goal of providing a safe, nurturing, permanent home for the child as quickly as possible. Family involvement in decision-making is critical to the welfare of the child and family.

B. DHR/BCDSS Responsibility: The Department of Human Resources (“DHR”)/Baltimore City Department of Social Services (“BCDSS”) shall make reasonable efforts¹ to prevent or eliminate the need for placement of each child into OHP, and to reunify each child who has been placed in OHP, by providing to families and children at risk of OHP, and to families whose children are in OHP, a range of sufficient services to support the families and avoid unnecessary placements into OHP or unnecessarily prolonged stays in OHP. DHR/BCDSS shall make those reasonable efforts necessary and sufficient to implement and achieve the child’s permanency plan; to change the child’s permanency plan when timely reunification is no longer likely; and to meet the child’s needs in all areas, including health, education, safety, and preparation for life after OHP. In making these efforts, DHR/BCDSS shall be guided by best practices in child welfare and shall identify, build upon, and expand existing resources for families and children in Baltimore City that utilize evidence-based models of mental health, substance abuse, and developmental treatment and services.

C. Definitions:

1. “Services,” as used throughout this Section, means services that BCDSS provides or services that BCDSS can obtain through a third party, based upon a child’s or a family’s needs, and include the following, as appropriate: (a) family counseling and other mental health services; (b) substance abuse services; (c) child care (as stated in Additional Commitment 8 of Part Two, Section II, “Out-of-Home Placement”); (d) parenting education services appropriate to the individual parent’s needs and abilities; (e) Emergency Assistance to Families with Children, TANF, Medical Assistance, Food Stamps, utility assistance programs, housing assistance programs, and other public benefits; (f) community-based services funded by Medical Assistance, the Governor’s Office for Children, and other sources (examples of required community-based services include, but are not limited to, wraparound services, Therapeutic Behavioral Services, personal care services, functional family therapy, and multi-system therapeutic services); (g) broad spectrum of family preservation services; (h) domestic violence services; (i) housing assistance services, including initiating and making available programs comparable to the HUD Family Unification project; (j) visiting nurse, home health aides, and other in-home services; and (k) referrals for employment assistance.

¹ The term “reasonable efforts,” as used in this paragraph refers to the requirements set forth in this Consent Decree, Md. Cts. & Jud. Proc. Code Ann. § 3-816.1, federal law, and any other applicable law governing the responsibilities of DHR/BCDSS to Plaintiffs to prevent or eliminate the need for placement of each child into OHP, to reunify each child who has been placed in OHP, to implement the child’s permanency plan, and to meet the child’s needs.

2. The term “case plan” means the plan developed by BCDSS that identifies the child and family’s needs and the services necessary to:

- a. implement and achieve the child’s permanency plan quickly;
- b. in the case of youth ages fourteen and over, successfully transition the child to independent living and self-sufficiency by age twenty-one;
- c. place promptly and maintain the child in the least restrictive appropriate placement type for that child’s needs; and
- d. meet the child’s needs for well-being, including health and education.

3. The term “permanency plan” includes all applicable permanency plans established for a child.

4. “Families” means those families that come to the attention of DHR/BCDSS. “Family” includes immediate family and kinship arrangements.

D. Outcomes:

1. **Preserve Families:** Except in cases where safety requires the emergency removal and shelter care of a child, BCDSS shall provide each family of a child at risk of removal with assistance, or referral for services as appropriate, to address identified problems, and BCDSS shall provide or obtain and shall monitor such services in a duration and intensity reasonably calculated to enable the child to remain with the family without removal.

a. Internal Success Measures:

- (1) Percent of children in family preservation that enter OHP.
- (2) Percent of children and families in family preservation that timely received services identified in the case plan.

b. Exit Standards:

- (1) 90 percent of children and families in family preservation had a case plan.
- (2) 85 percent of children and families in family preservation timely received the services identified in the case plan.

2. **Minimize Length of Stay:** BCDSS shall implement and achieve the child’s permanency plan quickly. BCDSS shall provide each child in OHP and each family of a child in OHP with assistance, or referral for services as appropriate, to address identified problems and needs, and BCDSS shall provide or obtain and shall monitor such services in a duration and intensity reasonably calculated to implement expeditiously and finalize the child’s permanency plan. This requirement shall continue until the Juvenile Court ends BCDSS’s obligations to the child.

a. Definitions:

(1) “Implement and achieve the child’s permanency plan quickly” includes, but is not limited to:

(a) Where a child’s paternity has not been established, BCDSS must seek to establish the child’s paternity within ninety days of the child’s entry into OHP.

(b) BCDSS must search for relatives or other resources immediately.

(c) In each case in which the permanency plan is reunification, BCDSS shall enter into a service agreement with the parents or guardians of the child within sixty days of the child’s placement in OHP unless the parents or guardians are unavailable or unwilling to agree. BCDSS must make all reasonable efforts to engage the parents or guardians in the service agreement. The agreement shall set forth current barriers to the child’s return home, the steps the parent must take in order to have the child return home to him or her, the timelines for the completion of these steps, the services, if any, that the caseworker and BCDSS will provide to the parent (for example, referral to alcohol abuse counseling), and the timelines within which any service will be provided. A copy of the service agreement shall be given to the parent and, upon request, to the child’s attorney.

(d) For each child in OHP with a permanency plan of reunification, DHR/BCDSS shall, unless ordered otherwise by the Juvenile Court, provide no fewer than one visit per week between each child in OHP and the child’s parents. BCDSS shall facilitate visitation in structure and frequency, including overnight and weekend visits as appropriate, that will support reunification. DHR/BCDSS shall provide any necessary, but not extraordinary, assistance. If necessary to assure the child’s safety, the visitation shall be supervised.

(e) If a permanency resource does not already exist for a child, BCDSS shall develop a specific recruitment plan within sixty days of a change in plan to adoption.

(f) A petition for termination of parental rights (“TPR”) must be filed on behalf of each child within the time limits established by law.

(g) After filing the petition for TPR, BCDSS shall take all necessary steps within its power to expedite a ruling on the petition.

(h) If the petition for TPR is granted, BCDSS shall take all necessary steps within its power to expedite the approval of an adoptive home for the child and the approval of the adoption by the court.

(i) If the petition for TPR is not granted or if the petition is granted but adoption is not possible, BCDSS shall take all necessary steps within its power to expedite an alternative permanency plan for the child, utilizing the steps set forth above.

b. Internal Success Measures:

- (1) Average length of stay for children in OHP.
- (2) Percent of children who had a comprehensive assessment within sixty days of placement.
- (3) Percent of all children with a permanency plan of reunification for whom BCDSS had a service agreement with the child's parents or guardians or for whom BCDSS made reasonable efforts to get the child's parents or guardians to enter into a service agreement.
- (4) Percent of all children for whom BCDSS provided referrals for services identified in the child's parents' or guardians' service agreement.
- (5) Percent of cases that had a team decision-making meeting when the child is at risk of a placement disruption.
- (6) Percent of TPR petitions filed that were filed on time.
- (7) Percent of children who, after twenty-four months in care, have had a case review every ninety days to resolve barriers to permanency.
- (8) Percent of all children with a permanency plan of reunification for whom BCDSS facilitated a visit with the child's parents once per week.
- (9) Percent of applicable children for whom, where the child's paternity had not been established, BCDSS sought to establish the child's paternity within ninety days of the child's entry into OHP.
- (10) Percent of children for whom BCDSS searched for relatives or other resources.

c. Exit Standards:

- (1) 90 percent of children in OHP had a case plan.
- (2) 90 percent of children in OHP and their families timely received the services identified in their case plans.

3. Families Involved in Decision-Making: BCDSS shall utilize a planning and decision-making model in which BCDSS makes reasonable efforts to fully involve the family of origin, the extended family members, the child (as clinically appropriate), the child's attorney, and other individuals able to contribute to positive outcomes for the child at each critical decision-making point.

a. Definitions:

(1) Unless there is clinical evidence to the contrary, it shall be considered “clinically appropriate” for a child twelve years or older to participate in decision-making meetings about the child.

(2) “Critical decision-making point” means at risk of removal, permanency plan change, placement change, and transitioning to independence.

b. Internal Success Measures:

(1) Percent of children ages twelve and over who participated in case planning meetings.

(2) Percent of all new entrants for whom a family involvement meeting was held within seventy-two hours of placement.

(3) Percent of all children for whom case planning meetings included family members.

c. Exit Standard:

(1) Beginning July 1, 2010, for 85 percent of children, BCDSS had a family involvement meeting at each critical decision-making point.

4. Each Child Has a Case Plan that Guides the Permanency Plan: Within sixty days of entering OHP, each child shall have a case plan that shall be updated and approved by an internal review team at least once every six months and which shall guide the permanency plan for the child.

a. Definitions:

(1) A “case plan” must meet the requirements set forth in federal, state and local law, regulation, and policy.

(2) BCDSS must request that the permanency plan be changed promptly from reunification pursuant to the regulations, rules, guidelines, circular letters, and Standard Operating Procedures of BCDSS, the Social Services Administration (“SSA”), and DHR.

(3) Any intention to request a change in the permanency plan must be reported to the child’s parents, the parents’ attorney and the child’s attorney at least ten days prior to the court review, at which the change will be requested.

(4) BCDSS shall not recommend a permanency plan of Another Planned Permanent Living Arrangement (“APPLA”) for any child in OHP unless all other reasonable and appropriate permanency options have been exhausted. Each child in OHP who has a permanency plan of APPLA should have a concurrent permanency plan under which BCDSS continues to seek a permanent family for the child, whether through adoption, custody and guardianship, long term-foster care, or another meaningful relationship.

(5) Each child ages fourteen and over shall have as part of his or her case plan a plan for transition to independent living and self-sufficiency.

(6) BCDSS shall provide at least ten days' notice of each six-month review and an opportunity to participate shall be provided to the child (if age appropriate), the child's attorney, the child's caregiver, the child's parents, and the parents' attorneys.

b. Internal Success Measures:

(1) Percent of children whose case plan was completed within sixty days of placement.

(2) Percent of children whose case plan was updated every six months.

(3) Percent of children for whom BCDSS reported to the child's parents, the parents' attorney, and the child's attorney any intention to request a change in the permanency plan at least ten days prior to the court review where the change would be requested.

c. Exit Standard:

(1) 90 percent of children had a case plan that was completed within sixty days of the child's entry into OHP and which was updated every six months.

5. BCDSS Will Provide Services Consistent with a Comprehensive Plan to Prepare Youth in OHP for Independence: Each child ages fourteen and over shall receive services, including independent living services, that are reasonably calculated to successfully transition the child to adulthood by age twenty-one.

a. Definitions:

(1) Each child ages fourteen and over shall have a plan for transition to independent living and self-sufficiency.

(2) "Independent living services" means a continuum of learning opportunities, supports, and services to enable children in OHP to reach independence by age twenty-one.

(3) BCDSS shall ensure that each child, both financially and otherwise, receives assistance with all testing applications, requests for financial assistance, and other steps involving the child's efforts to pursue post-secondary education or training.

(4) BCDSS shall retain custody of each child not adopted or placed in the custody and guardianship of a third party until age twenty-one, and shall maintain the transition plan for each child. The parties agree that within three months from the Court's entry of an Order approving this Consent Decree, BCDSS may propose and the parties shall negotiate in good faith possible changes to this definition.

(5) For children with a mental illness or a developmental disability who may need a residential placement, residential supports, or day programming or supported employment services after they turn twenty-one, BCDSS shall make referrals at least two years prior to their twenty-first birthday to the Developmental Disabilities Administration or the local Core Service Agency to ensure that the young adult can be determined eligible and services can be identified before the youth turns twenty-one.

(6) As part of the child's transition plan, BCDSS shall request a court hearing, to take place at least six months prior to a child's twenty-first birthday, to ensure that the child has a transition plan in place and is receiving the services necessary to implement that transition plan.

b. Internal Success Measures:

(1) Percent of children ages fourteen and over who had a transition plan for independence included in the child's case plan and were timely receiving the services identified in the case plan.

(2) Percent of emancipated youth who reported receiving services designed to prepare them for independence.

(3) Percent of youth with a mental illness or a developmental disability who need a residential facility, residential supports, or day programming or supported employment services after they turn twenty-one, who received a referral, and who had a transition plan to an alternative service provider at least two years prior to their twenty-first birthday.

(4) Number of youth, ages eighteen to twenty-one, who exited OHP through rescission.

c. Exit Standard:

(1) 90 percent of children ages fourteen and over had a transition plan included in the child's case plan and timely received the services identified in the case plan.

E. Additional Commitments:

1. Based on an analysis of the needs of the children and families that come to the attention of BCDSS, BDCSS will determine biennially the level of need and the amount of funds needed to fund in-home family preservation services, separate and apart from the regular program of protective services and safety case management services, to provide each family of a child at risk of removal with in-home family preservation services in a duration and intensity reasonably calculated to enable the child to remain with the family without removal. The DHR Secretary ("the Secretary") shall include in the DHR budget proposal funds that are sufficient, in the Secretary's judgment, to ensure that in-home family preservation services are available in the size and scope determined by the assessment and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

2. The Secretary shall include funds in the DHR budget proposal that are sufficient, in the Secretary's judgment, to ensure that services and assistance are available for all children (and their families) who come to BCDSS's attention as being at risk of placement into OHP or who are in OHP and have permanency plans of reunification with their families, and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

3. DHR shall contract for a formal evaluation of the efficacy of its family-centered practice initiatives. This evaluation shall be completed within two years of the signing of this Consent Decree. This contract is subject to any required approvals by the Department of Budget and Management and the Board of Public Works. In addition, DHR/BCDSS shall routinely collect data on the efficacy and safety of its practices in utilizing family-centered practice and team decision-making to avoid the removal of children.

4. BCDSS shall continue to provide opportunities for youth in OHP to meet together and with the BCDSS Director, other high level officials, and providers of youth services to talk about problems and needs for children in OHP and to develop effective ways to provide youth in OHP in Baltimore City information about the youth's rights, responsibilities, and opportunities to express concerns and report problems. With the assistance of youth, DHR shall develop a handbook for youth exiting OHP that provides information on available community resources.

5. BCDSS shall create an intensive case management plan for youth ages fourteen through twenty who frequently are missing from placement or are experiencing multiple disruptions in placements. These youth shall receive an intensive array of supportive services.

6. By September 30, 2009, DHR/BCDSS, in partnership with outside experts and advocates for children, including Plaintiffs' counsel, shall create and, thereafter, DHR/BCDSS shall implement and maintain a plan to provide comprehensive services to children in OHP to meet the goals of the children being ready by age twenty-one for successful transition to adulthood.

7. By December 2009, DHR shall develop and implement a program pursuant to which each child whose caregiver seeks and receives custody and guardianship from the juvenile court and meets the legal requirements for a guardianship subsidy receives such a subsidy in an amount that conforms to the requirements of federal law. Such subsidy shall continue until the child is eighteen years of age or, if disabled or attending school or training, until the youth is twenty-one years of age.

II. OUT-OF-HOME PLACEMENT

A. Statement of Principle: Out-of-Home Placement ("OHP") should be a stable, appropriate, nurturing and safe placement for children and youth.

B. DHR/BCDSS Responsibility: DHR/BCDSS shall establish and maintain a continuum of out-of-home placements and caregiver supports that is reasonably calculated to ensure that each child in OHP is placed in a stable, least restrictive and appropriate placement. The appropriateness of a placement considers the proximity to the child's home prior to entering

OHP and utilization of available extended family members (kin) or other available individuals known to the child.

C. Definitions: None.

D. Outcomes:

1. Each child shall be placed promptly in the least restrictive appropriate placement type for that child's needs.

a. Definitions:

(1) "Least restrictive placement" means placement in the most family-like setting and in the closest proximity possible to the child's family consistent with the child's best interest and special needs as determined by a thorough assessment of the child's placement needs. Placement with relatives and with siblings should be priorities and, where this is not possible, the placement priorities should emphasize the ability (unless safety dictates otherwise) to have meaningful contact with parents, siblings, relatives, and friends.

(2) "Close proximity to home" means a placement near Baltimore City when possible, in which the child is able to maintain continuity of school and other activities, and where the child is able to maintain meaningful contact with parents, siblings, relatives, and friends.

(3) "Needs" include, but are not limited to, the full range of mental health needs and the full range of physical and developmental disabilities that a child may present.

(4) "Promptly" means that a child is not placed on waiting lists for or in temporary placements while awaiting an appropriate, least restrictive placement unless that temporary placement is part of a time-limited plan for placement in the most appropriate, least restrictive placement. Plaintiffs' counsel will be notified within ten working days of any child being placed on a waiting list or in a temporary placement. A child shall not stay in any facility longer than permitted by the facility's licensing requirements or law. A child shall not stay in any facility beyond the time set by the treatment plan or recommendation of the facility unless continued placement is (a) agreed to by the caseworker's supervisor and the child's attorney or (b) requested by BCDSS and determined by the Juvenile Court to be in the child's best interest.

(5) BCDSS shall make all reasonable efforts to locate and assist relatives interested in caring for each child in OHP upon initial entry into OHP and periodically thereafter.

(6) DHR/BCDSS shall ensure that each relative under consideration as a permanent caregiver shall be given accurate and complete information about permanency options, including subsidized guardianship and adoption.

b. Internal Success Measures:

- (1) Percent of all children who were placed in:
 - (a) family settings;
 - (b) with relatives;
 - (c) in congregate care, and
 - (d) in other settings (by type).
- (2) Percent of children in OHP placed with siblings.
- (3) Percent of all children in congregate care who had a step-down plan.

c. Exit Standard:

- (1) Until January 1, 2011, 85 percent of all children were placed promptly in the least restrictive and appropriate placement based on their individualized needs. Beginning January 1, 2011, 90 percent of all children were placed promptly in the least restrictive and appropriate placement based on their individualized needs.

2. No child under the age of thirteen shall be placed in congregate care unless it is medically or therapeutically necessary and the child is placed in a program that has services specifically designed to meet that child's needs.

a. Definition:

"Congregate care" means an OHP setting where children are supervised by shift workers.

b. Internal Success Measures:

- (1) Number of children placed in congregate care by age groups: (a) under seven; and (b) seven to twelve.
- (2) Percent of children under age thirteen placed in congregate care for whom the placement was medically or therapeutically necessary and the placement included services that met the child's needs.

c. Exit Standard:

- (1) For 99 percent of children under age thirteen placed in congregate care, the placement was medically or therapeutically necessary and the placement included services that met the child's needs.

3. DHR/BCDSS shall maintain a continuum of placements reasonably calculated to assure that each child is placed in the least restrictive placement for that child.

a. **Definition:** The continuum shall include the types and quantities of placements determined by the needs assessment including emergency foster homes.

b. **Internal Success Measures:**

(1) Number of placements available to BCDSS by type.

(2) Number of emergency foster homes on retainer and the number of beds available in each home.

c. **Exit Standard:**

(1) The array of current placements matched the recommendation of the biennial needs assessment.

4. **Each child in OHP and the child's caregiver shall be provided those services necessary and sufficient (1) to meet the child's immediate and long-term needs; (2) to support the stability of the child's placement and to support the caregiver's ability to meet the child's needs; (3) to avoid placement of the child in a more restrictive setting; and (4) to move the child, if appropriate given the child's needs, to a less restrictive setting.**

a. **Definitions:**

(1) For this outcome, "services" includes child care (according to the requirements of Additional Commitment 8 in this Section) and includes, but is not limited to, respite care; transportation or reimbursement for transportation; crisis intervention services; support services for children with physical and developmental disabilities; and mental health services. "Mental health services" must include services available through the mental health plan developed pursuant to the requirements of Additional Commitment 4 of Part Two, Section III, "Health Care."

(2) For this outcome, "visitation with their siblings" means the following: For each child in OHP, BCDSS shall facilitate frequent and meaningful contact between the child and each of the child's siblings in OHP. For each child in OHP, BCDSS shall make reasonable efforts to facilitate meaningful contact between the child and each of the child's siblings not in OHP. Visitation may not be denied unless there is a clinical basis for such denial. Visitation may not be curtailed as a means of punishing a child.

(a) "Frequent and meaningful" means, where possible, overnight and weekend visits but no less frequent than one visit every two weeks that provides an opportunity for age-appropriate activities for the siblings.

(b) "Meaningful contact" does not include meetings, therapy sessions, court hearings, medical appointments, school conferences, and other meetings.

(3) For any child, male or female, in OHP who is a parent or is expecting a child, BCDSS shall identify in the case plan and provide services and assistance appropriate and sufficient to assist the child to acquire parenting skills.

(4) Caregivers and children must have an emergency number through which the caseworker or the caseworker's supervisor can be reached at any time.

b. Internal Success Measures:

(1) Percent of all children who have service needs identified in their case plans.

(2) Percent of all children for whom identified service needs were followed by timely and appropriate referrals.

(3) Percent of children who receive services necessary and sufficient to meet the child's needs and to support stability in the least restrictive placement.

(4) Percent of children not placed with their siblings who have visitation with their siblings twice a month.

c. Exit Standard:

(1) 90 percent of children and caregivers received services necessary and sufficient to meet their needs and to support stability in the least restrictive placement.

5. Each kinship care provider shall be informed promptly of his or her right to apply to become a licensed foster parent, and each application for licensure shall be timely processed with retroactive benefits provided to the date of application. Each kinship care provider will be given an application and afforded the opportunity to file an application on the date the child is placed in the home. An application will be deemed to have been made when the caregiver indicates in writing his or her desire to become a licensed foster parent. Each kinship care provider shall be afforded the same opportunities for training and other services as licensed foster parents.

a. Definition:

None.

b. Internal Success Measures:

(1) Percent of kinship care providers who received written notification of the right to apply for foster home licensing within ten days of placement.

(2) Percent of kinship care providers who received written notification of BCDSS training opportunities.

(3) Percent of kinship care providers who reported having been informed about training and licensing opportunities.

c. Exit Standard:

(1) 90 percent of kinship care providers received written notification of the right to apply for foster home licensing within ten days of placement.

6. BCDSS shall employ a staff of specialists to provide technical assistance to caseworkers and supervisors for cases that require specialized experience and/or knowledge.

a. Definitions:

(1) "Specialists" include but are not limited to staff with knowledge and experience in substance (alcohol and drug) abuse services; mental health services; developmental disabilities; independent living; housing; and education services, including special education.

(2) These specialized staff shall not have individual case responsibility or perform routine casework functions but will assist casework staff in identifying, locating and obtaining resources.

b. Internal Success Measures:

(1) Number of Special Support team positions funded by the Department, by type.

(2) Number of Special Support positions filled, by type.

(3) MCDSS MS-100 (job descriptions for all positions).

c. Exit Standard:

(1) BCDSS employed a staff of non-case carrying specialists to provide technical assistance to caseworkers and supervisors for cases that require specialized experience and/or knowledge.

7. Each child's placement shall meet all safety, health, sanitation, licensing and other legal requirements for that placement. Each placement provider shall receive all training required by law.

a. Definitions:

(1) "Legal requirements" include statutes, regulations, circular letters and transmittals, SOPs issued by BCDSS, or the equivalent policy statements.

(2) BCDSS shall develop and implement a plan to ensure the input of children and caseworkers in the reassessment, recertification and relicensing of any placement.

b. Internal Success Measures:

(1) Percent of all foster home applications that were approved/denied within 120 days of application.

(2) Percent of all foster home caregivers who received all training required by law.

(3) Number of foster homes licenses rescinded by the Department due to lack of compliance.

(4) Percent of all foster homes and kinship care placements that met the COMAR licensing requirements.

c. Exit Standards:

(1) 95 percent of all foster homes and kinship care placements met all legal requirements.

(2) 90 percent of all foster homes were approved and reapproved on a timely basis.

8. For each child, DHR/BCDSS shall provide the caregiver with all available information about the child's status, background, and needs.

a. Definitions:

(1) "All available information" means the reasons for the child's initial entry into OHP and, if applicable, the reason for the current placement; medical, psychological or behavioral concerns; on-going treatment the child is receiving; and the child's recent grade and attendance record in school.

(2) Such information must be provided prior to placement (unless the child is placed emergently, in which case the information shall be provided as soon as possible) and on an ongoing basis thereafter.

(3) If DHR/BCDSS holds a staffing about the child, the prospective and current caregiver(s) must be invited and encouraged to attend.

b. Internal Success Measure:

(1) Percent of all placements in which the caregiver received a complete Child Placement Information Form at the time of placement.

c. Exit Standard:

(1) 95 percent of caregivers had been provided all available information about the child's status, background, and needs.

9. Each child shall be protected from maltreatment in the child's placement to the maximum extent possible.

a. Definitions:

(1) The following steps must be taken whenever a BCDSS employee has reason to suspect abuse, neglect, or other maltreatment of a child in OHP or receives a report of suspected abuse, neglect, or other maltreatment of a child in OHP:

(a) BCDSS immediately shall notify the protective services unit of BCDSS and the pertinent licensing unit of DHR, which shall take all steps required by law or regulation regarding any report of maltreatment that has been accepted for investigation. BCDSS shall visit the placement within twenty-four hours in the case of abuse and within five days in the case of neglect or other maltreatment.

(b) The provisions of this paragraph shall apply upon the entry of a protective order by this Court consistent with the terms of this paragraph. Within five business days of receipt of a report, BCDSS shall notify the attorney for the child, the child's parents and their attorney (unless prohibited or their whereabouts or identity are unknown), Plaintiffs' counsel, caseworkers or other persons responsible for other children in the home or for the home or facility itself, and any other persons that are entitled to notice under state law or regulation. An unredacted (except the name of and identifying information about the reporter and privileged attorney-client material) copy of the report must be provided to the child's attorney and Plaintiffs' counsel. The completed unredacted (except the name of and identifying information about the reporter and privileged attorney-client material) disposition report must be provided to the child's caseworker, child's attorney and to Plaintiffs' counsel within five business days of its completion. Parents (except where clinically contraindicated) and other parties entitled to be provided copies under state law or regulation shall receive redacted copies within five business days of completion.

(c) For any report of maltreatment pertaining to a child in OHP, the child's assigned caseworker shall visit the home at least once a week until the complaint is ruled out. If a maltreatment report is not ruled out, the caseworker shall visit the home at least once a week until all children in OHP are removed from the home or until the Juvenile Court orders otherwise or the attorneys for each child in the home and BCDSS agree otherwise.

b. Internal Success Measures:

- (1) Number of children in OHP for whom a CPS report was made.
- (2) Number of children in OHP for whom a CPS investigation was opened.
- (3) Number of children in OHP for whom a report of maltreatment while in OHP was indicated.
- (4) Percent of CPS investigations which were initiated in a timely manner.

c. Exit Standards:

(1) 99.68 percent of children in OHP were not maltreated in their placement, as defined in federal law.²

(2) In 95 percent of cases of alleged maltreatment of a child in OHP, BCDSS provided the child's attorney and Plaintiffs' counsel the report of the alleged maltreatment within five days of the report and the disposition within five days of its completion.

10. No child may be housed in an office, motel, hotel, or other unlicensed facility.

a. Definition:

(1) "Housed" means stays of four hours or longer.

b. Internal Success Measure:

(1) Number of children who spend four hours or more in an office, motel, or unlicensed facility.

c. Exit Standard:

(1) 99.8 percent of children in OHP were not housed outside regular business hours in an office, motel, hotel, or other unlicensed facility. If any child is so housed, BCDSS shall notify Plaintiffs' counsel within one working day of the reasons for the placement, the name of the child's CINA attorney, and the steps that BCDSS is taking to find an appropriate placement. Barring extraordinary circumstances, no child may be housed in an office for consecutive nights.

11. Each child shall be given the opportunity to be informed about and, as clinically appropriate, to participate actively in placement decisions being made for the child.

a. Definitions:

(1) Prior to placement or replacement, each child must be given information concerning the possible placement, an opportunity to visit the placement in non-emergent situations, and an opportunity to participate in the placement decision except when there is a clinical basis for concluding that such participation is contrary to the child's best interest.

(2) For the purposes of this outcome, participation by each child twelve years old or older is presumed to be clinically appropriate unless there is clinical evidence to the contrary.

² The measurement for maltreatment in foster care in this Decree is the measurement used by the United States Department of Health and Human Services in Child and Family Services Reviews, which means the percentage of children who were found to be victims of indicated maltreatment by perpetrators who are relative foster parents, non-relative foster parents, and group home or residential facility staff. "Relative foster parents" include unlicensed kinship care providers with whom BCDSS placed children in OHP.

b. Internal Success Measure:

(1) Percent of children ages twelve and over who participated in placement decisions.

c. Exit Standard:

(1) 90 percent of children ages twelve or over participated in placement decisions.

12. Each child in OHP shall be visited by the child's assigned caseworker or designated substitute at least once every month in the child's placement.

a. Definitions:

(1) A "visit" means an assessment of:

(a) the quality of care provided to the child;

(b) the child's adjustment to the OHP, the supervising adults, any other individuals in the OHP, and school; and

(c) the appropriateness and success of the placement and the adequacy of services provided to meet the child's needs and the ability of the child's caregiver to meet the child's needs.

(2) The visit should be of sufficient duration and privacy to make the required assessments.

(3) The caseworker must indicate the date and summarize the results of each visit in the child's case record.

b. Internal Success Measure:

(1) Percent of children who had documented visits from their caseworker once monthly in the child's placement.

c. Exit Standard:

(1) 95 percent of children had documented visits from their caseworker once monthly in the child's placement.

E. Additional Commitments:

1. By December 31, 2009, DHR/BCDSS shall complete its assessment of the range of placements and placement supports required to meet the needs of children in OHP by determining the placement resource needs of children in OHP, the availability of current placements to meet those needs, and the array of placement resources and services that DHR/BCDSS needs to develop to meet those needs in the least restrictive most appropriate setting, including sufficient family placements for each child who does not have a clinical need for a non-family placement, family placements available for emergency placement needs, placements appropriate to meet the needs of children with serious mental health problems and

children with developmental disabilities, and appropriate facilities and programs for semi-independent and supportive independent living. The assessment shall be conducted biennially.

2. The DHR Secretary shall include in the DHR budget proposal funds that are sufficient, in the Secretary's judgment, to secure and maintain the array of placement resources and supports needed for children and youth served by BCDSS (including those needed to support the stability of placements and the ability of caregivers to meet the needs of children in OHP and to avoid placement of children in congregate care) and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

3. BCDSS shall provide stipends to emergency shelter care homes even in months in which children are not provided care to assure that such homes remain available for emergency placements. Should BCDSS determine that this provision is not necessary to achieve the outcomes of this Consent Decree, BCDSS will propose a modification to this Consent Decree about which the parties will negotiate in good faith. The Secretary shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

4. Within ninety days of this Consent Decree, DHR/BCDSS shall issue an RFP and shall provide funding sufficient to operate a kinship caregiver support center(s) which includes: provision of resource information and support services to caregivers; the development and maintenance of a website; transportation assistance to referrals, activities and appointments related to the care of children; staff training; training for caregivers; and the development and support of a statewide network of support groups for kinship caregivers. This contract is subject to any required approvals by the Department of Budget and Management and the Board of Public Works.

5. DHR shall set the Semi-Independent Living Arrangement rate at no less than 95 percent of the foster care payment rate for teens by July 1, 2009 and shall make adjustments annually thereafter to match increases in the foster care rate as included in the budget. To satisfy this requirement, the Secretary shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

6. DHR shall set the foster care payment rate at no less than the Foster Care Minimum Adequate Rates for Children ("MARC")³ standard. Until the MARC standard, as adjusted for cost of living, meets the foster care payment rate currently in effect for FY 2009, DHR shall not lower the foster care payment rate below current levels. To satisfy this requirement, the Secretary shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements, and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly. The Secretary shall include funds annually in the DHR budget that are sufficient, in the Secretary's judgment, to modify the foster care payment rate to reflect a COLA adjustment and,

³ See University of Maryland School of Social Work, "Hitting the M.A.R.C.: Establishing Foster Care Minimum Adequate Rates for Children" (October 2007) (attached as Exhibit 2).

if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

7. By September 2009, DHR/BCDSS, with the assistance of individuals knowledgeable about the issues, shall study and develop a plan to address the particularized needs of unlicensed kinship care providers for children in OHP, including remediation of problems discouraging or prohibiting licensure.

8. To meet the requirements of Outcome 4 (as defined) of this Section to provide funding for child care, DHR/BCDSS shall continue without interruption to provide funding for child care to caregivers to at least the extent required by DHR Policy SSA 08-17 (attached as Exhibit 1). Defendants agree to extend the provision of child care to include before- and after-school care, vacation and holiday care, and sick day care, as needed, for all children ages twelve and under, but only to the extent funds are available from savings generated through the documented reduction in the use of congregate care. To satisfy this requirement, the Secretary shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

9. By September 30, 2009, DHR/BCDSS shall provide documentation of policies and implementation of policies for ensuring that children in OHP who are expecting a child or who are parents receive services and assistance appropriate and sufficient to assist the child to acquire parenting skills.

10. By September 30, 2009, DHR/BCDSS shall provide documentation of policies and implementation of policies for ensuring that the input of children and caseworkers was considered in the reassessment, recertification and relicensing of a placement.

III. HEALTH CARE

A. Statement of Principle: Children and youth in OHP shall be provided with appropriate, necessary and timely medical, dental, and mental health services based on a comprehensive assessment of their individual needs, the protocols of the EPSDT, or the needs that develop subsequent to a comprehensive assessment.

B. DHR/BCDSS Responsibility: DHR/BCDSS shall develop, establish, and maintain a medical care system reasonably calculated to provide comprehensive health care services to children in OHP in a continual and coordinating manner in accordance with their needs.

C. Definitions:

1. "BCDSS Health Care Initiative" means the development and maintenance of a health services management unit that will include a medical director and the utilization of medical case managers to track and oversee the health outcomes identified in this Consent Decree and to perform medical case management for children in OHP.

2. "Standards" means standards that are specific to the needs of children in OHP which will be developed within the first year of the BCDSS Health Care Initiative by the medical

director. In developing the Standards, the medical director shall apply and adapt the Child Welfare League of America/American Association of Pediatrics standards for health care for children in OHP to the specific needs of children in BCDSS OHP.

D. Outcomes:

1. Each child in OHP must receive an initial health screen prior to placement, but, in any event, not later than five working days following placement in OHP.

a. Definitions:

(1) An "initial health screen" is an initial health examination to determine the child's health status upon entry into care and to identify any important health problems that require immediate attention or are relevant to the selection of a suitable placement.

(2) All provisions of the Standards that address the initial health screen are incorporated by reference into this definition.

(3) The initial health screen cannot serve as the comprehensive health assessment.

b. Internal Success Measures:

(1) Percent of new entrants who received an initial health screen within five days of placement.

(2) Percent of cases in which children received appropriate follow-up when the initial health screen indicated the need for immediate medical attention.

c. Exit Standard:

(1) Beginning July 1, 2009, 95 percent of new entrants to OHP received an initial health screen within five days of placement.

2. Each child in OHP must receive a comprehensive health assessment within sixty days of entry into OHP.

a. Definitions:

(1) "Comprehensive Health Assessment" means a thorough age-appropriate examination of a child by a qualified practitioner in each of the following domains: medical, dental, and mental health (including psychological, behavioral and developmental). The mental health portions of the comprehensive assessment must be conducted by a licensed mental health professional who is not responsible for the direct care of the child. In addition to assessing the child's health in the above domains, the assessment also shall address the child's educational status and needs based on the available information. Prior to the performance of the Comprehensive Health Assessment, the child's complete and up-to-date health, mental health, dental, and educational records from the time prior to the child's entry into care, plus the initial health screen, shall be obtained, if reasonably available, and provided to the assessing staff.

(2) Before finalizing the health plan, BCDSS shall hold a team meeting to discuss results of the comprehensive assessment and obtain further information about the child. Following the team meeting, the assessment results shall be integrated into a single document, which will constitute the comprehensive assessment and be used to inform permanency planning. For every child in OHP, BCDSS shall develop and implement a health plan that is updated at least annually and more frequently when the child's health status changes materially.

(3) Copies of the comprehensive assessment and health plan shall be provided within ten business days to the child's attorney and child's health care providers. Further distribution shall be at the discretion of BCDSS, subject to the child's clinical needs, applicable confidentiality laws, and decisions by the team meeting.

(4) All provisions of the Standards that address the comprehensive assessment are incorporated by reference into this definition.

b. Internal Success Measures:

(1) Percent of new entrants that received a comprehensive health assessment within sixty days of placement.

(2) Percent of children that had a comprehensive health plan.

(3) Percent of children whose case plan team meeting included a discussion of the child's comprehensive health assessment.

c. Exit Standard:

(1) Beginning July 1, 2009, 90 percent of new entrants into OHP received a comprehensive health assessment within sixty days of placement.

3. Each child in OHP must receive timely periodic EPSDT examinations, and all other appropriate preventive health assessments and examinations, including examinations and care targeted for adolescents and teen parents.

a. Definition:

"EPSDT examinations" are periodic medical, dental, and developmental examinations in accordance with the EPSDT protocols.

b. Internal Success Measures:

(1) Beginning July 1, 2009, percent of children entering OHP who received timely periodic EPSDT examinations, and all other appropriate preventive health assessments and examinations, including examinations and care targeted for adolescents and teen parents.

(2) Beginning July 2010, percent of children in OHP who received timely periodic EPSDT examinations, and all other appropriate preventive health

assessments and examinations, including examinations and care targeted for adolescents and teen parents.

c. Exit Standards:

(1) Beginning December 1, 2009, 90 percent of children entering OHP received timely periodic EPSDT examinations and all other appropriate preventive health assessments and examinations, including examinations and care targeted for adolescents and teen parents.

(2) Beginning July 2010, 90 percent of children in OHP received timely periodic EPSDT examinations and all other appropriate preventive health assessments and examinations, including examinations and care targeted for adolescents and teen parents.

4. Each child in OHP must receive timely all health services that the child needs, consistent with either of the COMAR regulations addressing OHP medical care in effect as of December 9, 2008 (07.02.11.28(M) and (N) (attached as Exhibit 3)) ("Needed Health Care Services").

a. Definitions:

(1) "Needed Health Care Services" means any referrals and appointments for Health Care Services that a child in OHP may need, including:

(a) Routine and scheduled Health Care;

(b) Further or specialized Health Care, or any follow-up Health Care, indicated by all Initial Health Screens, Comprehensive Health Assessments, EPSDT and other examinations; the child's health plan; and any treatment plans developed by a health care professional for the child;

(c) Health Care services or assessments needed due to the child's behavior or other indicators of a possible problem potentially requiring Health Care screening, assessment, testing, or treatment.

(2) For each child under the age of three, within ten days of the child's entry into OHP and, thereafter, within thirty days of observation of developmental or other delays, BCDSS shall refer the child to early intervention services, including those funded under Part C of the Individuals with Disabilities Education Act. BCDSS shall support the child and his or her caregiver in obtaining appropriate therapy, pre-school, and other services to address identified limitations.

(3) All provisions of the Standards which address needed health services are incorporated by reference into this definition.

b. Internal Success Measures:

(1) Beginning on July 1, 2009, percent of new entrants under age three who were referred for a Part C Assessment within ten days of placement.

(2) Percent of children who received timely all Needed Health Care Services.

(3) Percent of cases in which the identification of a developmental delay was followed by a prompt referral for special education or early intervention services.

(4) Percent of cases in which the case worker monitored the child's health status once monthly.

c. Exit Standard:

(1) 90 percent of children received timely all Needed Health Care Services.

5. Each child in OHP must have a completed health passport and a medical assistance card, which are provided promptly to each child's caregiver.

a. Definitions:

(1) A "health passport" is an abbreviated health care record with at least the following information:

- (a) The medical facilities where the child usually receives care;
- (b) The child's condition at placement as documented by his or her physician; and
- (c) The child's immunization record, allergies/adverse reactions, chronic health problems, and present medications.

(2) For a completed health passport, "promptly" means that the passport shall be provided at the time of placement if possible but no later than ten working days following placement. The child's caregiver shall be provided with the health passport completed and updated at the time of a child's placement and thereafter as additional Health Care information is obtained.

(3) For a medical assistance card, "promptly" means that the card shall be provided at the time of placement if possible, but, if the card is not available at the time of placement or when BCDSS becomes aware of the need for a replacement card, BCDSS shall make the request for a card within one working day of (a) the shelter care hearing when a child is first placed in OHP; (b) the date of placement if no shelter hearing is held; or (c) when BCDSS otherwise learns of the need for a card. BCDSS shall deliver the card to the caregiver within three working days of its receipt by BCDSS unless the child has an urgent need for it sooner, in which case delivery shall occur immediately.

b. Internal Success Measures:

(1) Percent of all new entrants who had a complete health passport and MA number that were distributed to caregivers promptly.

(2) Percent of children who had a health passport that was updated and distributed to the caregivers at least annually.

(3) Percent of children for whom BCDSS requested an MA card promptly when a replacement was needed.

(4) Percent of all children for whom BCDSS delivered an MA card promptly.

c. Exit Standards:

(1) 90 percent of all new entrants had a complete health passport that was distributed to the children's caregivers promptly.

(2) 90 percent of children had a health passport that was updated and distributed to the children's caregivers at least annually.

E. Additional Commitments:

1. By June 2009, BCDSS will implement the BCDSS Health Care Initiative for all children newly entering OHP and all children in OHP with complex medical needs. Defendants shall provide Plaintiffs copies of the standards developed by the Medical Director as required in Definition C (2) of this Section.

2. By March 2009, BCDSS shall establish and thereafter maintain a Health Care Advisory Council, including medical experts and advocates for children from outside BCDSS, DHR, and the Department of Health and Mental Hygiene, to provide guidance on implementation of the requirements of the BCDSS Health Care Initiative.

3. By August 2009 and annually thereafter, BCDSS/DHR, in consultation with the medical director and the Health Care Advisory Council, shall develop a plan, a timetable, and a funding strategy for inclusion in the FY 2011 and subsequent budget requests funding sufficient in the Secretary's judgment to accomplish full implementation of the requirements of the BCDSS Health Care Initiative for all children in OHP.

4. By December 31, 2010, DHR/BCDSS shall operationalize a system to meet the mental health needs of children in OHP. The system will include access to mental health screening and assessment as well as a continuum of treatment services designed to secure ongoing treatment that meets the needs of children in OHP. DHR/BCDSS will seek the advice and input from the Health Care Advisory Group in the development and implementation of this system.

IV. EDUCATION

A. Statement of Principle: All children in OHP shall have the necessary educational assessments, opportunities, and supports to succeed in school.

B. DHR/BCDSS Responsibility: Defendants shall ensure that all children and youth in OHP are provided with appropriate assistance to attend and succeed in school, including having the opportunity for school choice and to participate in school and school-related activities.

Where appropriate, i.e., where the child's caregiver knows the child and the child's needs and is capable of advocating effectively for the child, BCDSS should encourage the child's caregiver, particularly if the child is in a foster or kinship care home, to take primary responsibility for communication with the child's school and meeting the child's day-to-day educational needs. BCDSS shall:

1. Monitor educational progress, work with school personnel and caregivers to ensure that educational problems are identified and addressed, and maintain an educational plan for each child;

2. Take all reasonable steps to obtain from the school system or third parties all necessary educational services for the child to support the child's educational achievement and to ensure that all goals and tasks in the child's educational plan are accomplished; and

3. Document in the child's case file and notify the child's caregiver, parents (if appropriate), and attorney of all significant events in the child's education, including, but not limited to, report cards, awards or other recognition, suspension, expulsion, significant truancy, change of schools, school failure, and the need for special education or other services.

C. Definitions: None.

D. Outcomes:

1. **Each child in OHP shall be enrolled in and begin attending the child's home school or a new school immediately after entry into OHP and after any change of placement.**

- a. **Definitions:**

- (1) The child's "home school" is the school that the child attended prior to placement in OHP or prior to a change of placement.

- (2) The child's "new school" is the school in which the child is placed, if the home school is not in the child's best interest, after placement in OHP or a change in placement.

- (3) "Enrolled" and "attending" means that the child has begun to attend classes, that the child's educational records have been provided to the new school or that BCDSS has made reasonable efforts to obtain and deliver the records to the new school, and BCDSS has taken all reasonable steps to ensure that the child's special education plan is accepted and will be implemented by the new school.

- (4) For children who are not yet school age, "enrolled" means, where appropriate, referral to Head Start, child care, family child care or other equivalent early learning program.

- b. **Internal Success Measures:**

- (1) Percent of new entrants who were enrolled in and begin to attend school within five days of placement.

(2) Percent of children who changed placements who were enrolled in school within five days of a placement change.

(3) Percent of children eligible for special education who received special education services without interruption when they transfer schools.

(4) Percent of children ages three to five who were enrolled in a pre-school program.

c. Exit Standard:

(1) 90 percent of children were enrolled in and began to attend school within five days of placement in OHP or change in placement.

2. Each child's case plan shall include an educational plan for ensuring the child's educational stability and progress while in foster care and BCDSS shall monitor the child's educational progress.

a. Definitions:

(1) An "educational plan" means a plan that identifies the child's current educational status and needs, discusses any barriers in meeting those needs, and sets forth the services that the child needs to meet those needs.

(2) The plan must be developed with participation of the child, as age-appropriate, the child's caregiver, the child's attorney, the child's parents, and appropriate professionals, to the extent that these individuals are willing and available to participate.

(3) The education plan must be incorporated into the initial case plan and updated in all case plans thereafter.

(4) The plan should identify the particular services and supports that the child needs and the steps that BCDSS will take to obtain those services and supports from the school system or third parties to ensure that the child's educational needs and goals are met.

(5) The plan shall specify who has primary responsibility for accomplishing each of the education-related tasks.

(6) A copy of the plan shall be provided to each person with such responsibility as well as to the child's attorney.

(7) "Monitoring" the child's educational progress means that the child's caseworker shall:

(a) Review the child's educational progress through discussion with the caregiver, teacher and child;

(b) Review the child's report cards, progress reports and attendance records; and

(c) Take reasonable steps to support the child's educational progress and achievement.

b. Internal Success Measures:

(1) Percent of children who had attendance rates of 85 percent or higher in the Baltimore City Public School System.

(2) Percent of children who had an educational plan.

(3) Percent of children for whom BCDSS met its obligations as set forth in the child's educational plan.

(4) Percent of children whose educational progress was monitored monthly.

c. Exit Standards:

(1) 90 percent of children had an educational plan.

(2) For 90 percent of children, BCDSS had met its obligations as set forth in the child's educational plan.

(3) For 90 percent of children, BCDSS had monitored the child's educational progress monthly.

3. Each child in OHP shall receive all necessary special education services.

a. Definitions:

(1) If BCDSS has reason to believe that a child in OHP may be educationally handicapped and is not receiving special education services, it shall promptly notify the local educational agency and request a screening for that child in writing and provide, when requested, all evaluations of the child contained in BCDSS files and the address of the parents (if known).

(2) For each child under the age of three, within ten days of the child's entry into OHP and, thereafter, within thirty days of observation of developmental or other delays, BCDSS shall refer the child to early intervention services, including those funded under part C of the Individuals with Disabilities Education Act. BCDSS shall support the child and his or her caregiver in obtaining appropriate therapy, pre-school, and other services to address identified limitations.

(3) BCDSS shall be responsible for:

(a) Attending the initial meeting on behalf of each child in OHP relating to identification, evaluation and placement of the child in a special education program.

(b) In cases where a parent is not available, immediately providing the local education agency with appropriate documentation of

the child's legal status and requesting the appointment of an appropriate parent surrogate.

(c) For all special education meetings after the initial meeting, making best efforts to ensure:

(i) That the parent or an appropriate parent surrogate is attending all special education meetings on behalf of the child;

(ii) That the caseworker attend such meeting(s) if the parent or parent surrogate is not attending; and

(iii) That all necessary appointments are made and attended by the child and the child's parent, caregiver, or caseworker.

(d) Where a child is placed in congregate care, the caseworker shall attend all special education meetings unless BCDSS determines that the child's best interest will be met by the attendance of a third party in lieu of the caseworker.

(4) BCDSS shall notify the child's attorney if special education screening, evaluation, assessment and the individualized education plan are not provided in a timely fashion.

b. Internal Success Measures:

(1) Percent of children for whom any indication of developmental delay or disability was followed by a prompt referral for special education or early intervention services.

(2) Percent of children in special education or early intervention for whom the provider or case worker attended the IEP meeting.

(3) Percent of children who were eligible for special education or early intervention services for whom BCDSS made reasonable efforts to secure services.

c. Exit Standards:

(1) BCDSS made a prompt referral for special education or early intervention services for 90 percent of children for whom there was an indication of developmental delay or disability.

(2) BCDSS made reasonable efforts to secure services for 90 percent of children who were eligible for special education or early intervention services.

E. Additional Commitments:

By September 2009, Defendants will develop an implementation plan reasonably calculated to produce compliance with the education requirements of the federal "Fostering Connections to Success and Increasing Adoptions Act."

V. WORKFORCE

A. Statement of Principle: To be effective, the child welfare system must recruit, support and sustain a skilled workforce with manageable caseloads that permit workers to effectively protect and support children and their families.

B. DHR/BCDSS Responsibility: DHR/BCDSS shall recruit, support and retain a well-trained workforce and supervisory system that provides for accountability at every level.

C. Definitions: None.

D. Outcomes:

1. **Appropriate Caseload Ratios:** Permanency (foster and kinship care, including adoption) workers' caseload of fifteen children (or any lower ratio required by Maryland state law); Family Resource and Support ("R&S") workers' caseload of forty families (or any lower ratio required by Maryland state law); and supervisors' caseload of six caseworkers (or any lower ratio required by Maryland state law).

a. Definitions:

(1) "Caseload ratio" shall be the actual caseload ratio for each caseworker.

(2) A child must always be assigned to an active caseworker.

(3) To be applied prospectively to all children newly entering OHP in 2009, all siblings shall have the same caseworker unless it is clinically determined not to be in one or more of the children's best interests.

b. Internal Success Measures:

(1) Percent of case-carrying (full-time and with full-caseloads) staff who were at or below the standard for caseload ratios.

(2) Percent of case-carrying teams who were at or below the standard for ratio of supervisor: worker.

(3) Percent of children entering OHP beginning July 1, 2009 whose siblings had the same caseworker.

c. Exit Standards:

(1) 90 percent of case-carrying staff was at or below the standard for caseload ratios.

(2) 90 percent of case-carrying teams were at or below the standard for ratio of supervisor: worker.

2. **Qualified Workforce with appropriate training and supervision.**

a. Definitions:

(1) "Qualified Workforce" means that all caseworkers shall have the qualifications required by Maryland state law.

(2) All supervisors of caseworkers shall be social workers licensed under the requirements of Maryland state law.

(3) New caseworkers shall receive at least five weeks of pre-service training before being assigned any cases and shall thereafter receive twenty hours of training per year.

(4) Supervisors shall receive such training as required to maintain their licenses but in no case less than twenty hours per year.

b. Internal Success Measures:

(1) Percent of caseworkers who qualified for the title under Maryland State Law.

(2) Percent of case-carrying workers who passed their competency exams prior to being assigned a case.

(3) Percent of caseworkers and supervisors who had at least twenty hours of training annually.

(4) Percent of caseworkers who reported receiving adequate supervision and training.

c. Exit Standards:

(1) 95 percent of caseworkers met the qualifications for their position title under Maryland State Law.

(2) 90 percent of caseworkers and supervisors had at least twenty hours of training annually.

3. Case Transfer Policies: Case re-assignment in five working days. Case re-assignment conference in ten working days.

a. Definitions:

(1) Case reassignments will occur within five working days.

(2) The reassigned case shall be accompanied by a transfer document which shall include confirmation of the timing of the transfer; the status of the case; and short-term priorities for the child's needs and case activities.

(3) There shall be a conference between the supervisor and the new worker within ten working days of reassignment. If possible, the former worker shall attend the conference. The topics to be discussed at this conference shall include a discussion of any immediate unmet needs of the child, therapy and evaluations in progress, and existing service agreements.

b. Internal Success Measures:

(1) Percent of cases transferred with required documentation within five working days.

(2) Percent of transferred cases in which a case conference was held within ten days of the transfer.

c. Exit Standards:

(1) 90 percent of cases were transferred with required documentation within five working days.

(2) 90 percent of transferred cases had a case transfer conference within ten days of the transfer.

E. Additional Commitments: None.

APPROVED AND ENTERED on this 24 day of August, 2009.


Judge

United States District Court for the District of Maryland

Approved as to content and form:

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