

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

-----X		
BRIAN A., by his next friend, Bobbi Jean Brooks;	)	
TRACY B., by her next friend, Pamela Pallas;	)	
JACK and CHARLES C., by their next friend,	)	
Linda Lloyd;	)	
AMY D., by her next friend, Frank Koon;	)	
DENISE E., by her next friend, Linda Lloyd;	)	
CHARLETTE F., by her next friend, Juanita	)	
Veasy; and	)	Civil Action No. 3-00-0445
TERRY G., by her next friend, Carol Oldham	)	
on their own behalf and on behalf of all others	)	Judge Campbell
similarly situated,	)	Magistrate Brown
	)	
Plaintiffs,	)	
	)	
--against--	)	
	)	
PHIL BREDESEN, Governor of the State	)	
of Tennessee; and	)	
VIOLA MILLER, Commissioner of the	)	
Tennessee Department of Children's Services	)	
	)	
Defendants	)	
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MODIFIED SETTLEMENT AGREEMENT

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PREAMBLE

- A The provisions of this Settlement Agreement resolve the existing disputes and issues in the case of Brian A., et al., v. Don Sundquist, et al., Civil Action Number 3-00-0445 (Judge Campbell/Brown), and satisfy and resolve the claims of the named plaintiffs and the plaintiffs' class in the above-entitled case as of the date of this Settlement Agreement.
- B This court has subject matter jurisdiction and personal jurisdiction over this action and therefore the authority to enter this Settlement Agreement.
- C This court shall have continuing jurisdiction of this action to ensure compliance with the terms of this Settlement Agreement for as long as the Settlement Agreement remains in effect.
- D Any state agency responsible for the care, protection, and/or supervision of plaintiff class members shall be bound by the provisions of this Settlement Agreement. For as long as this Settlement Agreement remains in effect, all provisions of this Settlement Agreement referring to the "Department," the "Department of Children's Services" or "DCS," upon any subsequent changes to the current governmental organizational structure of the Tennessee Department of Children's Services concerning the children in the plaintiff class as defined in this Settlement Agreement, shall apply with full force and effect to the State of Tennessee and to any subsequent agency or agencies with any of the responsibilities that apply to the current Tennessee Department of Children's Services under this Settlement Agreement as of the date of this Settlement Agreement.
- E This Settlement Agreement, and any of its provisions, are not, and shall not be construed to be, an admission of any liability on the part of any of the defendants concerning any of the claims and allegations in the complaint in this litigation.

I PRINCIPLES OF SETTLEMENT AGREEMENT AND CLASS DEFINITION

- A Principles of Settlement Agreement
 - 1 All children should have the best possible opportunity to grow up within a safe, nurturing family, either their biological family or, if that is not possible, within an adoptive family.
 - 2 The state should make reasonable efforts to avoid foster care placement by providing services to preserve the biological family whenever that is reasonably possible. However, child welfare decision-makers must have the professional capacity to make determinations as to when making efforts to preserve the biological family, or leaving the child with that

family, is neither safe for the child nor likely to lead to an appropriate result for the child

3. After children enter placement, all non-destructive family ties should be maintained and nurtured. Children should be placed with relatives who are able to provide a safe, nurturing home for them, and should be placed with siblings, and relationships with relatives and siblings should be facilitated and maintained by the child welfare agency
4. Foster care should be as temporary an arrangement as possible, with its goal being to provide a permanent home for the child as quickly as possible. In making the determination about what plans and services will best meet this goal, the child's interests must be paramount.
5. The state has primary responsibility for the care and protection of children who enter the foster care system. Insofar as it relies on private contractors to assist in meeting this responsibility, it should only do so according to standards set by and rigorously monitored by the state.
6. All children in need of child welfare services should receive full and equal access to the best available services, regardless of race, religion, ethnicity, or disabilities
7. Children in foster care placement should be in the least restrictive, most family-like setting possible, and the state should make all efforts to avoid the use of non-family settings for children, particularly young children.
8. Children in foster care placement should have stable placements that meet their needs and the services necessary to address both the trauma of foster care placement and the problems surrounding their removal from their family.
9. Children in out-of-home placement must have timely decision-making about where and with whom they will spend their childhood, and timely implementation of whatever decisions have been made
10. Families of children in foster care should be significant participants in the planning and decision-making concerning their children.
11. The state should achieve these goals in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of the child's safety, keeping a child as close to home as possible

- 12 All parties in judicial proceedings involving neglect, abuse, unruly and delinquency should be provided a fair hearing and their constitutional and other legal rights should be enforced and recognized
- 13 Except where a particular provision of this Settlement Agreement establishes a specific limit on the resources required to be allocated, defendants shall commit all necessary resources (administrative, personnel, financial and otherwise) to implement all provisions of the Settlement Agreement.
- 14 All actions required for plaintiff class members under the Settlement Agreement shall be documented within the individual case file of each member of the plaintiff class DCS shall have the ability to produce aggregate data requested by the Monitor concerning compliance with the provisions of this Settlement Agreement

B Class Definition

Pursuant to the terms of this Settlement Agreement, this case shall be certified as a class action and the class certified shall be defined as follows: All foster children who are or will be in the legal custody of the Tennessee Department of Children's Services. "Foster children" shall mean all children who are or will be in the legal custody of the Tennessee Department of Children's Services, excluding children who are or will be in the legal custody of the Department of Children's Services upon an allegation or adjudication of a delinquent or criminal act. Children who are or will be in the custody of the Department of Children's Services upon an allegation or adjudication of an unruly or status offense shall be included in the class, and children who are or will be in the custody of the Department of Children's Services upon an allegation of a delinquent or criminal act and which allegation is subsequently dropped or fails to result in an adjudication of a delinquent or criminal act and who remain in the legal custody of the Department of Children's Services, shall be included in the class

C Principles of Tennessee's Child and Family Team Meeting Model

Tennessee has adopted a model for engaging children, family members and their own support persons in the process of ensuring the safety, permanency and well-being of children involved with DCS. Tennessee's Child and Family Team Meeting (CFTM) model shall be guided by the following principles:

- 1 All children in foster care must have a CFTM that meets regularly throughout a child's time in custody, that utilizes the CFTM process for assessment and planning, that monitors and tracks the implementation of the plan, and that reconvenes as needed but no less often than every three (3) months to adjust the plan and respond to new issues as they arise.

2. In addition to the child/youth and their own family, the Child and Family Team should include, and the CFTM process should engage, people who represent both formal and informal supports for the family.
3. CFTMs should include pre-meeting preparation, including the preparation of family members, including face-to-face meetings with the child as appropriate, recognizing that in the emergency circumstances that surround some placement CFTMs there would be less time for pre-meeting preparation
4. Children should not enter custody without the convening of a CFTM, should not have a permanency plan established or updated without the convening of a CFTM, should not disrupt from a placement without the convening of a CFTM, and should not be discharged from care without the convening of a CFTM
5. Case managers should effectively serve as the primary persons responsible for building, preparing and maintaining Child and Family Teams; facilitating CFTMs to develop Permanency Plans; monitoring progress and revising Permanency Plans as needed; and tracking them to goal achievement

II STRUCTURE OF THE AGENCY

- A. DCS shall establish child welfare policy and determine statewide standards and practices for the entire state. DCS shall take all reasonable steps necessary to ensure that statewide policies, standards and practices are implemented and maintained in each region of the state and that uniform forms and data collection and reporting are utilized in each region. Regions retain the right to develop and use forms and data instruments that address issues of local concern

III REPORTING ABUSE AND NEGLECT

- A. DCS's system for receiving, screening and investigating reports of child abuse and neglect for foster children in state custody shall be adequately staffed to ensure that all reports are investigated within established time periods
- B. All matters of abuse or neglect of foster children in DCS custody shall be investigated by the child protective services unit in the manner and within the time frame provided by law. All matters concerning abuse or neglect of foster children in DCS custody in institutional, group, residential or contract agency foster home placements shall also be referred to and reviewed by the quality assurance unit and, as appropriate, the licensing division. The purpose of this review is to determine whether a pattern of abuse or neglect exists within the institutional, group, residential or contract agency foster home placements that contributed to the abuse or neglect; whether the facility should be closed or the

contract terminated; and what other steps are necessary to safeguard the well-being of the children in the facility. The quality assurance unit and, where appropriate, the licensing division, shall be responsible for taking appropriate action, including the development of a corrective action plan, monitoring the implementation of any corrective action plan, and determining if additional monitoring is needed. This review (and any necessary investigation) shall be completed within 90 days, and DCS shall provide all necessary interim actions prior to, during and after any investigation, and shall provide reports of any investigation to the Monitor

IV REGIONAL SERVICES

- A Each region shall have available a full range of community-based services to support and preserve families of foster children in state custody, and to enable children to be reunified with their families safely and as quickly as possible
- B Each region shall have available or shall develop a full range of community based family services, which shall be available to:
 - 1 Foster families for whom children have established a significant, beneficial emotional bond and which provide the possibility of long-term stability and permanence, but which are in danger of disrupting without intensive home-based crisis intervention services;
 - 2 Families to whom children in foster care could be returned safely with the availability of intensive family services for a transition period; and
 - 3 Adoptive families in which an adoption contract has been signed and, who prior to finalization, are in danger of disrupting without intensive home-based crisis intervention services.

V STAFF QUALIFICATIONS, TRAINING, CASELOAD, SUPERVISION

- A All provisions of this section shall apply to all DCS Case Managers 1-4, Community Service Agency (CSA) custodial case managers, all contract agency foster care case workers and supervisors, and any other workers with corresponding responsibilities for class members. As of December 1, 2001, no CSA employees shall have any supervisory responsibility over case managers of children in the plaintiff class. As of December 1, 2001, there shall be at least a 50% reduction of the current number of class members receiving case management from CSA case managers, and CSA case managers in Davidson and Shelby Counties shall no longer have caseloads that include class members. As of July 1, 2002, CSA case managers shall no longer have caseloads that include children in the plaintiff class

B. Qualifications for case managers responsible for cases of class members shall be as follows:

- 1 A Case Manager 1 shall have a bachelor's degree, with employment preference given to applicants holding a bachelor's degree in social work or a related behavioral science. No Case Manager 1 shall be promoted to Case Manager 2 until the completion of a job performance evaluation developed in consultation with the technical assistance committee (defined in Section XIV in this Settlement Agreement). Such evaluation tool shall include evaluation of their performance on the case management requirements of this Settlement Agreement. Failure to receive a satisfactory job performance evaluation at the end of one year will result in the termination of the case manager's employment.
- 2 A case manager 2 must have either been promoted from case manager 1, or have at least a bachelor's degree, with employment preference given to applicants holding a bachelor's degree in social work or a related behavioral science and one year experience in providing child welfare services. No Case Manager 2 shall be promoted to Case Manager 3 until the completion of a job performance evaluation developed in consultation with the technical assistance committee. Such evaluation tool shall include evaluation of their performance on the case management requirements of this Settlement Agreement. Failure to receive a satisfactory job performance evaluation at the end of six months will result in the termination of the case manager's employment.
- 3 A Case Manager 3 must have either been promoted from Case Manager 2; or have at least a bachelor's degree, with employment preference given to applicants holding a bachelor's degree in social work or a related behavioral science, and two years experience in providing child welfare services. A master's degree in social work or a related behavioral science may substitute for one year experience in providing child welfare services.

C. In consultation with the technical assistance committee, the state shall develop and implement stipends and other incentives to support graduate work that will provide reasonable steps to enable the state to hire and retain case managers with undergraduate and graduate degrees in social work and relevant and related fields. As part of this process, the state will assess and determine whether salary increases are necessary to ensure that Tennessee is competitive with neighboring states concerning compensation for case managers and supervisors.

D. No case manager shall assume any responsibility for a case, except as part of a training caseload, until after completing training, as specified below, and after passing a skills-based competency test, the content and passing standards for which shall be developed in consultation with the technical assistance committee.

E. DCS shall have a full-time training unit headed by a chief of training with appropriate qualifications

1. In consultation with the technical assistance committee, this unit shall have sufficient staffing, budget funds, and other resources to assure that it can provide comprehensive child welfare training to ensure that all persons responsible for children in the plaintiff class will have sufficient training to permit them to comply with the relevant mandates of this Settlement Agreement, DCS policy, and reasonable professional standards
2. This unit shall determine, on an annual basis, those DCS workers in need of retraining, as indicated by workers' failure to ensure that cases for which they are responsible meet the requirements of this Settlement Agreement, DCS policy and/or reasonable professional standards, and shall ensure that additional training is provided to them. Workers who fail to meet the requirements of this Settlement Agreement, DCS policy and/or reasonable professional standards, despite the provision of additional training, shall be eligible for reassignment or termination.
3. The details of both a pre-service and in-service training program for case managers as determined necessary shall be reviewed and developed in consultation with the technical assistance committee. All case managers shall have a minimum of 160 hours of pre-service training, including instructional training and supervised field training. All case manager supervisors shall receive a minimum of 40 hours of in-service training that is directed specifically at the supervision of child welfare case workers, prior to receiving any supervisory responsibilities. All case managers shall receive a minimum of 40 hours of ongoing training each year. All case managers with supervisory responsibility shall receive a minimum of 24 hours of in-service training each year.
4. Prior to contracting with any agency, DCS will review, approve, and monitor the curriculum for caseworker pre-service and in-service training to assure that general content areas are appropriate to the work being performed by the agency. Where casework activities mirror the duties of the DCS case manager, the curriculum will correspond with DCS pre-service and in-service training. As a minimum, DCS will require 80 hours of pre-service instructional training and 80 hours of pre-service supervised field training, as well as 40 hours of ongoing training each year.

F. No Case Manager 1 having responsibility for the case of any class member shall have a case load totaling more than 15 class members, or, for those workers carrying a mixed caseload, the weighted equivalent, as those weights have been determined in consultation with the technical assistance committee. No Case Manager 2 or 3 having responsibility for the case of any class member shall have

a case load totaling more than 20 class members, or, for those workers carrying a mixed caseload, the weighted equivalent, as those weights have been determined in consultation with the technical assistance committee. Case managers with an adoptions caseload shall not have a caseload totaling more than 12 children in the plaintiff class. Case Manager 3's having no supervisory responsibility shall not have a caseload of more than 20. Case Manager 3's that supervise shall have a weighted caseload. Case Manager 3's supervising up to two lower level case managers shall not have caseloads totaling more than 10. A Case Manager 3 supervising three or more lower level case managers shall not have a caseload. A case manager 3 shall not supervise more than 4 case managers. Case manager 3's shall be given supervisory responsibility only in circumstances in which the caps on supervisory caseloads dictate that an additional case manager 4 would have less than a full supervisory case load. A single case manager assigned to a case shall have full responsibility for that case, including the responsibility to work with the child and the family and to visit with both for the purposes of assessing and meeting the child's and the family's needs, determining and implementing a permanency plan, supervising, supporting and assuring the stability of the child's placement and assuring a safe, adequate and well planned exit from foster care.

1. All case managers or case workers with supervisory responsibility for case managers or case workers carrying the cases of any class members (i.e., team leaders or supervisors) shall have a minimum of a master's degree in social work or related behavioral field with a child or family focus (excluding criminal justice) and at least three years experience as a case worker in child welfare; however, an additional 2 years of providing child welfare services may substitute for the master's degree (this sentence shall not apply to supervisors currently holding their positions as of the date of this Settlement Agreement or employees who are currently eligible for appointment as team leaders as of the date of this Settlement Agreement). No team leader/supervisor shall assume his or her supervisory responsibility until after completing training as specified herein, and after passing a skills-based competency test geared specifically to child welfare supervision.
2. By January 1, 2002, 50% of all team leaders or supervisors shall supervise no more than 7 case managers or case workers at any one time, and shall not carry their own caseloads. By April 1, 2002, all team leaders or supervisors shall supervise no more than 7 case managers or case workers at any one time, and shall not carry their own caseloads. By January 1, 2003, 50% of all team leaders or supervisors shall supervise no more than 6 case managers or case workers at any one time, and shall not carry their own caseloads. By April 1, 2003, all team leaders or supervisors shall supervise no more than 6 case managers or case workers at any one time, and shall not carry their own caseloads. By January 1, 2004, 50% of all team leaders or supervisors shall supervise no more than 5 case managers or case workers at any one time, and shall not carry their own caseloads. By April 1, 2004, all team leaders or supervisors shall supervise no more

than 5 case managers or case workers at any one time, and shall not carry their own caseloads. If team leaders or supervisors have any responsibilities other than the direct supervision of case-carrying case managers or case workers, their responsibilities shall be weighted, and their supervisory case load reduced to an equivalent weighted caseload.

- 3 Child care workers employed in any child care facility or program providing placements and services to children in foster care and their families shall have a minimum of a high school diploma, with preference given to those applicants with one year of previous child welfare-related experience.
- 4 All persons applying for positions with DCS or a contract agency which involve any contact with children shall be required to submit to a criminal records check and a child abuse registry screening process before beginning training or employment. No DCS or contract employee who has any contact with children shall have been convicted of a prior felony for an offense designated as a crime against the person or have been the subject (i.e., alleged perpetrator) in any substantiated or indicated case of child abuse or neglect. An individual who has been convicted of any prior felony may not be employed by DCS or a contract agency in a position involving contact with children unless: (1) the conviction occurred at least 5 years prior to the employee's hiring; (2) the employee has not been convicted of any other criminal offense since that conviction; (3) the DCS regional administrator or agency program director personally reviews the circumstances of the applicant and determines that this employee could work productively and constructively with children. An individual who has been convicted of any prior misdemeanor may not be employed by DCS or a contract agency in a position involving contact with children unless criteria ##2-3 above are satisfied. If, however, any employee for whom the above criteria has been satisfied is the subject of a criminal conviction or becomes the subject in any substantiated or indicated case of child abuse or neglect during his/her employment, the employment shall be immediately terminated. The section is not applicable to employees convicted of delinquent offenses. This provision shall not apply to foster and adoptive parents.
- 5 When a case manager leaves the agency, his/her cases shall be reassigned within one business day. No cases shall be uncovered at any time. Except in documented emergency situations, or when the case manager leaves without prior notice, all transfers of cases between case managers shall take place after a face-to-face meeting, including the departing and the receiving case manager's supervisors, to discuss the case. The departing case manager shall make every effort to introduce the receiving case manager, in person, to the child and the child's parents.

6. Any region with an annual case worker turnover rate that exceeds 10% in which cases are either uncovered or are being reassigned to workers at the caseload cap, shall establish and maintain a pool of trained workers available to take over the caseloads of departing workers.
- G Case recordings and all other documentation concerning contacts or developments in the cases of class members shall be added to the case file for that child within 30 days of the case work activity or development. The case files of class members shall contain adequate documentation tracking the services provided, progress, any change in placement of the child, and authorizations which document the approval for placements, treatment and services provided to each child.

VI. PLACEMENT AND SUPERVISION OF CHILDREN

- A DCS shall immediately conduct a statewide needs assessment, under the supervision and auspices of an independent expert chosen by the technical assistance committee. This needs assessment shall be completed by November 1, 2001, unless the independent expert determines that additional time is necessary, which shall not exceed 60 days. The results of the needs assessment shall be publicly available 15 days after the results are provided in written form to the Monitor and the Commissioner. This needs assessment and all future needs assessments will determine the need for new and/or different placement and services resources, and where those placements and services should be located. This independent expert and the technical assistance committee may consider DCS's past and present efforts in the area of needs assessment but the independent expert shall independently determine the manner and methodology of the needs assessment to be performed. The needs assessment shall be updated annually under the supervision of the independent expert for two years, and under the supervision of the technical assistance committee thereafter. However, after the first year, upon the determination of the technical assistance committee that the independent expert should be replaced, the technical assistance committee may appoint a new independent expert for the second year. The assessments shall include a plan and timetables within which the findings of the needs assessment shall be implemented, beginning immediately after the completion of the needs assessment. DCS shall provide funding to implement the findings of the needs assessments. DCS will commit 4 million dollars over each of five years from the date of this Settlement Agreement. In addition, DCS will establish a 2 million dollar contingency fund for each of five years from the date of this Settlement Agreement. If the costs of the recommendations from any needs assessment exceed the available funding for that year, DCS will consult with the technical assistance committee to get assistance in crafting effective methods through grants, direct appropriations and other resources, to fund the recommendations. During any of five years from the date of this Settlement Agreement, DCS may choose to accelerate the spending of state appropriated funds designated for those years.

B. A child shall be considered to have entered foster care custody on the date that the child enters DCS's physical, out-of-home custody, or on the date on which the child enters DCS's legal custody, whichever is sooner. The duration of a child's time in foster care custody shall include the entire time period after which a child entered foster care custody until formally discharged from foster care custody, including but not limited to any and all emergency, shelter or other temporary placements during which the child is in DCS's physical, out-of-home custody or legal custody.

C. All children shall be placed according to the following standards:

1. All children shall be placed within their own region or within a 75 mile radius of the home through which the child entered custody, unless the child's needs are so exceptional that they cannot be met by a family or facility within the region, or the child needs re-placement and the child's permanency goal is to be returned to his parents who at that time reside out of the region or the child is to be placed with a relative out of the region, under which circumstances the regional administrator or the team coordinator shall be specifically required to so certify in writing, based on his or her own examination of the circumstances.
2. Children shall not remain in emergency or temporary facilities, including but not limited to emergency shelters, for more than 30 days. Children shall not be placed in more than one shelter or other emergency or temporary facility within any 12 month period. An exception to the multiple placement limit within any 12-month period may occur for an individual placement episode for a maximum of 5 days. The exception shall only apply to runaways and children facing a direct threat to their safety, or who are a threat to the safety of others, where immediate removal is necessary. As an additional exception to the multiple placement limit within any 12-month period, if a child's behavior has changed so significantly that placement for the purposes of assessment is critical for the determination of an appropriate placement, and the regional administrator certifies in writing that the assessment is essential for an appropriate placement, there may be a single additional placement in a primary treatment center (PTC) for up to a maximum of 15 days.
3. No child in DCS physical or legal custody in foster care shall be placed, by DCS or with knowledge of DCS, in a jail, correctional or detention facility unless such child has been charged with a delinquency charge or unless otherwise placed or ordered by the court. Within 60 days of the signing of this Settlement Agreement, DCS shall inform the appropriate law enforcement offices and judicial officials in all Tennessee counties of this policy. DCS shall provide law enforcement and judicial officials with

written instructions to immediately notify DCS of any child in DCS legal custody who has been placed in a jail, correctional or detention facility

4. DCS shall not place any child determined by a DCS assessment to be at high risk for perpetrating violence or sexual assault in any foster care placement with foster children not so determined.
5. All children shall be placed in accordance with their individual needs, taking into account the child's needs to be placed as close to home and community as possible, the need to place siblings together, and the need to place children in the least restrictive, most home-like setting.
6. Siblings who enter placement at or near the same time shall be placed together, unless doing so is harmful to one or more of the siblings, one of the siblings has such exceptional needs that can only be met in a specialized program or facility, or the size of the sibling group makes such placement impractical notwithstanding diligent efforts to place the group together. If a sibling group is separated at the initial placement, the case manager shall make immediate efforts to locate or recruit a family in whose home the siblings can be reunited. These efforts will be documented and maintained in the case file.
7. No child shall be placed in a foster home if that placement will result in more than three foster children in that foster home, or a total of six children, including the foster family's natural and/or adopted children. No placement will result in more than 3 children under the age of 3 residing in a foster home. An exception in the best interests of the child shall apply under which the regional assistant commissioner will be allowed to make an exception on an individual basis that is documented in the child's case file. Such exception shall not be made in more than 10% of all placements made annually in each grand region. All such exceptions in each grand region and the detailed reasons justifying each exception shall be reported by the assistant commissioner for each grand region to the Monitor annually, from the date of this Settlement Agreement. The only other exception to these limits shall be in those instances in which the placement of a sibling group in a foster home with no other children in the home would exceed these limits.
8. No child under six years of age shall be placed in a group care non-foster family home setting, except for children with exceptional needs which cannot be met in any other type of placement and upon the express written approval by the regional administrator. Such approval shall be based on the regional administrator's certification based on a personal determination that the child's needs can only be met in that specific facility, including a description of the services available in the facility to address the individual child's needs.

9. No child shall be placed in a residential treatment center or any other group care setting with a capacity in excess of eight children without express written approval by the regional administrator. Such approval shall be based on his or her certification and specific findings that the child's needs can be met in that specific facility, including a description of the services available in the facility to address the individual child's needs and that the facility is the least restrictive placement that could meet this child's needs.
 10. Children for whom the permanency goal is adoption should, whenever possible, be placed with a family in which adoption is a possibility.
 11. Race and/or ethnicity and/or religion shall not be the basis for a delay or denial in the placement of a child, either with regard to matching the child with a foster or adoptive family or with regard to placing a child in a group facility. Race and/or ethnicity shall otherwise be appropriate considerations in evaluating the best interest of an individual child to be matched with a particular family. DCS shall not contract and shall immediately cease contracting with any program or private agency that gives preference in its placement practices by race, ethnicity, or religion.
 12. DCS shall only contract for placements or services with licensed contractors or subcontractors.
- D. All children in DCS custody shall receive an assessment using a standardized assessment protocol. The assessment shall include a medical evaluation and, if indicated, a psychological evaluation. The assessment may take place prior to custody, if the need for placement is known in advance, but no later than 30 days after the child comes into custody. As soon as the assessment is completed, the child's placement shall be reevaluated to ensure that it meets the child's needs and, if not, a new placement obtained. The technical assistance committee shall review DCS's assessment protocol, to determine if it constitutes a complete assessment of a child's individual needs, and if it does not, it will recommend revisions which DCS shall implement.
- E. All children in DCS custody shall have access to a reasonable and appropriate education, including special education services the need for which shall be timely identified. Children shall be placed in community schools whenever possible. Within 60 days of the signing of this Settlement Agreement, DCS shall undertake an evaluation of all "in house" schools located within group, residential or institutional facilities, to determine if such schools are providing children in foster care with access to a reasonable and appropriate education, including special education services the need for which shall be timely identified, and to determine if such schools are providing educational services as required by law. This evaluation will be designed in close collaboration with the technical assistance

committee and any educational experts it deems appropriate. The technical assistance committee shall make recommendations, which shall include timetables for implementation, promptly upon reviewing the results of the evaluation. DCS shall implement the results of the technical assistance committee's recommendations as they pertain to any schools within the DCS local educational authority (LEA). DCS shall require all recommendations of the technical assistance committee to be mandatory contractual obligations for any contract agency providing "in house" schools located within group, residential or institutional facilities. Within 6 months of the date of the recommendations of the technical assistance committee, DCS shall terminate the contract with any agency providing "in house" schools located within group, residential or institutional facilities that have not implemented the recommendations of the technical assistance committee, unless the contract agency demonstrates to the approval of the technical assistance committee that additional time up to 6 months is necessary to complete implementation of the recommendations. DCS shall assign a full time educational specialist in each region to ensure that individual children in DCS custody have access to a reasonable and appropriate education, including special education services the need for which shall be timely identified. DCS shall assign twelve additional lawyers statewide who will specialize in representing children in DCS custody to ensure that individual children in DCS custody have access to a reasonable and appropriate education, including special education services the need for which shall be timely identified.

- F. Psycho-tropic medication shall not be used as a method of discipline or control for any child. Within 6 months of the signing of this Settlement Agreement, DCS shall undertake a review of the policies and procedures surrounding the use of psycho-tropic medications. This evaluation will be designed in close collaboration with the technical assistance committee and any additional experts on the use of psycho-tropic medication for children it deems appropriate. The technical assistance committee shall make recommendations, which shall include timetables for implementation, promptly upon reviewing the results of the evaluation, which DCS shall implement. Within 6 months of the signing of this Settlement Agreement, DCS shall create and as soon as possible thereafter fill a position of full time Medical Director, with appropriate qualifications, who shall, among other things, be responsible for overseeing the implementation of policies and procedures concerning the use of psycho-tropic medications for all children in DCS custody, and who shall have the authority to issue and impose corrective actions. The Medical Director shall report directly to the Commissioner of DCS. When possible, parents shall consent to the use of medically necessary psycho-tropic medication. In the event that a parent is not available to provide consent for psycho-tropic medication, the regional health unit nurse shall review and consent to medically necessary medication. Regional health unit nurses shall maintain a log of psycho-tropic medication approvals as well as copies of logs maintained by contract agencies for all uses of psycho-tropic medication and shall submit the logs to the Medical Director for review on an ongoing basis.

- G. Within 6 months, of the signing of this Settlement Agreement, DCS shall undertake a review of the policies and procedures surrounding all forms and use of physical restraint and seclusion/isolation of children in the plaintiff class. This evaluation will be designed in close collaboration with the technical assistance committee and any additional experts on the use of restraint and seclusion/isolation for children it deems appropriate. The technical assistance committee shall make recommendations, which shall include timetables for implementation, promptly upon reviewing the results of the evaluation, which DCS shall implement. Within 6 months of the signing of this Settlement Agreement, DCS shall create and as soon as possible thereafter fill a position of full time Medical Director (same position identified in VI.F. herein), with appropriate qualifications, who shall, among other things, be responsible for monitoring the implementation of policies and procedures surrounding all forms and use of physical restraint and seclusion/isolation of children in DCS custody, and who shall have the authority to issue and impose corrective actions. The Medical Director shall report directly to the Commissioner of DCS. All uses of physical restraint for children in any placements, and all uses of seclusion/isolation in group, residential or institutional placements, shall be reported to the central office resource management unit. Such reports shall be made available to the licensing unit and the Medical Director for appropriate action.
- H. DCS shall not contract with any agency, for which any owner, member of the board of directors, or member of the board of trustees of that private agency also holds any other position which may influence the placements provided to children in the plaintiff class. Such positions include, but are not limited to, juvenile court judges, referees or other court officers involved in the individual cases of children in foster care. Within 30 days of the signing of this Settlement Agreement, DCS shall notify all contract agencies involved in foster care placements and services of this policy, and shall receive written confirmation from all agencies with existing contracts that they will be in compliance with this policy within 60 days of receiving the written notice, after which time DCS shall terminate its contract with any agency that is not in compliance with this policy. All future contracts or contract renewals shall contain this policy as a binding term of the contract.
- I. DCS shall have a full range of independent living services and shall provide sufficient resources to provide independent living services to all children in the plaintiff class who qualify for them.
- J. DCS will establish and maintain a resource management unit within its central office. The resource management unit will be responsible for training regional staff on placement issues so that regional placement resource management units are able to ensure a careful and appropriate match between the child's individual needs and a placement facility or foster family. DCS's unified computer system will allow for the central office and regional offices to track the following information concerning placements provided by directly by DCS or through

contract agencies: the facility's or contract agency's current license and accreditation status and whether any reports of abuse or neglect have been filed and/or substantiated against the facility or agency within the last three years; whether the facility or contract agency has any vacancies; the ages and genders of children whom the facility or agency is licensed to accept; the age and gender of all children in the facility or agency; the level of care that the facility or agency can provide; specialized services available through the facility, agency or by the foster parents; and the total number of children who may reside in the facility or with the agency at any one time pursuant to the facility's or agency's license. DCS will establish and maintain regional resource management units with sufficient staff and other resources to ensure all children requiring placement are placed promptly and appropriately, and in accordance with their needs. Any agency or program contracting with DCS shall be prohibited from refusing to accept a child referred by DCS as appropriate for the particular placement or program.

- K. All children in the plaintiff class shall receive visits from the DCS case manager responsible for their case, whether the child is placed through a program directly run by DCS or through a contract agency, as follows:
- 1 For children in DCS foster homes, worker-child visiting shall mean a face-to-face visit between the child's DCS case manager and the child. Visits may take place in the child's placement, at school if the child is of school age, in the case manager's office, or in another appropriate setting. Visits shall be made as frequently as is necessary to assure the child's adjustment to the placement, to ensure the child is receiving appropriate treatment and services, and to determine whether the child's needs are being met and service goals are being implemented. A new placement shall mean either the child's entrance into custody or any placement that is different from the immediately prior placement. All visits shall include a private meeting between the case manager and the child out of the presence of the foster parents or other caretaker, except for those cases in which the child is an infant. There shall be at least 6 face-to-face visits during the first two months a child is in a new placement, and at least 3 of these visits shall take place in the child's placement. Following the first two months a child is in a new placement, there shall be at least 2 face-to-face visits each month.
 - 2 For children in a foster home or facility operated by or under a private contract agency:
 - a. Private agency case worker: DCS shall require and ensure that the private agency case worker visits the child as frequently as necessary to ensure the child's adjustment in placement, to ensure the child is receiving appropriate treatment and services, and to determine that the child's needs are being met and service goals

are being implemented. Visits may take place in the child's placement, at school if the child is of school age, in the case manager's office, or in another appropriate setting. Worker-child visiting shall mean a face-to-face visit between the child's private agency case worker and the child. A new placement shall mean either the child's entrance into custody in a foster home or facility operated by or under a private contract agency, or any placement in a foster home or facility operated by or under a private contract agency that is different from the immediately prior placement. All visits shall include a private meeting between the private agency case worker and the child out of the presence of the foster parents or other caretaker, except for those cases in which the child is an infant. There shall be at least 6 face-to-face visits during the first two months a child is in a new placement, and at least 3 of these visits shall take place in the child's placement. Following the first two months a child is in a new placement, there shall be at least 2 face-to-face visits each month.

- b. DCS case manager: The DCS case manager shall visit each child in a foster home or facility operated by or under a private contract agency as frequently as necessary to ensure the child's adjustment to the placement, to ensure the child is receiving appropriate treatment and services, and to determine that the child's needs are being met and service goals are being implemented, but at least once each month. Worker-child visiting shall mean a face-to-face visit between the child's DCS case manager and the child in the child's placement. All visits shall include a private meeting between the DCS case manager and the child out of the presence of the foster parents or other caretaker, except for those cases in which the child is an infant, and, outside the presence of the facility staff and the private contract agency case worker. The private contract agency case worker shall accompany the DCS case manager to these visits at least once every three months in order to have substantial discussions with each other, the foster parent(s) or other caretaker, and the child, if age appropriate.

- L. DCS, in close collaboration with the technical assistance committee and any additional experts the technical assistance committee deems appropriate, if any, shall review the delivery of services and payment structure of "continuum" contracts. The technical assistance committee shall report on the results of the review and make recommendations. DCS shall implement the recommendations of the technical assistance committee in regard to the delivery of services and payment structure of "continuum" contracts. However, such recommendations may not include the elimination of the use of "continuum" contracts.

VII. PLANNING FOR CHILDREN: MINIMUM STANDARDS FOR ALL CHILDREN AND YOUTH

- A. DCS shall maintain and update policies and procedures that will establish a planning process for all foster children in DCS custody that (1) initially will seek to work intensively with the child's parents and other appropriate family members to allow the child to remain safely at home, if appropriate; (2) in those instances in which removal from the home is necessary, will work intensively with the child's parents and other appropriate family members in a collaborative process to return the child home quickly under appropriate circumstances consistent with reasonable professional standards; and (3) if return home is not appropriate or cannot be accomplished safely within a reasonable period of time, will assure the child an alternative, appropriate permanent placement as quickly as possible.
- B. In addition to the child's case manager, the child/youth and his or her own family, the Child and Family Team shall include persons who represent both formal and informal supports for the family. A trained, full-time or back-up facilitator shall participate in every Initial CFTM and Placement Stability CFTM. The DCS supervisor assigned to the case shall participate in the Initial CFTM, the Initial Permanency Planning CFTM, the Discharge Planning CFTM, and any CFTM if the case manager has less than one year of experience. For any child who has been in custody for twelve (12) months or more, the supervisor will participate in a CFTM at least one time every six months. For all other CFTMs, the supervisor shall make a decision about his or her participation based on the complexity of the case, the availability of other supports in the meeting such as a full time or skilled facilitator, and the experience of the case manager. The following persons shall be Child and Family Team members as appropriate: (1) contract agency worker; (2) guardian ad litem (GAL); (3) court appointed special advocate (CASA); (4) resource parents; and (5) the child's parents or other relatives or fictive kin. DCS shall provide reasonable advance notice of CFTMs to the GAL for the child if one has been appointed or CASA worker for the child if one has been appointed. For all CFTMs, if the child is 12 years or older, the child shall participate in the meeting, unless extraordinary circumstances exist, and are documented in the case record, as to why the child's participation would be contrary to his/her best interests.
- C. The Department shall begin the process of building a team, assessment, and convening a formal meeting prior to children entering state custody, except when an emergency removal is warranted due to immediate needs for child safety and protection. In the case of an emergency removal, an Initial CFTM team shall be convened no later than seven (7) days after a child enters state custody. The purposes of the Initial CFTM shall be to discuss the strengths of the family and the issues that necessitated the child's removal; to explore alternatives to custody that would ensure the safety of the child; to identify the family's basic needs that must be addressed immediately; to identify the changes by the parents that may be necessary to allow the child to return home safely; to identify the services that

need to be provided to the parents to allow the child to return home; to determine the appropriateness of the child's placement; to arrange a visitation schedule between the child and the parents; to ensure that all reasonable efforts will be made to enable the visitation to take place; to arrange an immediate schedule of contacts between the parents and the worker; and to begin developing the permanency plan. In all instances in which it is impossible to meet with the parents, the planning process shall begin as described above, notwithstanding the parents' absence, within the time period set forth above. Efforts to ensure the parents' participation shall include providing transportation and/or child care and/or a brief rescheduling, and shall be documented in the child's case file

- D The Initial Permanency Planning CFTM shall occur within thirty (30) calendar days of a child entering custody. In the event that the parents cannot be located or refuse to meet with the worker, the DCS case manager shall document all efforts made to locate the parents and to ensure that the meeting takes place. The purposes of this meeting shall be to further collaborate with the family on the development of a plan that will address the problems that necessitated the child's removal; to specify the changes or action to be taken by the parents that may be necessary to allow the child to return home safely; to identify the services that need to be provided to the parents and the child to ensure a successful reunification; and to determine the appropriateness of the child's placement. The plan shall be built upon family strengths, address the family's and child's needs, and designate timeframes for the completion of actions that will help the child and family to achieve permanency and stability as soon as possible. Whether the permanency goal is reunification, exit custody to live with relatives, Planned Permanent Living Arrangement or Adoption, permanency plans shall contain specific information about how the permanency goal will be achieved, what services are necessary to make the accomplishment of the goal likely, who is responsible for the provision of those services, when the services will be provided, and the date by which the permanency goal is likely to be achieved. Time periods for achieving permanency goals shall be specific to the child and not merely tied to the scheduling of subsequent administrative or periodic reviews or meetings. All services documented in the record as necessary for the achievement of the permanency goal shall be provided within the time period in which they are needed. Within sixty (60) calendar days of a child entering custody, an individualized, completed and signed permanency plan for that child must be presented to the court. Biological parents shall have the opportunity to sign a completed handwritten or typewritten permanency plan at the conclusion of the Initial Permanency Planning CFTM. If a completed typewritten permanency plan was not available for the biological parents to sign at the conclusion of the Initial Permanency Planning CFTM, one shall be presented to the child's biological parents for discussion and signature no later than sixty (60) calendar days after the child enters custody, and prior to the presentation of that plan to the court

- E. The Department shall convene a Placement Stability CFTM prior to any child or youth potentially disrupting from a placement while in state custody, or, in the event of an emergency change in placement, as soon as team members can be convened, but in no event later than fifteen (15) days before or after the placement change. The purposes of this meeting shall be to review progress in the current placement and determine if the current placement is still appropriate to meet the child's needs; to determine whether or not the current placement can be maintained and develop a plan to support the child's needs and stabilize the current placement; and if the current placement is not appropriate and/or cannot be maintained, to develop a plan for the transition to an alternative placement in the least traumatic manner possible. If a change in placement has already taken place, the team shall explore ways to help strengthen the present placement and prevent any future disruptions.

A disruption is an unplanned interruption of placement in a resource home or group care setting that is not the result of progress toward achieving permanency. This type of CFTM is indicated whenever there are threats to the stability of a placement as a result of any number of factors, including, but not limited to: medical or physical conditions beyond the monitoring or treatment capacity of the caregiver; the behavior of the child or youth; or changing circumstances of the resource family affecting their willingness or ability to provide for the needs of the child. These disruptions of placement are distinct from placement changes which are planned to facilitate permanency, such as reunification with the family; placement into a pre-adoptive home; an exit to the custody of a relative; or placement into a relative's home providing kinship care.

The Placement Stability CFTM shall be convened as soon as there are indications that the current placement is at risk with the hope that the placement can be stabilized, if it is still appropriate for the child. If the placement cannot or should not be preserved, the team shall identify the best placement for the child and plan how to minimize the trauma that may result from changing placements.

When a child or youth must be moved before a Placement Stability CFTM can be arranged, the child and family team shall convene as soon as possible after the move to assess how to stabilize the new placement and support the child, family and caregiver through the adjustment period.

- F. DCS shall develop a process for supervisors to review, monitor and validate the results of CFTMs to ensure supervisors remain engaged and responsible for quality casework.
- G. The goal of "permanent foster care" or "long term foster care" is no longer used, and shall not be used, as a permanency goal. The *Brian A.* Monitor/Technical Assistance Committee (TAC) shall issue recommendations on the use of the goal of Planned Permanent Living Arrangement and subsidized guardianship on or before October 31, 2007, and those recommendations shall be implemented.

- H. Independent living is no longer used, and shall not be used, as a permanency goal, but rather is used as a service array to enable older youth to transition into adult life and live independently.
- I. Children with an initial goal of return home may also have another concurrently planned permanency goal. Record keeping and tracking for any child in the class with more than one concurrently planned permanency goal shall be consistent with a goal of return home until such time that return home is no longer an option.
- J. For any child who has a permanency goal of return home for more than 12 months, the case manager, with written approval from his or her supervisor, shall include in the record a written explanation justifying the continuation of the goal, and identifying the additional services necessary or circumstances which must occur in order to accomplish the goal. No child shall have a permanency goal of return home for more than 15 months unless there are documented in the record and approved by the supervisor compelling circumstances and reason to believe that the child can be returned home within a specified and reasonable time period.
- K. The child's DCS case manager and his or her supervisor shall have an ongoing responsibility to assure that the child's permanency goal is appropriate or to change it if it is not, to assure that the child's services and placement are appropriate and are meeting the child's specific needs, to assure that the parents and other appropriate family members are receiving the specific services mandated by the permanency plan and that they are progressing toward the specific objectives identified in the plan, and to assure that any private service providers identified in the plan or with whom the child is in placement are delivering appropriate services.
- L. Whenever the Permanency Plan goal needs to be revised a Permanency Plan Revision CFTM shall be convened. The team shall discuss the reasons for the proposed goal change and consider alternative options for permanency such as guardianship, adoption or the addition of a concurrent goal. The child's permanency plan shall be reviewed at CFTMs at least every three months. These meetings must be separate and distinct from any court hearings, foster care review board meetings or other judicial or administrative reviews of the child's permanency plan. The permanency plan shall be reviewed and updated if necessary at each of these CFTMs.
- M. DCS shall recommend to the Juvenile Court a 90-day trial home visit for all children for whom a decision is made to return home or to be placed in the custody of a relative, before the child or youth is projected to exit state custody. An exception to this general rule shall be allowed, based on specific findings and the signed certification of the case manager, supervisor and regional administrator for the child, that a shorter trial home visit is appropriate to ensure the specific safety and well-being issues involved in the child's case. Under this exception, a

trial home visit may be recommended for less than 90 days but in no case less than 30 days. All cases in which the exception is used shall be forwarded to the *Brian A. Monitor/Technical Assistance Committee (TAC)* for their review.

- N A Discharge Planning CFTM shall be convened within thirty (30) days of a child returning home on trial home visit, exiting custody to a newly created permanent family, or aging out of the system. The participants will identify all of the services necessary to ensure that the conditions leading to the child's placement into state custody have been addressed, and that the child's safety will be assured, and will identify the services necessary to support the child or youth. DCS shall provide or facilitate access to all services necessary to support the child and family and the trial home visit. If exiting custody is determined to be inappropriate, DCS shall make the appropriate application to extend the child's placement in the custody of DCS before the expiration of the trial home visit. During any child home visit, the child's case manager shall visit the child in person at least 3 times in the first month, and twice per month for any remainder of the trial home visit period ordered by the court, and each visit shall occur outside the parent or other caretaker's presence. The case manager shall also contact service providers, and shall visit the school of all school age children at least once each month during the trial home visit period, shall interview the child's teacher, and ascertain the child's progress in school and whether the school placement is appropriate.

VIII FREEING A CHILD FOR ADOPTION

- A. The process of freeing a child for adoption and seeking and securing an adoptive placement shall begin as soon as the child's permanency goal becomes adoption, but in no event later than as required by federal law. The adoption process shall begin immediately for all children for whom a diligent search has failed to locate the whereabouts of either parent and for whom no appropriate family member is available to assume custody.
- B. DCS has replaced its process for making legal risk placements with policies and procedures for the "dual licensing" of resource families as foster parents and adoptive parents.
- C DILIGENT SEARCHES AND CASE REVIEW TIMELINE
1. When a child is placed in state custody, diligent searches for parents and relatives shall be conducted according to DCS policy by the DCS case manager prior to the child coming into custody if possible but no later than 30 days after the child comes into the custody of DCS. Compliance with policy and the results of the diligent search shall be documented in the case record.

2. In cases in which the parents have been indicated for severe abuse, a discussion with the DCS attorney shall take place within 45 days regarding whether to proceed immediately to termination of parental rights (TPR). The decision based on this discussion shall be documented in the child's case record.
3. The following provisions apply within three (3) months from when a child enters custody: Diligent searches for parents and relatives shall be performed and updated again in accordance with DCS policy. Compliance with policy and the results of the diligent search shall be documented in the case record. If a previously absent parent is located, reasonable efforts and engagement of that parent shall occur and shall be evidenced in a permanency plan. If a relative is located and the plan is changed to consider a goal of Exit Custody to Live with Relative, the relative shall be clearly identified and the requirements to exiting custody to live with that relative shall be clearly articulated in the permanency plan.
4. The following provisions shall apply when a child has been in custody for six (6) months: Diligent searches for parents and relatives shall be performed and updated in accordance with DCS policy. Compliance with policy and the results of the diligent search shall be documented in the case record.
 - a. If a previously absent parent is located, reasonable efforts and engagement of that parent shall occur and shall be evidenced in an updated permanency plan. If a relative is located and the plan is changed to consider a goal of Exit Custody to Live with Relative, the relative shall be clearly identified and the requirements to exiting custody to live with that relative shall be clearly articulated in the permanency plan.
 - b. The progress on existing permanency plans shall be reviewed with the DCS attorney to accomplish the following: (1) identify any case that is appropriate for TPR at six months and file the TPR; (2) consider cases in which the child is ready to return home or be placed in the custody of a relative and what legal steps need to be taken to achieve that permanency and what information the DCS attorney will need from the case manager to proceed legally; and (3) consider cases for possible legal grounds for termination in which the child is not ready to return home or be placed in the custody of a relative. A date certain by which the decision to go forward on a TPR shall be agreed upon and documented in the child's case file.

5. Within nine (9) months of a child entering state custody, the progress on existing permanency plans shall be reviewed with the DCS attorney for the following:
 - a. If the child is to return home or be placed in the custody of a relative, a timetable for unsupervised visits, trial home visits and hearings to be returned to the parent/relative shall be established.
 - b. If the child is not returning home, a timetable for providing documentation and information to the DCS attorney shall be established in order to file a TPR
 - c. If the decision to file a TPR has been made, and the child is not in a pre-adoptive home, the case manager along with the members of the Child and Family Team shall continue to search for relatives as placement options.
6. If return home or other permanent placement out of custody (relative or guardianship) without TPR is inappropriate at both 12 and 15 months, a TPR petition shall be filed no later than 15 months after the child is placed in DCS custody, unless there are compelling reasons, which shall be documented on the child's case file, for not doing so.

A review of every child's status shall be done on a quarterly basis by the regional leadership, including the DCS attorney, to determine whether the processes outlined herein are being followed in each case. Any case in which the processes are not being followed shall be restaffed to determine what actions need to be taken to best insure that permanency for that child is best achieved

7. The following series of time frames related to critical activities in the adoption process shall be followed as set forth in DCS policy:
 - a. Within 90 days of the permanency goal changing to adoption, the DCS attorney shall file the petition to terminate parental rights, unless there is a legal impediment to the filing, in which case the petition shall be filed as soon as possible once the legal impediment is resolved
 - b. DCS shall take all reasonable steps to ensure that the date of the trial court order granting full guardianship shall be within eight (8) months of the filing of the TPR.
 - c. DCS shall take all reasonable steps to ensure that the date of the finalization of the adoption or the date the child achieves

permanent guardianship shall be within twelve (12) months of full guardianship.

- d All children who have been in custody for 15 months or more with no TPR petition filed shall be reviewed by the Commissioner or his or her designee
- 8 DCS shall provide and maintain an approval process in which resource parents may be approved simultaneously as both foster and adoptive parents, so that whenever possible and appropriate, replacements can be minimized and resource parents shall be eligible to adopt the children for whom they have been providing foster care. A resource parent who has been providing appropriate foster care for a child for twelve months shall have a preference as an adoptive parent for that child, should the child become legally available for adoption.
- 9 If a child has been in custody 12 months with a dual or sole goal of adoption and the current resource family is not willing or appropriate to adopt and no adoptive placement has been identified, the Department shall convene a CFTM to write an Individualized Recruitment Plan and implement Individualized Recruitment.
- 10 Within 60 days of a child or youth entering full guardianship without a permanent family identified, the following steps will be taken to ensure permanency for the child or youth:
 - a The Child and Family Team shall submit the updated Individualized Recruitment Plan to the Finding Our Children Unconditional Supports (FOCUS) Team
 - b The FOCUS Team shall review the written Individualized Recruitment Plan. This plan shall include time frames, roles and responsibilities
 - c The FOCUS Team shall ensure the child or youth is registered on both REACT and ADOPT US Kids to help match children with potential families
 - d The FOCUS Team shall assist the regions with conducting archeological digs, family searches, interviews, and the building of a permanency-focused Child and Family Team as needed and appropriate.
 - e The FOCUS Team shall report and review trends that promote and prevent permanency for children.

- f. The FOCUS Team shall monitor the case progress
 - g. The FOCUS Team shall explore other options that could increase permanency for children, *e g* , partnerships with other state adoption programs
- 11. Once a permanent family has been identified for and with the child or youth, the following steps shall be taken to ensure timely permanency.
 - a. If the current resource family is adopting the child, DCS shall take all reasonable efforts to ensure that the adoption shall be completed within 90 days of the final and unappealable TPR provided the court did not issue any additional requests for information and the child has been in the home for the required time period.
 - b. If the adoptive placement is a new placement, DCS shall take all reasonable efforts to ensure that the adoption shall be completed within 60 days after the end of the 6-month placement period provided the court did not issue any additional requests for information.
- 12. DCS shall establish and maintain a system of post-adoptive placement services, to stabilize and maintain adoptive placements, to which all adoptive families shall be entitled, and about which all resource parents shall be notified at the earliest appropriate time.

IX RESOURCE PARENT RECRUITMENT, RETENTION, AND APPROVAL

- A. DCS shall establish and maintain a statewide, regional and local program of resource parent recruitment, in consultation with the technical assistance committee. Under Tennessee's dual approval process, both foster and adoptive parents are considered to be resource parents. DCS will ensure the availability of a toll free phone number in all regions of the state to ensure access to information concerning the availability of adoption information, training, the approval process and children available for adoption
- B. DCS will develop and maintain standards for the approval of resource families, to ensure that only appropriate families are approved, and will provide recruitment teams in each region. All such approval will be handled within the regions and field offices, which shall be adequately staffed and trained. DCS shall comply with federal law and shall utilize nationally accepted standards for the approval of resource parents, in consultation with the technical assistance committee. These standards shall apply to all approvals of resource parents, including those recruited and/or approved through any contract agencies, for any foster child in DCS custody

- C. DCS shall maintain a statewide and regional plan for resource parent training, in consultation with the technical assistance committee
- 1 All inquiries from prospective resource parents subsequent to the date of approval of the Stipulated Modifications to the Settlement Agreement, May 2007, shall be responded to within 7 days after receipt, and home studies shall be completed within 90 days of completing the approved training curriculum, unless the applicant defaults or refuses to cooperate.
 2. Training classes shall be available beginning every 30 days in every region with individualized training available as needed, at times convenient for resource parent applicants
 - 3 Identified staff persons will conduct exit interviews with all resource families who voluntarily resign as resource parents, and DCS shall issue annual reports on why resource families leave DCS and what steps are necessary to ensure their retention.
 - 4 To the extent possible, DCS shall maintain a practice of using existing resource families to recruit and retain new resource families, and shall maintain a statewide and regional support system for resource families.
 5. Beginning in fiscal year 2003 (*i.e.*, July 1, 2002), DCS shall provide adequate and appropriate respite services on a regional basis to resource parents with special needs children.
- D. By July 1, 2001, all resource parent payment room and board rates, including the rates of resource parents under the supervision of private agencies, will at a minimum meet USDA standards and will be adjusted annually to be no lower than USDA standards for the cost of raising children within this region. By July 1, 2001, relatives who are approved as resource parents shall receive the same resource parent payments as all other resource parents, and all resource payment room and board rates for relatives, including the rates of relative resource parents under the supervision of private agencies, will at a minimum meet USDA standards and will be adjusted annually to be no lower than USDA standards for the cost of raising children within this region
- E DCS shall provide specialized rates for DCS and provider resource parents providing services to special needs children. DCS shall provide and shall ensure that contract agencies provide any specialized training necessary for the care of special needs children. DCS also will continue to contract with private agencies for the provision of therapeutic foster care and medically fragile foster care. The details concerning the provision of foster care to special needs children will be presented to the technical assistance committee for consultation, including the issue of establishing minimum resource parent payment rates for categories of

special needs children. DCS will follow recommendations from the technical assistance committee for program modifications.

- F All potential adoptive families, including resource families caring for a child with special needs who has become legally available for adoption, shall be advised of the availability of the adoption subsidy. This notification shall be documented in the child's record, and the family's access to such subsidy shall be facilitated.
- G No resource family shall receive a foster child for placement until the family has received resource parenting training, which training shall be specified in consultation with the technical assistance committee. Each resource family shall receive additional annual resource parent training, which shall be specified in consultation with the technical assistance committee. DCS will provide for a waiver of approval of the requirements for relatives wishing to care for related children. Prior to the waiver of requirements, staff shall have completed a home visit and conducted a local criminal records check. In situations where approval for placement has been granted under a waiver, all remaining approval requirements, including the relatives' completion of approved foster parent training, shall be completed within 150 days of the placement.
- H In consultation with the technical assistance committee, DCS shall develop and implement a statewide program to ensure that the pool of resource families is proportionate to the race and ethnicity of the children and families for whom DCS provides placement and services, provided however that individual children shall be placed in resource families without regard to race or ethnicity.

X. STATEWIDE INFORMATION SYSTEM

- A DCS shall establish and maintain a statewide computerized information system for all children in DCS custody that is accessible in all regional offices and into which workers shall be able to directly enter data. The state-wide computerized information system shall ensure data integrity and user accountability. The system shall have the necessary controls to prevent the duplication of data and to reduce the risk of incorrect or invalid data.
- B This system shall include uniform data presentation including but not limited to AFCARS elements from DCS for all children in the plaintiff class. This system shall be audited periodically to ensure the accuracy and validity of the data in the system. This system shall provide an immediately visible "audit trail" to the data base administrators of all information entered, added, deleted or modified, and shall have necessary security to protect data integrity. This system shall be capable of providing system-wide reports. Within 6 months of the signing of this Settlement Agreement, DCS, with the direct involvement and approval of the technical assistance committee, and with the assistance of any management information systems expert(s) which the technical assistance committee determines appropriate, if any, shall undertake and complete an evaluation of the

following: (1) the data elements and uniformity of data presentation from DCS for children in the plaintiff class; (2) the audit processes of the data in the system utilized by DCS's current management information systems for children in the plaintiff class; (3) the "audit trail" in the system utilized by DCS's current management information systems for children in the plaintiff class; and (4) the system-wide reports that DCS's management information system is currently able to provide for children in the plaintiff class. The technical assistance committee shall make recommendations including timetables for implementation upon its review of the evaluation, which DCS shall implement.

- C. An intensive data clean-up process shall ensure the accuracy of all data, including but not limited to data on all individual children in the plaintiff class, in the statewide computerized information system. The data shall be audited no less frequently than every 12 months after the signing of this Settlement Agreement to ensure its ongoing accuracy.

XI. QUALITY ASSURANCE

- A. No later than January 1, 2002, DCS shall develop and implement a statewide quality assurance program, in consultation with and subject to the approval of the technical assistance committee, which shall be directed by a quality assurance unit. The quality assurance unit's functions will coordinate with and complement the independent Monitor's functions and the unit is intended to become a permanent unit of DCS. The quality assurance unit shall assure that, in addition to external case file reviews and monitoring, there is an internal method to perform special administrative case record reviews. The quality assurance unit shall track, coordinate and integrate all DCS quality assurance activities. The quality assurance unit shall provide critical attention to the follow-up needed to improve services and outcomes.
- B. This unit shall provide regular, periodic reports and shall also conduct specialized case record reviews on issues addressed by this Settlement Agreement, as well as other issues affecting the care of children.
- C. This unit shall be directed by a person with appropriate qualifications. The director of the quality assurance unit shall report directly to the Commissioner of DCS. The unit shall be adequately staffed and shall receive special training to fulfill its responsibilities.
- D. All reports provided by the quality assurance unit shall be public record, unless disclosure is prohibited by law. It is the intent of the parties to disclose all information that is not individually identifiable.
- E. In addition to reviews otherwise required, DCS shall establish a process for conducting special administrative case record reviews, in consultation with the technical assistance committee.

1. The purpose of the reviews is to provide necessary information to DCS management and to determine on an ongoing basis whether DCS is following the provisions of this Settlement Agreement, DCS policy and good social work practice.
2. The reviews will include specific processes and procedures for identifying workers or supervisors who, as a result of a quality assurance review, are in need of additional training, reassignment, or for whom termination may be appropriate.
3. At a minimum, the quality assurance unit shall, once every twelve months, review a statistically significant number of cases from each region in the state. These case file reviews shall include interviews and an independent assessment of the status of children in the plaintiff class. As part of this minimum annual case record review, the quality assurance unit, central office and other designated staff, in consultation and with the approval of the technical assistance committee, shall develop a measure of appropriate and professional decision-making, concerning the care, protection, supervision, planning and provision of services and permanency for children in the class. This measure shall be utilized in conjunction with the case file reviews to measure DCS's performance.
4. If significant problems are identified within a region, the quality assurance unit shall review a statistically valid sample of cases within each supervisory unit, to identify whether particular units have particular problems and, if necessary, whether administrative action is necessary.
5. Beginning July 1, 2002, the quality assurance unit will oversee special administrative reviews. The reviews will include the following categories:
 - a. All cases in which there have been three or more reports of neglect or abuse concerning a particular caretaker for a particular child in the plaintiff class.
 - b. All cases in which a child in the plaintiff class is the subject of substantiated or indicated abuse or neglect.
 - c. All cases within the preceding twelve months in which a child has been placed in three different placements excluding a return home.
 - d. All cases in which a child has been in more than two shelters or other emergency or temporary placements within the past 12 months, and in all cases in which a child has been in a shelter or other emergency or temporary placement for more than 30 days.

- e. All cases in which a child has had a permanency goal of return home for more than 24 months
- f. All cases in which a child has had a permanency goal of adoption for more than one year and has not been placed in an adoptive home.
- g. All cases in which a child has returned home and has reentered care more than twice and has a plan of return home
- h. All cases in which the date for the accomplishment of the permanency goal of reunification has been exceeded by 12 months

6. The parties to this Settlement Agreement are concerned with the national problem of the overrepresentation of African American children in child welfare systems. The parties to this Settlement Agreement are committed to ensuring that there is no disparate treatment of, or disparate impact on, African American children in the plaintiff class. Within 90 days of the date of this Settlement Agreement, DCS shall retain an independent expert, jointly agreed to by the parties (or, if the parties cannot agree then appointed by the technical assistance committee), to conduct a statewide evaluation of the Tennessee foster care program. The evaluation shall determine whether there are any disparities concerning the placement, services and treatment provided to African American children in foster care and their families, the recruitment and retention of foster and adoptive families, as well as the foster parent payments provided to foster parents for the care of African American children in foster care. The evaluation and a report of its findings and recommendations shall be presented to the Commissioner and the Monitor no later than 12 months from the date the expert is retained. The report shall include a plan and timetables within which the recommendations shall be implemented, beginning immediately after the completion of the evaluation. DCS shall implement the recommendations in the report.

7. The quality assurance unit shall issue reports on a periodic basis, at least every six months. These reports shall be presented to the Commissioner of DCS and to the Monitor. In the event that the DCS Commissioner does not take appropriate action on any of the findings in the quality assurance report, the Court Monitor may recommend such action, or plaintiffs may seek an order from the court directing that further action be taken, pursuant to the enforcement procedures set out in this Settlement Agreement.

F. Within 90 days after the date of this Settlement Agreement, DCS, in conjunction with designated field and central office staff, shall begin the specialized review of all foster children in DCS custody who entered DCS custody prior to October 1,

1998. The permanency plan for each child shall be reviewed and a determination made regarding the appropriateness of the goal, the barriers to permanency and the services in place to move the child to permanency. This review will include interviews including relevant personnel and an individualized written corrective action plan including, if necessary, a new permanency plan. These special reviews shall occur at least once every three months until permanency is achieved for each child.

G Within 90 days after the entry of this Settlement Agreement, DCS shall have a process in place under which it shall report on and immediately take all necessary action on the status of children in the following categories:

1. Children in one or more emergency, temporary or shelter facilities for more than 45 days within the last 12 months;
2. Foster children in DCS physical or legal custody who are currently or who have been placed in jail, detention or other correctional facilities and who have not been arrested on a delinquency charge, within the past 12 months.
3. Children in foster homes or facilities that exceed their licensed capacities, or children in foster homes or facilities that do not have a valid license.
4. Children with a permanency goal of return home that has remained in effect for more than 22 months.
5. Children who do not have a permanency plan.
6. Children for whom the permanency goal has not been updated for more than 12 months.
7. Children with a sole permanency planning goal of adoption for more than 12 months and for whom a petition to terminate parental rights has not been filed.

XII. SUPERVISION OF CONTRACT AGENCIES

- A All contract agencies which provide placements or services to children in the plaintiff class shall only do so pursuant to annual performance-based contracts issued by DCS. Such contracts shall be developed by DCS within 90 days after the approval of this Settlement Agreement. These contracts shall be entered into in the next contracting cycle.
- B DCS shall only contract with those agencies that meet the provisions of this Settlement Agreement that specifically apply to those agencies and that meet state standards governing the operation of child care facilities. These state standards

shall reflect reasonable professional standards. DCS shall not contract with any agency that has not been licensed by the State to provide placements for children in the plaintiff class.

- C. DCS shall expand the staff of the current licensing unit to allow for increased monitoring and oversight responsibilities of the contract agencies. All contract agencies providing placements for children in the plaintiff class shall be inspected annually by DCS licensing staff in an unannounced visit, and DCS shall determine in a written report whether the agency complies with state licensing standards. The licensing unit shall collaborate with the DCS quality assurance unit and the central office resource management unit to determine agency compliance with the terms of this Settlement Agreement.
- D. Alleged abuse or neglect of children placed with a contract agency must be reported by the agency to the DCS child protective services unit in the county in which the facility is located. Additionally, alleged abuse or neglect concerning children placed with any contract agency shall be reported to the central office resource management unit and the quality assurance unit. DCS shall incorporate these reports, and their findings, into the annual review of each contract agency. DCS will evaluate carefully those reports and consider prior corrective actions, the history of the agency and determine if there are serious problems that place children at serious risk of harm and prevent further contracts from being issued.

XIII. FINANCIAL DEVELOPMENT

- A. DCS shall develop and implement policies and procedures by which it can maximize funds available to it through Titles IV-B and IV-E of the Adoption Assistance and Child Welfare Act of 1980. The technical assistance committee shall evaluate the work of any current consultants retained by DCS to develop and implement policies and procedures under the terms of this provision, and shall make recommendations on the continued use of the current consultants and/or the use of other consultants. The technical assistance committee shall also evaluate the current policies and procedures in place and in development, and make any recommendations to modify these policies and procedures. DCS shall implement any recommendations made by the technical assistance committee.
- B. All funds remitted for children in the plaintiff class to the State of Tennessee by the United States Department of Health and Human Services, as described above, shall be committed exclusively to the provision of services and staff serving the children in the class covered by this Settlement Agreement. It is the intent of the State that dollars committed to DCS for the provision of services and resources to benefit children in the class and children at risk of entering the class shall not be decreased if efforts to maximize federal dollars result in additional federal funding. DCS shall establish a mechanism acceptable to the Monitor for reporting the budgeting of both federal and state dollars. Nothing in this

provision shall reduce the defendants' financial obligations to comply with the terms of this Settlement Agreement.

C FINANCIAL RECORD KEEPING

1. When a child in the plaintiff class is removed from a DCS family foster or adoptive home, the DCS case manager shall, within 7 days, enter this status change and update placement information directly into the Children's Plan Financial Information System (ChipFins) or any comparable database used for this purpose.
2. DCS shall maintain an adequate system for identifying and collecting overpayments to foster care and adoption assistance parents
3. DCS shall maintain an adequate system relating to cash receipting procedures

XIV. TECHNICAL ASSISTANCE COMMITTEE

- A A Technical Assistance Committee of five neutral experts in the child welfare field has been selected to assist the state in meaningful implementation of the requirements of this Settlement Agreement. The technical assistance committee will have the ability to consult and involve other experts as necessary. John Mattingly, of the Annie E. Casey Foundation, has agreed to convene the technical assistance committee and provide guidance and leadership, as he is available. Should any of the five technical assistance committee members become unavailable, the remaining technical assistance committee members will be authorized, but not required, to select replacement neutral child welfare experts to serve on the technical assistance committee. Appointment of additional technical assistance committee members shall require the consent of the parties and shall be made in a manner appropriate to meet DCS' evolving technical assistance needs. In no event shall the number of standing technical assistance committee members be less than four or more than six.
- B The role of the technical assistance committee is to advise DCS on the child welfare policy, management and practice issues delineated in this Settlement Agreement, as well as other issues which DCS or the technical assistance committee agree to consult on. It is understood by the parties and the technical assistance committee that the primary function of the technical assistance committee is advisory; however, DCS shall implement the technical assistance committee's recommendations in all areas so specified in this Settlement Agreement.
- C When time frames are specified for the completion of an evaluation or review by DCS, the technical assistance committee is authorized, after consultation with both parties, to give time-limited extensions for completion of the evaluation or

review. The time frames stipulated for implementation of any technical assistance committee recommendations in this Settlement Agreement shall remain in place, and while the technical assistance committee is not authorized to extend implementation time periods for recommendations under this Settlement Agreement, the technical assistance committee is authorized to advise the parties when extensions may be needed.

XV. MONITORING

- A DCS shall enter into a contract consistent with the terms of this Settlement Agreement with an independent and neutral party who will monitor compliance with the terms of this Settlement Agreement. The TAC will function as the independent monitor, in the place of Sheila Agneil. The TAC shall continue in the role of independent monitor at least for the duration of the redefined Period III, plus an additional three month Continuation Period. Prior to the conclusion of the Continuation Period, the parties, in consultation with the TAC, will determine whether it is advisable for the TAC to continue in the role of independent monitor following the expiration of the Continuation Period or whether a separate independent monitor should be retained to fulfill the responsibilities described in this section of the Settlement Agreement. The TAC shall report on performance under the entire Settlement Agreement after the end of the redefined Period III. The TAC shall also report on performance during the redefined Period III.
- B The state shall provide to the independent Monitor all information necessary to fulfill the Monitor's obligations, including access to documents and personnel, and shall where appropriate facilitate and ensure access to documents and personnel from the contract agencies involved in the care of the plaintiff class members. The State agrees to provide the TAC with free access to all individuals within the Department, any successor agencies, and other persons within the Executive Branch, as the TAC deems necessary; to assist the TAC in gaining free access to other stakeholders in the child welfare system (including but not limited to the staff of contract providers); and to provide the TAC with free access to all documents and data it deems relevant to its work. The members of the TAC have agreed to respect the confidentiality of all information related to individually identifiable clients of DCS, subject to applicable law. The members of the TAC have further agreed to respect the confidentiality of any documents that are in draft form or otherwise privileged.
- C The technical assistance committee and the Monitor will, within their respective responsibilities, work together and share information so they can remain informed about the operations of the agency. During the initial months of this Settlement Agreement, DCS will coordinate an orientation program for the technical assistance committee and the Monitor. DCS will provide the orientation to the technical assistance committee and the Monitor concurrently.

- D The Monitor shall have the authority to require reports on the status of the implementation of any and all requirements of this Settlement Agreement, the status of foster children in DCS custody, and compliance with this Settlement Agreement
- E In order to avoid duplication and to build capacity within the agency, the Monitor will look first to DCS data and to data and reports created and maintained by the DCS Quality Assurance Unit. However, the Monitor will have the authority to require reports and to create new reports concerning the status of foster children in DCS custody and concerning compliance with this Settlement Agreement, to the extent the Monitor deems necessary.
- F Plaintiffs shall have access from the Monitor to all information made available to the Monitor, and to all other information necessary to ensure compliance and enforcement of this Settlement Agreement. If plaintiffs become aware of information related to possible non-compliance about which they wish to investigate, plaintiffs shall notify the Monitor of the matter as part of plaintiffs' investigation, without any limitation to plaintiffs' right to access all information necessary to ensure compliance and enforcement of this Settlement Agreement. Plaintiffs shall not initiate case file reviews unless necessary in connection with a motion for non-compliance or enforcement.
- G All reports made available pursuant to this Settlement Agreement shall be public information, provided that if any report contains, or is requested by the Monitor to contain, individually identifiable information, such individually identifiable information shall not be made public. All formal reports of the TAC, and the attachments thereto, will be public documents, except that the TAC agrees that any individually identifiable information (as that term is understood under Tennessee law) and any other confidential information protected from disclosure by law, including without limitation any protected health information and/or individually identifiable health information (as those terms are understood under the Health Insurance Portability and Accountability Act of 1998 (HIPAA)) will be redacted or otherwise removed from any public report
- H Defendants shall continue to fund the TAC's monitoring and technical assistance functions. The Annie E. Casey Foundation ("the Foundation") has supported funding of the TAC since the TAC's inception. The parties expect the Foundation will continue funding through calendar year 2008 at a reduced level. Defendants shall make up any such reductions in funding. The TAC shall exercise final authority over its use and expenditure of monitoring and technical assistance funding.
- I The TAC shall, prior to the implementation of the *Brian A.* implementation plan (Implementation Plan), provide monitoring necessary to measure defendants' compliance with the Settlement Agreement. This shall include a case record review, to be initiated as soon as practicable, provided however that the TAC, in

consultation with the plaintiffs, shall design both the size and scope of the case record review so as to measure those Settlement Agreement provisions that have a significant impact on the plaintiff class members. In addition, the TAC shall receive and to the extent appropriate analyze data and reports from the State that have previously been provided to the Monitor.

- J. The TAC shall monitor the defendants' performance under the Settlement Agreement and shall also monitor the extent to which the defendants are implementing the Implementation Plan. The TAC shall develop a monitoring plan no later than 30 days after the finalization of the Implementation Plan.
- K. The intent of the parties is for the Monitor to develop a plan that transfers the primary monitoring function to the Quality Assurance Unit after the termination of this Settlement Agreement.

XVI. OUTCOME AND PERFORMANCE MEASURES

This section lists the child welfare outcomes and performance indicators related to practice improvements. Performance targets are listed for three time periods for the child welfare outcomes and the practice performance indicators. Period 1 covers 18 months beginning on September 1, 2001. Period II began on March 1, 2003, and ended on November 31, 2005, and Period III began on December 1, 2005, and ends on June 30, 2008.

A Child Welfare Outcomes

The child welfare outcomes will be measured using a combination of longitudinal data analysis and point in time data analysis. The Monitor shall use appropriate and adequate means to determine whether defendants have achieved the following levels of compliance with the following requirements, by measuring defendants' achievement of these requirements as soon as possible after the time periods specified.

1 Reunification

Period I

At least 70% of children entering care after September 1, 2001, who are reunified with their parents or caretakers at the time of discharge from custody, shall be reunified within 12 months of the latest removal date.

Period II

At least 75% of children entering care after September 1, 2001, who are reunified with their parents or caretakers at the time of discharge from custody, shall be reunified within 12 months of the latest removal date.

Of the remaining children (i.e. those who are not reunified with their parents or caretakers at the time of discharge from custody within 12 months of the latest removal date), 60 % shall be reunified within 24 months of the latest removal date

Period III

At least 80% of children entering care after September 1, 2001, who are reunified with their parents or caretakers at the time of discharge from custody, shall be reunified within 12 months of the latest removal date

Of the remaining children (i.e. those who are not reunified with their parents or caretakers at the time of discharge from custody within 12 months of the latest removal date), 75 % shall be reunified within 24 months of the latest removal date.

- 2 Adoption Finalization (point in time measure) Adoptive placement is defined as the date the adoption contract is signed

Period I

At least 70% of adoptions that become final within the reporting period shall have become final within 6 months of the adoptive placement.

Period II

At least 80% of adoptions that become final within the reporting period shall have become final within 6 months of the adoptive placement.

Period III

For children whose parental rights have been terminated or surrendered during the reporting period (i.e., those in full guardianship), 75% shall have their adoption finalized or permanent guardianship transferred within 12 months of being in full guardianship.

- 3 Number of placements (measures in this section apply to children in care at any time during the reporting period and children still in care at the end of the reporting period). Placements made prior to September 1, 2001, shall not be counted in this measure. For children requiring emergency hospitalization who return to their immediately prior placement, that return shall not count as an additional placement

Period I

At least 60% of children in care at any time during the reporting period shall have had two or fewer placements not including temporary breaks in placement for children who run away or require emergency hospitalization not exceeding 10 days

Period II

At least 75% of children in care at any time during the reporting period shall have had two or fewer placements not including temporary breaks in placement for children who run away or require emergency hospitalization not exceeding 10 days

Period III

At least 90% of children in care at any time during the reporting period shall have had two or fewer placements within the previous 12 months in custody, not including temporary breaks in placement for children who run away or require emergency hospitalization not exceeding 30 days

At least 85% of children in care at any time during the reporting period shall have had two or fewer placements within the previous 24 months in custody, not including temporary breaks in placement for children who run away or require emergency hospitalization not exceeding 30 days

- 4 Length of time in placement. This measure shall include all children who entered care after October 1, 1998 and either left care at any time during the reporting period or are still in care at the end of the reporting period. Measurement shall exclude children still in care at the end of the reporting period who are in a long term relative placement for whom a long term placement agreement has been signed, and shall exclude children in permanent foster care.

Period I

At least 60% of children in placement shall have been in placement for two years or less.

No more than 25% of children in placement shall have been in placement for between two and three years.

No more than 15% of children in placement shall have been in placement for over three years

Period II

At least 70% of children in placement shall have been in placement for two years or less

No more than 18% of the children in placement shall have been in placement for between two and three years

No more than 12% of the children in placement shall have been in placement for more than three years.

Period III

At least 75% of the children in placement shall have been in placement for two years or less

No more than 20% of the children in placement shall have been in placement for between 2 and 3 years.

No more than 5% of the children in placement shall have been in placement for more than 3 years

5. Reentry into placement

Period I

Measures in this section apply to children who are discharged from foster care at any time up to the end of the reporting period. For each child, reentry shall be determined from the date of discharge for a period of 12 months. The overall performance percentage of compliance on this measure for this period shall be calculated 12 months after the end of Period I.

No more than 8% of the children who are discharged from foster care at any time up to the end of the reporting period shall reenter custody within 12 months after the discharge date from the prior custody episode

Period II

Measures in this section apply to children discharged from foster care at any time during calendar year 2005 (January 1, 2005 through and including December 31, 2005). For each child, reentry shall be determined from the date of discharge for a period of 12 months

No more than 8% of the children who are discharged from foster care at any time during calendar year 2005 shall reenter custody within 12 months of discharge from the prior custody episode.

Period III

Measures in this section apply to children who are discharged from foster care at any time during the fiscal year 2007 (July 1, 2006 through and including June 30, 2007). For each child, reentry shall be determined from the date of discharge for a period of 12 months.

No more than 5% of children who are discharged from foster care at any time during fiscal year 2007 shall reenter custody within 12 months after the discharge date from the prior custody episode.

- 6 Adoptive placement disruption (defined for Periods I and II as occurring between the signing of the adoption contract and finalization). Measures in this section apply to children who were placed in an adoptive home during the reporting period.

Period I

No more than 10% of adoptive placements that occurred in the reporting period shall have disrupted

Period II

No more than 6% of adoptive placements that occurred in the reporting period shall have disrupted

Period III

Adoption placement disruption for this reporting period is defined as occurring between the signing of an "intent to adopt" agreement and finalization. Measures for this reporting period apply to children who were placed in an adoptive home during the reporting period

No more than 5% of adoptive placements that occurred in the reporting period shall have disrupted

7. Achievement measures upon discharge (this measure shall exclude children on runaway status at the time they reach the age of 18).

Period I

At least 80% of the children who are discharged from foster care during the reporting period because they reached the age of 18 shall have at least one of the following apply at the time of discharge: earned a GED, graduated from high school, enrolled in high school or college or alternative approved educational program for special needs children, currently enrolled in vocational training, or employed full time.

Period II

At least 85% of the children who are discharged from foster care during the reporting period because they reached the age of 18 shall have at least one of the following apply at the time of discharge: earned a GED, graduated from high school, enrolled in high school or college or alternative approved educational program for special needs children, currently enrolled in vocational training, or employed full time.

Period III

At least 90% of the children who are discharged from foster care during the reporting period because they reached the age of 18 shall have at least one of the following apply at the time of discharge: earned a GED, graduated from high school, enrolled in high school or college or alternative approved educational program for special needs children, currently enrolled in vocational training, or employed full time.

B Performance Indicators / Practice.

The Monitor shall use appropriate and adequate means to determine whether defendants have achieved the following levels of compliance with the following requirements, by measuring defendants' achievement of these requirements as soon as possible after the time periods specified. The compliance levels articulated in this section shall be enforceable at the levels indicated at the end of periods one, two, and three respectively. However, after March 1, 2002, plaintiffs may seek enforcement of any of these standards in this section at any time upon a showing of defendants' gross deviation from any of these standards.

1 Parent-child visiting

a. The standard:

For children in the plaintiff class with a goal of reunification, parent-child visiting shall mean a face-to-face visit with one or

both parents and the child which shall take place for no less than one hour each time (unless the visit is shortened to protect the safety or well-being of the child as documented in the child's case record). The visit shall take place in the child's home if possible or in as homelike a setting as possible, or for longer as otherwise required by the child's permanency plan and reasonable professional standards. This standard does not apply to situations in which there is a court order prohibiting visitation or limiting visitation to less frequently than once every month. The child's case manager may consider the wishes of a child (generally older adolescents) and document in the case file any deviation from usual visitation requirements.

- b. Measurement periods / compliance levels
This measure applies to children with a goal of reunification.

Period I

20% of all class members with a goal of reunification shall be visited at least once every two weeks.

For the remaining class members with a goal of reunification who are not visited once every two weeks, at least 75% shall be visited once a month.

Period II

30% of all class members with a goal of reunification shall be visited at least once every two weeks.

For the remaining class members with a goal of reunification who are not visited once every two weeks, at least 70% shall be visited once a month.

Period III

50% of all class members with a goal of reunification shall be visited at least twice per month.

For the remaining class members with a goal of reunification who are not visited twice per month, at least 60% shall be visited once a month.

2 Sibling visiting

a. The standard:

For children who are not placed in the same home or facility as their siblings there shall be face to face visits between the child and any of his or her sibling(s) who are in the plaintiff class in the most home-like setting available. The visits shall take place in the parent's home, the foster home in which one of the siblings is living, the home of a relative, or the most home-like setting otherwise available and shall occur as frequently as is necessary and appropriate to facilitate sibling relationships but no less frequently than once each month. The visiting shall take place for no less than one hour each time (unless the visit is shortened to protect the safety or well-being of the child as documented in the child's case record), or more as otherwise required by the child's permanency plan and reasonable professional standards. This standard does not apply to situations when there is a court order prohibiting visitation or limiting visitation to less frequently than once every two months.

b. Measurement periods / compliance levels

Period I

75% of all children in the class in placement who have siblings with whom they are not living shall visit with those siblings at least once a month.

Of the remaining children in the class in placement who have siblings with whom they are not living and with whom they did not visit at least once a month, at least 85% shall visit at least once every two months.

Period II

85% of all children in the class in placement who have siblings with whom they are not living shall visit with those siblings at least once a month.

Of the remaining children in the class in placement who have siblings with whom they are not living and with whom they did not visit at least once a month, at least 90% shall visit at least once every two months

Period III

90% of all children in the class in placement who have siblings with whom they are not living shall visit with those siblings at least once a month.

Of the remaining children in the class in placement who have siblings with whom they are not living and with whom they did not visit at least once a month, at least 90% shall visit at least once every two months.

3. Placing siblings together

a. The standard:

Siblings who enter placement at or near the same time shall be placed together, unless doing so is harmful to one or more of the siblings, one of the siblings has such exceptional needs that can only be met in a specialized program or facility, or the size of the sibling group makes such placement impractical notwithstanding diligent efforts to place the group together. If a sibling group is separated at the initial placement, the case manager shall make immediate efforts to locate or recruit a family in whose home the siblings can be reunited. These efforts will be documented and maintained in the case file.

b. Measurement period/ compliance levels

Period I

At least 70% of all siblings who entered placement during the reporting period shall be placed together in the same foster home or other placement.

Period II

At least 80% of all siblings who entered placement during the reporting period shall be placed together in the same foster home or other placement.

Period III

At least 85% of all siblings who entered placement during the reporting period shall be placed together in the same foster home or other placement.

4. Filing a petition to terminate parental rights

a. The standard:

The process of freeing a child for adoption and seeking and securing an adoptive placement shall begin as soon as the child's sole permanency goal becomes adoption, but in no event later than is required by federal law. The adoption process shall begin immediately for all children for whom a diligent search has failed to locate the whereabouts of either parent and for whom no appropriate family member is available to assume custody.

b. Measurement period/ compliance levels

Period I

At least 75% of children in the class with a sole permanency goal of adoption during the reporting period shall have a petition to terminate parental rights filed within 6 months of when goal was changed to adoption.

Period II

At least 60% of children in the class with a sole permanency goal of adoption during the reporting period shall have a petition to terminate parental rights filed within 3 months of when goal was changed to adoption.

Of the remaining children in the class with a sole permanency goal of adoption during the reporting period who did not have a petition to terminate parental rights filed within 3 months, at least 50% shall have a petition for termination of parental rights filed within 6 months of when the goal was changed to adoption.

Period III

At least 65% of children in the class with a sole permanency goal of adoption during the reporting period shall have a petition to terminate parental rights filed within 3 months of when goal was changed to adoption.

Of the remaining children in the class with a sole permanency goal of adoption during the reporting period who did not have a petition to terminate parental rights filed within 3 months, at least 75% shall have a petition for termination of parental rights filed within 6 months of when the goal was changed to adoption.

5. Placement in an adoptive home

a. The standard:

Once there has been a termination of parental rights for a child in the plaintiff class, an adoptive home shall be identified and an adoption contract shall be signed for that child as soon as possible.

b. Measurement period/ compliance levels

Period I

At least 75% of children freed for adoption during the reporting period (for whom termination of parental rights was obtained) shall have an adoptive home identified and an adoption contract signed within 12 months of the termination of parental rights.

Period II

At least 45% of children freed for adoption during the reporting period (for whom termination of parental rights was obtained) shall have an adoptive home identified and an adoption contract signed within 6 months of the termination of parental rights.

Of the remaining children in the class who have been freed for adoption during the reporting period (for whom termination of parental rights was obtained) who have not had an adoptive home identified and an adoption contract signed within 6 months, at least 70% shall have an adoptive home identified and an adoption contract signed within 12 months of the termination of parental rights.

Period III

The standard for this reporting period: Once there has been a termination of parental rights or surrender (i.e., full guardianship) for a child in the plaintiff class, an adoptive home shall be identified and an "intent to adopt" agreement signed as soon as possible.

At least 65% of children freed for adoption during the reporting period (for whom termination of parental rights was obtained) shall have an adoptive home identified and an "intent to adopt" agreement signed within 6 months of full guardianship.

Of the remaining children in the class who have been freed for adoption during the reporting period (for whom termination of parental rights was obtained) who have not had an adoptive home identified and an "intent to adopt" agreement signed within 6 months, at least 85% shall have an adoptive home identified and an "intent to adopt" agreement signed within 12 months of full guardianship.

6. Goal of permanent or long term foster care

a The standard:

No child shall be assigned a permanency goal of permanent foster care unless a) the child is at least 15 years old; b) DCS has made every reasonable effort, documented in the record, to return the child home, to place the child with appropriate family members or to place the child for adoption; and c) the person to whom DCS proposes to assign permanent caretaker status has demonstrated a commitment to assuming long-term responsibility for the child.

b. Measurement period/ compliance levels

Period I

No more than 10% of children in the plaintiff class shall have a goal of permanent or long term foster care

Period II

No more than 8% of children in the plaintiff class shall have a goal of permanent or long term foster care.

Period III

No more than 5% of children in the plaintiff class shall have a goal of permanent or long-term foster care.

7. In-region placements

a The standard:

All children shall be placed within their own region or within a 75 mile radius of the home through which the child entered custody, unless the child's needs are so exceptional that they cannot be met by a family or facility within the region, or the child needs re-placement and the child's permanency goal is to be returned to his

parents who at that time reside out of the region or the child is to be placed with a relative out of the region, under which circumstances the regional administrator or the team coordinator shall be specifically required to so certify in writing, based on his or her own examination of the circumstances

b. Measurement period/ compliance levels

Period I

At least 70% of children in the class shall be placed within the region from which they entered placement or within a 75 mile radius of the home from which the child entered custody.

Period II

At least 80% of children in the class shall be placed within the region from which they entered placement or within a 75 mile radius of the home from which the child entered custody

Period III

At least 85% of children in the class shall be placed within the region from which they entered placement or within a 75 mile radius of the home from which the child entered custody.

C. Performance Indicators Related to Administration

DCS shall complete the following by the dates provided below.

1. On or before July 1, 2001, DCS shall designate a Director of Training as contemplated in section V. E
2. On or before October 1, 2001, DCS shall designate a Director of Quality Assurance as contemplated in section XI. C.
3. On or before January 1, 2002, DCS shall submit to the technical assistance committee an employee incentive and stipend plan as described in section V.C.
4. On or before September 1, 2001, DCS shall submit to the technical assistance committee a plan for making legal risk placements as described in section VIII B.
5. On or before January 1, 2002, DCS shall install a toll free number designated to provide adoption information as described in section IX.A.

6. On or before July 1, 2001, every region will submit an adoptive and foster parent recruitment plan as described in section IX.A.

XVII. MODIFICATION

This Settlement Agreement may be modified on the consent of the parties or upon appropriate motion filed with the court.

XVIII. ENFORCEMENT, TERMINATION AND EXIT

A. General Principles Guiding Enforcement

1. All of the provisions in this Settlement Agreement are separately and independently enforceable, as set forth in this Settlement Agreement. Plaintiffs agree not to seek judicial relief for isolated, technical, or de minimis violations of this Settlement Agreement, or for violations relating solely to an individual child (other than an individual child who is a named plaintiff in this litigation)
2. Unless otherwise specifically stated in a provision of this Settlement Agreement, all provisions of this Settlement Agreement shall apply to all children in the class, regardless of whether they are in a DCS or contract agency placement, and regardless of the type of placement.
3. Nothing in this Settlement Agreement shall limit the right of the plaintiffs to seek from the court appropriate relief to remedy any violations of the Settlement Agreement

B. Dispute Resolution

1. Solely with regard to the provisions contained in Section XVI(A) above regarding outcome measures, the following enforcement process will apply: If DCS fails to meet the performance standard for any outcome measure during or at the end of the specified compliance period, as determined by the Monitor, prior to seeking judicial relief, plaintiffs will submit the non-compliance issue to the technical assistance committee. Within 45 days of that submission, DCS, after consultation with the technical assistance committee and plaintiffs, will present a corrective action plan designed to enable DCS to meet the performance standard within a specified time period. The technical assistance committee will review the plan and recommend any changes it deems necessary. DCS shall revise the plan based on the recommendations of the technical assistance committee. Upon the technical assistance committee's final approval of the plan, the parties agree to be bound by the corrective action plan. Defendants' failure to adopt and implement the corrective action

plan within the time period specified constitutes prima facie evidence of noncompliance, for which plaintiffs may seek appropriate legal remedies.

2. With regard to all provisions of this Settlement Agreement, with the exception of the provisions in Section XVI (A) regarding outcome measures for which the enforcement process is set out above in XVIII (B)(1), the following enforcement process shall apply:
 - a. Prior to seeking judicial remedies for non-compliance, plaintiffs shall notify the defendants in writing if they believe defendants are out of compliance with any provisions of this Settlement Agreement.
 - b. The parties shall engage in a 30 day period of good faith negotiations in an effort to resolve the non-compliance issues and shall utilize the Monitor to facilitate this process
 - c. Plaintiffs may bypass the dispute resolution provisions of this Settlement Agreement and seek immediate relief in court if plaintiffs clearly demonstrate that DCS action or inaction in contravention of this Settlement Agreement caused or is likely to cause an immediate and substantial risk of serious harm to children in the class.
 - d. After the completion of Period II, (36 months from the signing of the Settlement Agreement), if defendants believe that they are in substantial compliance with specific provisions of this Settlement Agreement, they may seek a diminution of monitoring of any or all of those specific provisions from the Monitor. If plaintiffs do not oppose that application, the Monitor may diminish monitoring of those provisions, but only to a level sufficient to determine whether compliance continues for the duration of this Settlement Agreement. If plaintiffs oppose the diminution of monitoring, plaintiffs shall seek a finding of non-compliance with the relevant provisions from the court, and the court shall determine whether non-compliance exists. If the court finds non-compliance, the monitoring of the relevant provisions shall not be diminished. If the court finds compliance, monitoring shall be diminished as determined by the Monitor. However, even in the event that monitoring of any particular provision is diminished, pursuant to this paragraph, based on an agreed-upon or court-determined finding of substantial compliance, court jurisdiction to enforce compliance with that and all provisions of this Settlement Agreement shall continue for the duration of the entire Settlement Agreement.

C. Termination and Exit

1. Only after the completion of Period III as defined in Section XVI, Defendants may seek the termination of court jurisdiction over any specific provision in this Settlement Agreement, as follows:
 - a. Defendants may seek the termination of court jurisdiction over any specific provision of this Settlement Agreement if the Monitor finds substantial compliance with the provision at the end of Period III. If plaintiffs do not agree that court jurisdiction should be terminated, defendants may seek a ruling terminating court jurisdiction over that provision from the court. The parties intend that the court shall grant termination of jurisdiction over the provision only if (1) defendants can prove substantial compliance with the provision; AND (2) if plaintiffs fail to demonstrate that the provision is directly related to defendants' achievement of compliance with other provisions of this Settlement Agreement.
 - b. If the Monitor finds non-compliance with the provision at the end of Period III, and the Monitor subsequently finds sustained compliance with the provision for two consecutive six-month periods after the end of Period III, defendants may seek a ruling terminating court jurisdiction over that provision from the court. The parties intend that the court shall grant termination of jurisdiction over the provision only if defendants can prove substantial compliance with the provision AND if plaintiffs fail to demonstrate that the provision is directly related to defendants' achievement of compliance with other provisions.
2. This Settlement Agreement shall remain in full force and effect until at least the conclusion of Period III. Following the conclusion of Period III, and after the Monitor submits a report on compliance levels after Period III, the defendants may seek a ruling from the court for the full termination of court jurisdiction over this Settlement Agreement based on achievement of the compliance levels specified, so long as there are no pending non-compliance motions and no other pending remedial court orders based on non-compliance with any provisions of this Settlement Agreement, unless plaintiffs can demonstrate that continued court jurisdiction is necessary to accomplish the purposes of this Settlement Agreement.

XIX NAMED PLAINTIFFS

- A. The Commissioner of DCS shall monitor the individual cases of the named plaintiffs in this action, to ensure that all necessary and appropriate plans are

developed and implemented and that all necessary placements and services are provided.

- B The parties shall attempt to agree on necessary services and plans for the named plaintiffs, within 30 days after the signing of this Settlement Agreement.
- C The Monitor shall begin overseeing the cases of the named plaintiffs within 45 days after the signing of this Settlement Agreement and continuing for so long as the named plaintiffs remain in defendants' custody. If the parties cannot agree on any aspect of the care of any of the named plaintiffs, including placements, services, treatment or plans, the Monitor shall have final decision-making authority. The Monitor shall have the authority to consult with the technical assistance committee on particular issues pertaining to the named plaintiffs, as necessary.
- D The Commissioner of DCS shall ensure that plaintiffs' counsel receive documents and reports every 60 days concerning the status of the named plaintiffs, services that have been provided, and implementation of plans, so long as the named plaintiffs remain in defendants' custody. Plaintiffs' counsel shall receive immediate notification of any significant events or developments concerning the named plaintiffs, including but not limited to any change in placement, services, permanency goal or permanency plans; any reports of any incident of abuse or neglect involving any of the named plaintiffs or occurring at the placement where any of the named plaintiffs are currently placed; any serious incident (requiring generation of a serious incident report as defined in DCS policy as it exists on the date of the signing of this Settlement Agreement) involving any of the named plaintiffs or occurring at the placement where any of the named plaintiffs are placed.

XX ATTORNEYS FEES AND EXPENSES

As prevailing parties in this lawsuit, plaintiffs are entitled to recover and reserve the right to seek reasonable attorneys fees and expenses up to the date of this Settlement Agreement and for all subsequent activities in this lawsuit to the extent authorized pursuant to 42 U S C §1988.

DATED: May 11, 2007
Nashville, TN

SO ORDERED:


HONORABLE TODD J. CAMPBELL, U S D J DATE

APPROVED FOR ENTRY:

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