

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ANDREW C., by Next Friend Gregory C.)	
Elliott; MATTHEW R. by Next Friend)	
Elaine Macintosh; and SEAN M. by Next)	
Friend Elaine Macintosh; for themselves)	
and those similarly situated,)	
)	
Plaintiffs)	
)	
v.)	C.A. No. 1:07-cv-241-WES-PAS
)	
GINA M. RAIMONDO, in her official)	
capacity as Governor of the State of Rhode)	
Island; ERIC J. BEANE, in his official)	
capacity as Secretary of the Executive Office)	
of Health & Human Services; and)	
TRISTA PICCOLA, in her official capacity)	
as Director of the Department of Children,)	
Youth & Families,)	
)	
Defendants.)	
)	

AGREEMENT

A. INTRODUCTION

Section 1. Preamble

Whereas, on June 28, 2007, Plaintiffs commenced this lawsuit naming the Governor of the State of Rhode Island, the Secretary of the Executive Office of Health and Human Services, and the Director of the Rhode Island Department of Children, Youth and Families (“DCYF”) as State Defendants, all in their official capacities. The case was filed on behalf of a putative class of all children who are or will be in the legal custody of DCYF due to a report or suspicion of abuse or neglect, alleging violations of their constitutional rights to substantive due process and familial association, and their alleged statutory rights to adequate case plans and foster care maintenance payments.

Whereas, the lawsuit alleges the following systemic deficiencies:

- DCYF assigns excessive caseloads to its caseworkers, thereby undermining their ability to perform their tasks adequately;
- DCYF fails to timely and appropriately license and oversee foster care placements;
- DCYF fails to timely and adequately investigate abuse and neglect;
- DCYF fails to maintain an adequate placement array to meet the needs of all children in care, and as a result, children are placed in inappropriate and/or unsafe placements;
- DCYF fails to provide children with timely and adequate case plans; and,
- DCYF does not provide adequate foster care maintenance payments to foster parents.

Whereas, after taking office in January 2015, Governor Raimondo ordered reform of the Rhode Island child welfare system and the operations of DCYF. A comprehensive review of DCYF was undertaken. DCYF leadership, staff, stakeholders, and outside consultants collaborated and assessed the agency, its functions, and divisions to understand the processes and improvements needed and to prioritize goals for the agency. One overarching goal and commitment of the agency is to improve overall services to children and families through data-driven decision-making and innovation. The Governor also directed DCYF to adopt a Lean Initiative to improve productivity and service quality for children and families by promoting efficiency and value while eliminating waste.

Whereas, DCYF is focused on the following overarching guiding principles and defined agency goals:

- Provide the right service, at the right time, at the right cost to our children and families;
- Ensure competence, accountability, and professionalism at all levels of the agency;
- Improve employee engagement to raise morale and productivity;
- Utilize data to inform decision-making;
- Reduce the number of children and youth being placed in congregate care settings;
- Increase the number of children and youth placed in kinship care with sibling placement priority;
- Increase the number of children and youth placed in family-based settings;
- Reduce placement disruptions;
- Reduce the length of stay of youth in congregate care; and,
- Safely increase the number of youth returning home.

Whereas, DCYF is committed to tracking and monitoring data and information, as well as providing reports and transparency to demonstrate improvement toward the goals of the agency to better serve children and families.

Whereas, DCYF is committed to tracking and assessing the types of placements and services needed for the children, youth, and families in DCYF care on a continual basis.

Whereas, DCYF is committed to understanding, monitoring, and developing the services and placements for the agency's population of children and families in relation to their needs.

Whereas, DCYF is committed to providing services to children and their families based on the needs of the children and families.

Whereas, DCYF is committed to placing children based on their needs at any given point in time and is committed to reducing congregate care placements where appropriate.

Whereas, DCYF is committed to assessing Family Service Unit social caseworker workloads based on a variety of factors and on a continual basis.

Whereas, DCYF is committed to periodic visitation, when appropriate, between children in foster care and their families (parent(s), siblings). DCYF is also committed to providing that monthly face-to-face visitation between the child and the worker is being conducted and documented.

Whereas, DCYF is committed to licensing foster homes in an effective and efficient manner. DCYF is also committed to maintaining a focus on identifying and timely licensing of kinship homes.

Whereas, DCYF is committed to providing foster care maintenance payments in accordance with the Adoption Assistance and Child Welfare Act.

Whereas, DCYF is committed to providing children with case plans in accordance with the Adoption Assistance and Child Welfare Act.

Whereas, reduction of maltreatment of children in care is a core priority.

Whereas, the State denies all claims of wrongdoing asserted in connection with the Complaint and no finding of liability has been made.

Whereas, the Parties wish to avoid the expense and disruption of litigation on the issues presented in this litigation, and are prepared to settle their differences without

admitting any fault, liability, or wrongdoing asserted in connection with Plaintiffs' Complaint;

NOW THEREFORE, IT IS HEREBY AGREED, upon the stipulation and agreement of the Parties, through the undersigned, that this action is settled, subject to the approval of the United States District Court for the District of Rhode Island pursuant to the Federal Rules of Civil Procedure, on the following terms and conditions:

Section 2. Definitions (capitalized terms in this Agreement have their defined meaning herein)

- a. "**Commitment**" shall refer to the requirements set forth in Section B that are required for exit of Sections B.1 through B.12 from monitoring and the jurisdiction of the Court.
- b. "**Complaint**" shall refer to Plaintiffs' Fourth Amended Complaint filed in the matter of *Andrew C., et al. v. Raimondo, et al.*, 07-cv-241-S, Dkt. No. 550.
- c. "**Court**" shall refer to the United States District Court for the District for Rhode Island in the case of *Andrew C., et al. v. Raimondo, et al.*, 07-cv-241-S.
- d. "**Data Validator**" shall have experience with research design, research methods using mixed methods (quantitative and qualitative), statistical analysis, and program evaluation in the areas of child welfare and behavioral health. The Data Validator shall be well versed in child welfare principles of safety, permanency, and well-being, and have knowledge of best practices in child welfare casework, evidence-based programs, and evidence-informed programs, and measurement of child welfare performance outcomes.

The Data Validator shall be the independent evaluator and final arbiter of the timeliness, accuracy of the methodology, as well as the statistical validity and reliability of the DCYF data (including the Rhode Island Children's Information System (RICHIST) data, case sample logistics, and documentation in support of exceptions) submitted to the Monitoring Team pursuant to this Agreement.

The Data Validator shall agree to be bound by the Confidentiality Order entered by the Court (Dkt. No. 133) that remains in full force and effect during the implementation and monitoring of this Agreement.

- e. "**Monitoring Team**" shall refer to the OCA and the Data Validator together.

- f. “OCA” shall refer to the R.I. Office of the Child Advocate established by R.I. Gen. Laws § 42-73-1 et seq. and shall serve as the Monitor for purposes of providing oversight to the Commitments in this Agreement. In the role of Monitor, the OCA shall receive and review the progress reports that have been determined to be valid and reliable by the Data Validator. The OCA, in the role of Monitor, shall confirm whether the Commitment has been met or not met. For Commitments for which a certain numerical percentage is required, the OCA shall make this determination based upon the information received from the Data Validator.
- g. “Parties” shall refer collectively to the Plaintiffs and State together.
- h. “Plaintiffs” shall refer collectively to the Named Plaintiffs, and the entire class of individuals as certified by the Court, comprising “all children who are or will be in the legal custody of the Rhode Island Department of Children, Youth and Families due to a report or suspicion of abuse or neglect.” Plaintiffs shall act and be notified for purposes of this Agreement by and through the Plaintiffs’ Attorneys.
- i. “Plaintiffs’ Attorneys” shall refer to attorneys at Children’s Rights, Inc. and Weil Gotshal & Manges LLP, who have appeared in this action, and John Dineen as counsel for the Named Plaintiffs and the class.
- j. “Released Claims” shall refer to all of Plaintiffs’ claims, alleged either directly or indirectly, that have been brought or could have been brought based upon the operative facts averred in the Complaint and that arise from conduct, acts or omissions of the Released Parties occurring before this Agreement has exited from Court jurisdiction.
- k. “Released Parties” shall refer to the State, and any of its past, present, and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions, or employees.
- l. “Releasing Party” shall refer to the Plaintiffs.
- m. “Reporting Period” shall refer to the six-month period during which data is collected on any Commitment referenced in this Agreement. Each Reporting Period is of six months’ duration and the resulting data will be provided to the Data Validator at the conclusion of the 30 day period immediately following the final day of the sixth month of the Reporting Period.
- n. “State” shall refer collectively to the Governor of Rhode Island, the Secretary of the Executive Office of Health and Human Services, and the Director of DCYF, all in their official capacities and the Department of Children, Youth and Families (“DCYF” or “the agency”). This shall also apply with

full force and effect to any successor and successor agencies that assume their office, functions, or operations. The State shall act and be notified for purposes of this Agreement by and through the Office of the Rhode Island Attorney General.

Section 3. Releases

The Plaintiffs hereby absolutely and unconditionally release and forever discharge all Released Parties from all Released Claims.

B. SPECIFIC COMMITMENTS

1. Assessments

- 1.1. An assessment (including but not limited to the assessments utilized by DCYF or the clinical opinion of a licensed health care professional in an Assessment and Stabilization Center, mental health inpatient facility, or a facility of equivalent level or type) shall be performed upon entry into foster care or upon a placement change for every child who is in DCYF out of home care due to a report or suspicion of abuse or neglect.
 - a. For initial placements, the assessment shall be performed within 30 days of the child's removal.
 - b. For subsequent placement moves, the assessment shall be performed within 60 days prior to or 14 days following the placement change.
- 1.2. An assessment does not need to be performed in accordance with the above if:
 - a. The placement move is to a placement at an equivalent level of need; or
 - b. The placement change is occurring because the placement is no longer available for reasons unrelated to the changing needs of the child (such as at the foster parents' request, due to a closure of the placement or other unavailability); or
 - c. The placement change is occurring to a child not in DCYF legal custody and out-of-home placement due to a report or suspicion of abuse or neglect (in voluntary custody due to mental health or behavioral health needs) or the child is open to DCYF for juvenile justice, as distinct from an allegation of abuse or neglect, and the placement change is occurring because of a juvenile justice reason or children's behavioral health reason, not because of the allegation of abuse or neglect that brought the child into DCYF care; or

¹ When one or more of the exceptions listed apply, they shall be documented. The failure to document the exception shall not itself be considered a failure to comply with the underlying Commitments of this Agreement. However, an exception may not be applied for purposes of determining compliance with this Section absent documentation. For this purpose, DCYF may provide to the Monitoring Team, up to 6 months from the end of the Reporting Period, documentation created no later than six months from the event that is being documented.

- d. The change in placement occurs pursuant to an order of the Rhode Island Family Court.²
- 1.3. If an assessment is not performed in a timely manner because of the unavailability of the child (for example, the child is AWOL, or placed in a psychiatric hospital and unavailable for assessment, or placed out-of-state), the case shall be identified and the circumstances surrounding the delay described to the Monitoring Team to determine whether this instance should be excluded from inclusion in measuring compliance with this requirement.
- 1.4. Once DCYF has demonstrated that 85% of assessments are being timely completed consistent with the Commitments set forth in Section 1.1, 1.2, and 1.3 of this Section for two consecutive six month Reporting Periods, Section 1 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit from monitoring under this Agreement and the Court will not have continuing jurisdiction over the State with respect Section 1 or the Commitments in Sections 1.1 through 1.3.

2. Placement in Shelters and Assessment and Stabilization Centers

- 2.1. No child shall be placed in a shelter³ under any circumstances.

² The Rhode Island Family Court has original jurisdiction to determine the placements and services for children in the care and custody of DCYF. The Family Court may thus authorize placements in the best interests of children that alter timelines and authorize variances from the goals and targets set forth in this Agreement. Should the Monitoring Team become concerned that the orders of the Rhode Island Family Court are creating a high proportion of exceptions from the Commitments in this Agreement, such that the exceptions have the potential of eroding the validity of the data collection regarding the Agreement goal or target at issue, the Monitoring Team may request a meeting with the Chief Judge of the Family Court, to include representative(s) of the State, to discuss the concerns regarding the volume of exceptions to the Agreement goal or target created by the orders of the Family Court.

³ A shelter is a short-term residential placement without therapeutic programming.

- 2.2. No child shall be placed in an Assessment and Stabilization Center⁴ unless DCYF has determined that:⁵
 - a. The child has a demonstrated need for placement in an Assessment and Stabilization Center for assessment and/or treatment; or
 - b. The placement is an emergency removal and immediate removal is necessary, and using professional judgment this placement is in the best interest of the child; or
 - c. The placement is made pursuant to an order of the Rhode Island Family Court.⁶
- 2.3
 - a. A child who is placed in an Assessment and Stabilization Center shall have the appropriateness of his/her continued placement reviewed and approved at least every 14 days. At least 90% of children placed in an Assessment and Stabilization Center shall be documented to have been reviewed and approved at least every 14 days.⁷
 - b. A child who is placed in an Assessment and Stabilization Center for longer than 60 days must have the written approval documented in the child's case file from the Director or Director's designee. At least 95% of children placed in an Assessment and Stabilization Center for longer than 60 days shall be documented to have the written approval of the Director or Director's designee.⁸
- 2.4 Once DCYF has demonstrated that it has achieved the Commitments set forth in Sections 2.1, 2.2, and 2.3 for two consecutive six-month Reporting Periods,

⁴ An Assessment and Stabilization Center is a facility that is a short-term therapeutic program, which provides comprehensive assessment and stabilization services to youth.

⁵ See Footnote 1 regarding documentation of exceptions.

⁶ See Footnote 2 regarding the authority and orders of the Rhode Island Family Court.

⁷ The failure to document the review and approval shall not itself be considered a failure to comply with the underlying Commitments of this Agreement. However, a review and approval may not be counted for purposes of determining compliance with this Section absent documentation. For this purpose, DCYF may provide to the Monitoring Team, up to 6 months from the end of the Reporting Period, documentation created no later than six months from the event that is being documented.

⁸ See Footnote 7 regarding documentation of the Director or Director's designee approval.

Section 2 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit from monitoring under this Agreement and the Court will not have continuing jurisdiction over DCYF with respect to Section 2 and the Commitments in Sections 2.1 through 2.3.

3. Placement in Congregate Care

- 3.1. No child placed in DCYF care because of a report or suspicion of abuse or neglect shall be placed in congregate care (to include group homes, residential counseling, and residential treatment centers) unless:⁹
 - a. The child has treatment needs as found in the assessment process in Section 1, which require congregate care placement; the child has needs that cannot be addressed in their own home, with kin, or in another family-like setting, as found in the assessment process; or
 - b. The child is currently in congregate care awaiting step-down to an appropriate family-like setting within the timeframes provided in Section 3.2; or
 - c. The placement is an emergency removal and immediate removal is necessary, and using professional judgment, this placement is in the best interest of the child, and DCYF is working to identify a placement in another family-like setting, in which case an assessment shall be performed within ten (10) days to determine if continued placement in congregate care is appropriate. If at the point of the assessment it is determined that the child is not appropriate to congregate care then this exception no longer applies; or
 - d. The placement is made pursuant to an order of the Rhode Island Family Court.¹⁰
- 3.2. For children in congregate care for 90 days or longer, review of the placement shall be made every sixty (60) days for the six months following the execution of this Agreement and every forty-five (45) days thereafter to determine if the ongoing placement in congregate care is necessary. If it is determined through the review process that the child is ready to be stepped down to a less restrictive environment, DCYF shall initiate and act on referrals to a less restrictive

⁹ See Footnote 1 regarding documentation of exceptions.

¹⁰ See Footnote 2 regarding the authority and Orders of the Rhode Island Family Court.

environment and if not placed within thirty (30) days of that determination, the case will be reviewed by the Associate Director of the Permanency Division or her/his designee every fifteen (15) days thereafter with documentation in the child's case file.

- 3.3 Once DCYF has demonstrated 90% compliance with the Commitments set forth in Sections 3.1 and 3.2 for two consecutive six-month Reporting Periods, Section 3 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit from monitoring under this Agreement and the Court will not have continuing jurisdiction over DCYF with respect to Section 3 and the Commitments in Sections 3.1 and 3.2.

Section 4. Sibling Placement

- 4.1 At least 80% (using a proportional stratified random sample and sample size, both of which shall be proposed by the State and approved by the Data Validator) of siblings (newly removed or whose placement has changed within the reporting period) with at least one parent in common either through birth or adoption and who have lived together immediately prior to placement who enter placement at or within 30 days of each other shall be placed together unless:¹¹
- a. DCYF determines that doing so would be harmful and/or not be in the best interest of one or more of the siblings; or
 - b. One of the siblings has treatment needs that need to be met in a specialized placement or facility; or
 - c. The size of the sibling group makes such placement impossible due to the licensing regulations restricting such placement to a single home based on the size of the sibling group not as a result of a lack of licensed capacity for a group of that size; or
 - d. It is in the best interest of one or more of the siblings to be placed in a kinship placement in which the other sibling(s) cannot be placed; or

¹¹ See Footnote 1 regarding documentation of exceptions.

- e. Specific placements are made by an order of the Rhode Island Family Court.¹²
- 4.2 Once DCYF has demonstrated that 80% of siblings (newly removed or whose placement has changed within the reporting period) as defined in Section 4.1, excluding siblings who meet one of the criteria for exclusion from this requirement enumerated in Sections 4.1(a) through (e), have been placed together for two consecutive six-month Reporting Periods, Section 4 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit from monitoring under this Agreement and the Court will not have continuing jurisdiction over DCYF with respect to Section 4 or the Commitments in Section 4.1.

Section 5. Case Management

- 5.1 This Agreement articulates targets for attainment of casework goals in the areas of visitation (Section 6) and case plans (Section 10). Should the Commitments set forth in Sections 6 and 10 not be attained for two consecutive six-month Reporting Periods after the conclusion of the 6-month baseline-setting period in Section 10.1, DCYF shall undertake a workload study during the six-month corrective action period cited in Section C. DCYF will undertake a workload study in consultation with the Monitoring Team for purposes of determining the methodology for the workload study, and, in consultation with the Monitoring Team, will reasonably consider the results of the workload study and will exercise professional judgment with any implementation of a corrective action plan.

Subsequent to the corrective action period, the Parties shall meet and confer regarding any disagreement on implementation. Should the Parties be unable to agree regarding the implementation of the workload study during the meet and confer period, then Section C(3) shall apply.

- 5.2 Once the Commitments set forth in Section 6 and 10 have been met for two consecutive six-month Reporting Periods then Section 5 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit from monitoring under this Agreement and the Court will not have continuing jurisdiction over DCYF with respect to Section 5.

¹² See Footnote 2 regarding the authority and orders of the Rhode Island Family Court.

Section 6. Visitation

6.1 Face-to-Face Visits with Children

- a. DCYF shall assure that the total number of visits made by caseworkers on a monthly basis to children in foster care is not less than 95% of the total number of such visits that would occur if each child were visited once every month while in care, as required by Section 424(f) of the Child and Family Services Improvement and Innovation Act, excluding children absent from care (AWOL) and children who are placed out of state.
 - i. Only one visit to each child in a single month shall be included when calculating this percentage. Any visits in excess of one per month shall not be included in the numerator.
 - ii. For purposes of Section 6.1, a face-to-face visit with a child may be performed by any member of the DCYF Care Team for the child. The Care Team includes the primary caseworker, supervisor, child support technician, regional director, or a provider agency that has been assigned or contracted with to provide case management or visitation responsibilities.
- b. Once DCYF has demonstrated at least 95% compliance with the Commitment in Section 6.1(a) for two consecutive six-month Reporting Periods, Section 6.1 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit this Agreement and the Federal Court will not have jurisdiction over DCYF with respect to Section 6.1 or the Commitments in Section 6.1(a).

6.2 Qualitative Review of Face-to-Face Visits with Children

- a. DCYF shall utilize a qualitative case review process of the quality of worker and child visits to assess issues pertaining to the safety, permanency, and well-being of the child and promote achievement of case goals. The qualitative case review shall utilize the review instrument utilized for the federal Child and Family Services Reviews (CFSR) process for purposes of conducting the qualitative case review and shall apply the two federal categories: "strength" or "area needing improvement." In at least 85% of the cases reviewed (using a proportional stratified random sample and sample size, both of which shall be proposed by the State and approved by the Data Validator) DCYF shall receive

the “strength” designation on the case review. The role of the Data Validator in verifying the results of the qualitative case review process shall be to audit the results of the study by verifying the inter-rater reliability of the review conducted and verifying a random sub-sample of the review sample, which sub-sample shall be proposed by the State and approved by the Data Validator.

- b. Once DCYF has demonstrated at least 85% compliance with the Commitment in Section 6.2(a) for two consecutive six-month Reporting Periods, Section 6.2 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A “Notice of Exit” from this Section will be filed with the Court. Thereafter, it shall exit this Agreement and the Federal Court will not have jurisdiction over DCYF with respect to Section 6.2 or the Commitments in Section 6.2(a).

6.3 Sibling Visitation

- a. DCYF will develop a mechanism to track visitation between siblings in the legal custody of DCYF due to a report or suspicion of abuse or neglect on at least a biannual basis, excluding children AWOL and children who are placed out of state.
- b. At least 85% (using a proportional stratified random sample and sample size, both of which shall be proposed by the State and approved by the Data Validator) of children with siblings with at least one parent in common either through birth or adoption who are both in the legal custody of DCYF due to a report or suspicion of abuse or neglect shall have all of the sibling visits indicated in their case plans.
- c. Once DCYF has demonstrated for two consecutive six-month Reporting Periods, after the conclusion of the 6-month baseline setting period in Section 10.1, that it has achieved the Commitments set forth in Sections 6.3(b), 6.4(b), 10.2 and 10.3, Section 6.3 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A “Notice of Exit” from this Section will be filed with the Court. Thereafter, it shall exit this Agreement and the Court will not have jurisdiction over DCYF with respect to Section 6.3 or the Commitments in 6.3(b).

6.4 Parent-Child Visitation

- a. DCYF shall develop a mechanism to track visitation between parent(s) and children in the legal custody of DCYF due to a report or suspicion of

abuse or neglect with a goal of reunification on at least a biannual basis to provide that the frequency of visitation is not less than that set forth in the child's case plan. As with other areas of casework, DCYF shall assure the quality of parent-child visits through the continuous quality improvement process and provide documentation of the results of the continuous quality improvement process to the Monitoring Team and Plaintiffs' Attorneys.

- b. At least 85% (using a proportional stratified random sample and sample size, both of which shall be proposed by the State and approved by the Data Validator) of children in the legal custody of DCYF due to a report or suspicion of abuse or neglect with a goal of reunification shall have all of the visits required by their case plan. Exceptions¹³ to this requirement are cases in which the parents are not attending visits despite DCYF taking adequate steps to ensure the parents' ability to visit.
- c. Once DCYF has demonstrated for two consecutive six-month Reporting Periods, after the conclusion of the 6-month baseline setting period in Section 10.1, that it has achieved the Commitments in Sections 6.3(b), 6.4(b), 10.2 and 10.3, Section 6.4 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit this Agreement and the Court will not have jurisdiction over DCYF with respect to Section 6.4 or the Commitment in Section 6.4(b).

Section 7. Licensing

- 7.1 A child shall not be placed in a non-kinship placement if that placement does not have an active license. For purposes of this provision, licensed non-kinship foster homes that are pending license renewal are considered active. Pursuant to the statute, in order to be pending and "active" the renewal must be timely and sufficient (R.I. Gen. Laws § 42-35-14). For purposes of this Agreement "timely" shall mean that an application for renewal has been filed prior to the expiration of the license and "sufficient" shall mean meeting the requirements set forth in Section 7.4 below. The sole exception to the prohibition in this Section shall be a placement made pursuant to an order of the Rhode Island Family Court.
- 7.2 Background checks are required prior to any placement pursuant to R.I. Gen. Laws § 14-1-34. No child shall be placed into a prospective foster home pending licensure until such background checks are completed. DCYF shall comply

¹³ See Footnote 1 regarding documentation of exceptions.

with these background check requirements at all times, except as required by an order of the Rhode Island Family Court.

- 7.3 At least 95% of all kinship foster home license applications, excluding pending foster care license applications that meet the requirements of R.I. Gen. Laws § 14-1-34 in that background checks have been satisfactorily completed and placement has been expressly authorized by the Rhode Island Family Court, shall be completed within the six-month period set forth in the state statute.
- 7.4 For at least 85% of all licenses due for renewal and where there is a child currently placed in the licensed home (where renewal is viewed as required two years from the date of issuance) DCYF clearances, Rhode Island BCI, and NCIC III checks shall be conducted for all household members 18 years and older within 30 days of the date that the renewal is due, including a national criminal records check for anyone in the home. In addition, a home safety inspection of the caregivers' home shall be conducted within 30 days of the date that the licensing renewal is required.
- 7.5 Once DCYF has demonstrated for two consecutive six-month Reporting Periods that it has achieved the Commitments set forth in Sections 7.1, 7.2, 7.3 and 7.4, Section 7 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit the Agreement and the Court will not have jurisdiction over DCYF with respect to Section 7 or the Commitments made in Sections 7.1 through 7.4.

Section 8. Child Protective Services

- 8.1 At least 90% of reports of abuse or neglect are to be screened in or out for investigation within the time frames set forth in DCYF policies duly promulgated consistent with the Rhode Island Administrative Procedures Act.
- 8.2 At least 90% of cases screened in for investigation shall be responded to within the time frames set forth in DCYF policies in force and effect at the time duly promulgated consistent with the Rhode Island Administrative Procedures Act.
- 8.3 At least 85% of investigations shall be completed within the time frames set forth in DCYF policies in force and effect at the time duly promulgated consistent with the Rhode Island Administrative Procedures Act, unless the investigation is continued due to circumstances beyond the control of DCYF. Any extension of the time frame shall be approved by a supervisor. However, such

exception beyond the regulatory timeframe shall be accompanied by an assessment of the safety of the child during the pendency of the investigation.¹⁴

- 8.4 Once DCYF has demonstrated for two consecutive six-month Reporting Periods that it has achieved the Commitments set forth above in Sections 8.1, 8.2 and 8.3, Section 8 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of this achievement and supporting data. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit this Agreement and the Court will not have jurisdiction over DCYF with respect to Section 8, or the Commitments contained in Sections 8.1 through 8.3.

Section 9. Foster Care Maintenance Payments

- 9.1 DCYF will reassess the base rates for foster care maintenance considering the elements enumerated in 42 U.S.C. § 675(4)(A) to determine whether rate adjustments are needed and, if necessary based upon that reassessment, will advocate for additional appropriations from the General Assembly to increase the base rate. The first reassessment will occur in state fiscal year 2018. DCYF will amend the Rhode Island Administrative Code, pursuant to the Rhode Island Administrative Procedures Act, to include a regulation requiring that DCYF conduct a reassessment every three years.
- 9.2 Once DCYF amends the Rhode Island Administrative Code as described in Section 9.1 and makes its first reassessment in State fiscal year 2018, the Commitment in Section 9.1 will be deemed satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit this Agreement and the Court will not have jurisdiction over DCYF with respect to Section 9, or the Commitments contained in Section 9.1.

Section 10. Case Plans

- 10.1 Within the first six months following the execution of this Agreement, DCYF shall determine a baseline of current DCYF compliance with case plan content and timeliness elements set forth in the Adoption Assistance and Child Welfare Act, 42 U.S.C. § 670 et seq. and 45 C.F.R. §§1355-57.
- 10.2 DCYF shall assure that 80% of children in the legal custody of DCYF due to a report or suspicion of abuse or neglect have initial and updated case plans that meet the timeliness requirements enumerated in 42 U.S.C. § 670 et seq., and in 45 C.F.R. §§ 1355-57.

¹⁴ See Footnote 1 regarding documentation of exceptions.

- 10.3 DCYF shall also assure, based on a review (using a proportional stratified random sample and sample size, both of which shall be proposed by the State and approved by the Data Validator), that 80% of children in the legal custody of DCYF due to a report or suspicion of abuse or neglect have case plans that document the elements enumerated in the Adoption Assistance and Child Welfare Act, 42 U.S.C. § 670 et seq., and in 45 C.F.R. §§ 1355-57.
- 10.4 Once DCYF has demonstrated for two consecutive six-month Reporting Periods that it has achieved the Commitments set forth in Sections 6.3(b), 6.4(b), 10.2 and 10.3, Section 10 shall be deemed to be satisfied. DCYF shall notify the Monitoring Team, with a copy to Plaintiffs' Attorneys, of the achievement and supporting data. A "Notice of Exit" from this Section will be filed with the Court. Thereafter, it shall exit this Agreement and the Court will not have jurisdiction over DCYF with respect to Section 10, or the Commitments contained in Sections 10.1 through 10.3.

Section 11. Maltreatment in Care

- 11.1 DCYF shall conduct an annual assessment of the substantiated events of abuse or neglect occurring to a child in DCYF foster care custody, including but not limited to any substantiated events of abuse or neglect occurring to a child placed in an unlicensed kinship placement, over the preceding twelve months to identify any systemic factors that may have contributed to the events. DCYF shall publish and make publicly available an annual report setting forth the findings of the assessment and making recommendations for corrective actions to assure safety in foster care.
- 11.2 Once all of the Commitments in Sections 1-10 of this Agreement have been deemed to be satisfied and the Court no longer has jurisdiction over those other Commitments, then the Commitment contained in Section 11.1 shall also be deemed to be satisfied and the Court will not have jurisdiction over DCYF with respect to Section 11 or the Commitment contained in Section 11.1.

Section 12. Foster Home Array

- 12.1 DCYF will develop an annual recruitment and retention plan for foster homes in consultation with the Monitoring Team. The plan shall include:
 - a. Targets for number of foster homes, including targets for special populations, for example adolescents, sibling groups, children with disabilities and medically fragile children, relevant during the period of the plan; and
 - b. Foster home retention strategies, such as respite homes, enhanced foster parent training opportunities, and increased visitation with foster parents.
- 12.2 DCYF shall implement the annual recruitment and retention plan and make diligent efforts to meet the targets set forth therein, including requests for any additional resources required to meet them.
- 12.3 DCYF shall conduct an annual assessment of implementation of the plan over the preceding twelve months to identify any systemic factors that may have contributed to any shortfall in recruitment. DCYF shall publish and make publicly available an annual report setting forth the findings of the assessment including: (a) the numbers of homes recruited and retained by category, (b) the actual number of homes recruited in each of these categories during the twelve month implementation period, and (c) the total number of homes available for child placement in each of the categories at the beginning and end of the twelve month implementation period, and making recommendations for corrective actions to assure sufficient recruitment and retention of homes under the plan.
- 12.4 Once all of the Commitments in Sections 1-10 of this Agreement have been deemed to be satisfied and the Court no longer has jurisdiction over those other Commitments then the Commitment contained in Section 12 shall also be deemed to be satisfied and the Court will not have jurisdiction over DCYF with respect to Section 12, or the Commitments contained in Sections 12.1 through 12.3.

C. ENFORCEMENT

1. The Court shall have continuing jurisdiction over this action to ensure compliance with the terms of this Agreement.

2. Monitoring

- a. The first six-month Reporting Period pursuant to this Agreement shall commence on July 1, 2018, with the data to be provided to the Monitoring Team within 30 days from the end of the Reporting Period. With respect to Section 10 (Case Plans), for which a baseline will be determined, reporting may begin in the second six-month Reporting Period. Nothing herein shall prohibit DCYF from reporting on Section 10 earlier.
- b. On or before July 1, 2018, DCYF data and evaluation staff shall provide the Monitoring Team and the Parties with a template that provides the format for reporting on the data collected for all Commitments that require a numerical percentage after the conclusion of every six-month Reporting Period and for reporting facts with respect to the progress and/or completion of DCYF's Commitments as defined in this Agreement.
- c. DCYF shall provide to the Monitoring Team all data, reports, and other information that the Monitoring Team deems necessary to measure the agency's performance on the Commitments in this Agreement. The Monitoring Team and DCYF may communicate regarding the data and information related to the Commitments in this Agreement. The Parties shall have access, through the Monitoring Team, to all information made available by DCYF to the Monitoring Team under the terms of this Agreement.
- d. DCYF shall prepare and submit to the Monitoring Team the data and reports referenced in Section C(2)(c) every six months after the first data transmission to occur within 30 days of the end of the relevant Reporting Period. Should the Data Validator need additional documents or information to validate the data, it shall send a letter to the State requesting such documents or information, and the Data Validator shall provide a copy of the request to Plaintiffs' Attorneys. Within six months from the close of each Reporting Period, the Monitoring Team shall determine and report facts with respect to the progress and/or completion of DCYF's Commitments as defined in this Agreement.

- e. All non-public information obtained by the Monitoring Team shall be maintained in a confidential manner. The Monitoring Team's reports shall be public documents, except that any individually identifying information and other confidential information protected from disclosure shall be redacted from any public report in accordance with the Confidentiality Order entered by the Court.
- f. The Monitoring Team shall determine and report facts with respect to the progress and/or completion of DCYF's Commitments as defined in this Agreement.
- g. The Monitoring Team shall be permitted to speak separately with all Parties, except that if any attorney for the Parties wishes to speak ex parte with the Monitoring Team, they must first give the other Parties notice. The Monitoring Team may meet internally without notice to the Parties or the Court.

3. Corrective Action Plan

Should any of the Commitments set forth in this Agreement not be met for two consecutive 6-month Reporting Periods, then the DCYF will develop a corrective action plan. The corrective action plan will be supplied to the Monitoring Team and Plaintiffs' Attorneys. The corrective action period shall continue until either the Commitment is met or six months have elapsed, whichever comes first. If the Commitment is met during this corrective action period and is sustained for two six-month periods (which may include the corrective action period), the Commitment exits from the Agreement and jurisdiction of the Court.

4. Meet and Confer

Should the corrective action plan referenced above in Section C(3) not result in the Commitments being met, the Parties shall meet and confer within 60 days, or at a later time if mutually agreed by the Parties, regarding further corrective actions, if any. If the Commitment is met during this meet and confer period and is sustained for two six-month periods (which may include the meet and confer period), the Commitment exits from the Agreement and jurisdiction of the Court.

5. Court Intervention

- a. Should the Parties be unable to resolve the Commitments at issue through meeting and conferring in Section C(4) above, Plaintiffs may choose to request Court intervention. If Plaintiffs choose to request Court intervention, Plaintiffs shall provide to the State a notice of intent to seek Court intervention prior to filing. Such notice shall include with

particularity the issues that Plaintiffs seek resolution from the Court. Within seven (7) business days, the State shall have an opportunity to address those issues prior to Plaintiffs seeking Court intervention.

- b. Once all of the above requirements have been met, and Plaintiffs seek Court intervention, the OCA shall present a report to the Court concerning the issue(s) presented by Plaintiff and the OCA's position with regard to the issue(s). The Data Validator findings are to be included in the OCA's report to the Court.

6. Emergency Court Intervention

If Plaintiffs can show just cause to believe in good faith that DCYF has failed to comply with any Commitment in this Agreement and that this failure has caused or is likely to cause immediate and irreparable harm to children in DCYF foster care custody, Plaintiffs may, after following the process below in C(6)(a)-(c), seek immediate emergency relief with the Court, bypassing the enforcement provisions in Sections C(2) through C(4). Before seeking such relief with the Court, however:

- a. Plaintiffs shall give written notice to the OCA and the State of the alleged failure, specifying any such alleged harm or risk of imminent harm and causation between the alleged failure and harm or risk of imminent harm. This notice shall include, but is not limited to, all documentation that Plaintiffs rely on to support their decision to seek emergency relief; and
- b. The Parties shall meet and confer for a period not to exceed 10 business days, unless extended by agreement of the Parties.
- c. Should the OCA determine within the 10-day period referenced above in Section C(6)(b) that the documentation provided by Plaintiffs does not indicate that the alleged failure has caused or is likely to cause immediate and irreparable harm or risk of imminent harm to children in DCYF foster care custody, Plaintiffs shall be foreclosed from seeking emergency intervention from the Court. The OCA may seek an extension of this 10-day time period but not greater than 30 days. The OCA shall provide a written notification to the Plaintiffs and the State of whether Plaintiffs have shown just cause to enable Plaintiffs to invoke relief under this Section C(6). If the Plaintiffs elect to invoke the provisions under this Section, the Parties can upon mutual agreement of the Parties request mediation with United States District Court Judge John J. McConnell, Jr. prior to filing a request for emergency relief in Court.

If the Parties are unable to resolve the issue during the meet and confer period in C(6)(b), and the Monitoring Team has not made a determination foreclosing Plaintiffs from seeking relief from the Court as set forth above, Plaintiffs may seek immediate Court intervention.

D. CONFIDENTIALITY

The Confidentiality Order entered by the Court (Dkt. No. 133) shall remain in full force and effect during the implementation and monitoring of this Agreement. All parties to the Settlement Agreement have participated in its drafting. All communications and written drafts in connection with the mediation and negotiation of this Settlement Agreement are strictly confidential and may not be used for any purpose, including to resolve any dispute that may arise as to the meaning of the terms of this Agreement.

FOR THE DEFENDANTS,

STATE OF RHODE ISLAND
By Its Attorney,

PETER F. KILMARTIN
ATTORNEY GENERAL

Neil F.X. Kelly
Neil F.X. Kelly
Brenda Baum
Assistant Attorneys General
Ariele Yaffee
Special Assistant Attorney General
R.I. Department of Attorney General
150 South Main Street
Providence, Rhode Island 02903
(401) 274-4400 x 2284
Fax: (401) 222-3016
nkelly@riag.ri.gov
ayaffee@riag.ri.gov

Date: 1/2/18

Eric J. Beane
SECRETARY ERIC J. BEANE,
Secretary of the Executive Office of Health
and Human Services

Date: 1/3/18

Gina M. Raimondo
GOVERNOR GINA M. RAIMONDO,
Governor of the State of Rhode Island

Date: 1/2/18

Trista Piccola
DIRECTOR TRISTA PICCOLA,
Director of the Rhode Island Depart-
ment of Children, Youth and Families

Date: 1-3-18

FOR THE PLAINTIFFS,

By Their Attorneys,



Sara M. Bartosz
Elizabeth Pitman Grether
Joshua Rosenthal
CHILDRENS RIGHTS, INC.
88 Pine Street, Suite 800
New York, New York 10005
(212) 683-2210
Fax: (212) 683-4015
Sbartosz@childrensrights.org

Date: January 3, 2018



John W. Dineen
305 South Main Street
Providence, Rhode Island 02903
(401) 223-2397
Fax: (401) 223-2399
jwdineen1@yahoo.com

Date: 1-5-18

IT IS SO ORDERED.

William E. Smith,
Chief Judge
United States District Court
for the District of Rhode Island

Date: _____