

L.J. v. Massinga Modified Consent Decree

Additional Commitments

65th Reporting Period (July 1 – December 31, 2020)

1. Preservation and Permanency

There are seven Additional Commitments in the Preservation and Permanency section. In the 65th Report, Defendants have claimed compliance with Additional Commitments 1-2 and 4-7. Defendants discuss Additional Commitment 3 but do not claim compliance.

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

Defendants: “met this commitment”

IVA response: Not in compliance

There has been no change or new information provided to the IVA to support certification. Defendants still have not provided the required assessment and analysis of the needs of children and families requiring assistance from BCDSS to determine the level of need and amount of funds needed for in-home family preservation services. Defendants continue to claim that they rely on the data collected through the Child and Adolescent Needs and Strengths - Family (CANS-F) tool for which “the intention is to use this data to determine needs and strengths of families serviced by family preservation.” (Deft’ 65th report, p. 31) Yet, Defendants acknowledge that their staff needs additional training in the proper use of the CANS tool, a long-standing and well-known

problem. Given this acknowledgement, reliance on this data, which is unlikely to be valid, accurate or reliable, is concerning.

Defendants' only other justification for the amount of funds allocated is repeating that "BCDSS/DHS agree that the amount of funding provided is sufficient to meet the needs of families" (Defts' 65th Report, p. 31). No data or documentation is provided to support this assertion.

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

Defendants: In Compliance

IVA response: Not in compliance for the same reasons stated in the 63rd and 64th reports

The IVA reiterates the response provided in the response to previous reports: For this Additional Commitment, Defendants provide no justification or documentation for explaining why the \$4 million in super flex funds is sufficient to meet the requirements of this additional commitment.

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

Defendants: No claim of compliance.

IVA response: Not in compliance.

Despite the passage of 10-plus years, Defendants have never entered into the required contract to meet this Additional Commitment. Furthermore, while DHR/BCDSS apparently does contract with UMSSW to collect some process and outcome data on FIMS, there is no evidence

that they collect data on the safety of those diverted removals, and the collection of this data does not constitute a formal evaluation of Family Centered Practice Initiatives.

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

Defendants: In Compliance.

IVA response: Not in Compliance.

As stated in the IVA's 64th report, the information regarding the Youth Advisory Board and other Ready by 21 programs is helpful, but it is insufficient to demonstrate whether or not they meet the requirements of this Additional Commitment. As stated in the IVA's responses to previous reports, Defendants should supply documentation of events or meetings between youth in OHP and the BCDSS director, other high-level officials and providers of services during each reporting period. Participation should not be limited to those youth on the Youth Advisory Board or involved with the Jim Casey Opportunity Passport initiative. In addition, Defendants do not address how those few youth on the Youth Advisory Board are able to represent the problems and needs of the more than 1,800 children in OHP at any one time. For a more in-depth discussion of the reasons for not granting certification, see the IVA's 63rd report (pp. 22-23).

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

Defendants: In compliance.

IVA response: Insufficient information to determine compliance during report period.

Defendants have created an Intensive Case Management (ICM) unit. In October 2020, the Defendants submitted a draft version of the ICM SOP to the IVA for review and feedback. The

IVA appreciated the opportunity to review the SOP and met with Director Stocksdale in November 2020 to discuss their comments and feedback. On July 2, 2021 (falling in the 67th reporting period) the final ICM SOP was shared with child welfare staff and the IVA. The IVA will review this finalized SOP, and once the IVA has additional information regarding the implementation of the SOP and the operation of the unit, the IVA will consider certification for future reporting periods.

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

Defendants: In compliance.

IVA response: Insufficient information and documentation to determine compliance.

The reason for the IVA's inability to certify this measure, is primarily the same as stated in the 64th report. In response to Additional Commitment 4, Defendants list a number of programs they are making available to or planning to make available to older youth through the Ready by 21 program – an array of life skills classes, the Jim Casey Opportunities Initiative, Keys to Success, tutoring, and pregnancy prevention. Defendants also mention their “ongoing partnership with AECF to target and resolve the multiple issues that arise with the transition of youth from the care of BCDSS.” (Def’t 65th report, p. 38). However, no documentation of work between AECF and Defendants regarding transitioning youth, the types of issues that arise and their resolution has been provided to the IVA. Defendant still do not provide documentation of a plan to provide comprehensive services to all youth in OHP, beginning at age 14, to meet the goal of all youth being ready by age 21 for successful transition to adulthood. For a number of years, the state's website and BCDSS' case plan SOP has included a list of milestones, by age, that youth should reach in order to be ready by 21 for that transition. Defendants have provided no evidence of a plan to ensure that each youth has the opportunity to meet those milestones.

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

Defendants: In Compliance.

IVA response: In Compliance.

2. Out-of-Home Placement

There are ten Additional Commitments in the Out-of-Home Placement section. In the 65th Report, Defendants have claimed compliance with Additional Commitments 1, 5, and 8, and partial compliance with Additional Commitments 3, 7 and 10. Defendants claim varying levels of compliance with the remaining Additional Commitments.

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

Defendants: In Compliance.

IVA response: Not in compliance.

As discussed in previous IVA reports, the referenced March 15, 2018 assessment was inadequate to meet the requirements of this Additional Commitment.

As of September 15, 2020, Defendants have contracted with the University of Maryland School of Social Work (UMSSW) to complete a new biennial needs assessment. A scope of work

was shared with the IVA and Plaintiffs' counsel on October 15, 2020, and the draft tool was shared on February 9, 2021. Meetings were held on December 8, 2020, February 18, 2021 and May 25, 2021 with Director Stocksdales and UMSSW staff to discuss Plaintiffs' Counsel's and the IVA's concerns regarding the placement assessment. The current projected completion date of the assessment is not known at this time as UMSSW has reported delays due to issues with obtaining access to the new CJAMS system. The IVA will continue to engage in conversations with the Defendants and UMSSW regarding the status of this assessment. Due to the timing of the contract, the earliest reporting period that compliance could be achieved would be the 67th reporting period.

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

Defendants: No claim of compliance.

IVA response: Not in compliance.

Without an adequate biennial assessment as required by Additional Commitment 1, Defendants cannot comply with Additional Commitment 2. Defendants state that "BCDSS has allocated sufficient funds every year to utilize for any needs of children in out-of-home placement." (Defts' 65th report, p. 40). No documentation is provided to support this statement.

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

Defendants: Partially in compliance.

IVA response: Not in compliance.

Since the 55th reporting period, no such emergency shelter care homes have been reported as being on retainer in associated Measure 38. In reporting on this Additional Commitment Defendants claim to have “identified and approved emergency home placements.” (Defts’ 65th report, p. 41). Yet, none of these emergency home placements are on retainer as evidenced by reporting on the corresponding measure. Defendants have reported zero homes on retainer for associated Measure 38. (Defts’ 65th report, pp. 48, 55.) Given that Gay Street and hospital overstays continued to occur during the reporting period., a more comprehensive response to this requirement should be provided. Defendants should explain why emergency shelter care homes are not needed and what would be appropriate alternatives. Furthermore, rather than choosing simply to ignore the requirement, Defendants have the option to invoke the clause in the Additional Commitment which provides that, “*Should BCDSS determine that this provision is not necessary to achieve the outcomes of this Consent Decree, BCDSS will propose a modification to this Consent Decree about which the parties will negotiate in good faith.*”

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

Defendants: “actively involved in the creation of a Kinship Resource Center”

IVA response: Not in compliance.

More than ten years after the signing of the MCD, Defendants report that they are actively involved in the creation of a Kinship Resource Center. This project is not being developed through

an RFP but rather through resources and staff at BCDSS. BCDSS has not created a “brick and mortar” Kinship Resource Center due to COVID restrictions, but they have added a webpage on kinship care to their DHR website (<https://dhs.maryland.gov/local-offices/baltimore-city/what-is-kinship-care/>). The IVA was provided this link on January 26, 2021. It is not known to the IVA how kin providers are made aware of this information or if they have been able to access services as a result of the information included on this webpage. In addition, there are a number of other services required by this provision that do not require a “brick and mortar” center – *“transportation assistance to referrals, activities and appointments related to the care of children; staff training; training for caregivers; and the development and support of a statewide network of support groups for kinship caregivers.”* No new additional information or documentation of these services has been provided to the IVA for review.

The disparity between the Defendants’ support of licensed resource homes (many of which are not kin of the children) – which provide both a family and a resource home worker, and a substantial monthly financial stipend - and the support of children’s kin as caregivers remains significant. Support and services to kin are vital to the goal of increasing dramatically the number of children who are placed in kin homes. Defendants have notified the IVA that there is now a Kinship Navigator within OHP who is charged with communicating with kin caregivers of newly-placed children. The IVA looks forward to learning more about the Kinship Navigator, the issues they see among kin caregivers and how their work is helping the agency to achieve their goal of placing more children with kin caregivers.

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

Defendants: In compliance.

IVA response: In compliance.

As per the Ready by 21 Policy Manual, Defendants apparently are in compliance with this requirement. As Defendants have acknowledged, however, the governing regulations (and policy releases for resource home payment increases) do not reflect this requirement and need to be updated to guarantee raises in the SILA rate when resource home rates are increased. Defendants have provided no information about when they intend to promulgate the new regulations.

6. *DHR shall set the foster care payment rate at no less than the Foster Care Minimum Adequate Rates for Children ("MARC")¹ standard. Until the MARC standard, as adjusted for cost of living, meets the foster care payment rate currently in effect for FY 2009, DHR shall not lower the foster care payment rate below current levels. To satisfy this requirement, the Secretary shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements, and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly. The Secretary shall include funds annually in the DHR budget that are sufficient, in the Secretary's judgment, to modify the foster care payment rate to reflect a COLA adjustment and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.*

Defendants: "DHS has ensured that providers in Maryland are being appropriately funded as required by federal standards"

IVA response: Not in compliance.

The Defendants failed to address the concerns raised in the IVA's 64th report (App. 1, p. 9). In order to meet the MARC and maintain it, Maryland should be providing an annual increase matching the increase in the cost of living. Yet, there was no increase to the foster care board rate for FY21. Defendants report that an increase is planned for January to June 2022. The IVA will review this Additional Commitment again for compliance following the increase.

¹ See University of Maryland School of Social Work, "Hitting the M.A.R.C.: Establishing Foster Care Minimum Adequate Rates for Children" (October 2007) (attached as Exhibit 2 to the MCD). [This is the original footnote from the MCD.]

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

Defendants: Partial compliance.

IVA response: Not in compliance.

See discussion above regarding Additional Commitment 4 (Kinship Resource Center). The IVA looks forward to learning more about particularized needs of unlicensed kin providers, how these needs were determined, as well as the plan to provide support and services to kinship care providers as the agency focuses on the goal of placing more children with kin.

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

Defendants: In compliance.

IVA response: In compliance.

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

Defendants: "continues to work to meet this commitment"

IVA response: Insufficient information and documentation to determine compliance.

While Defendants claim reasonable progress, they do not provide information about or documentation of any actual policies that outline and ensure the services. Defendants reference

but do not attach an "Expecting and Parenting Supervision Addendum Form." Furthermore, they do not explain how this supervision addendum form meets the goals of the Additional Commitment.

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

Defendants: Partially in compliance.

IVA response: Not in compliance.

Defendants provide no documentation of policies or implementation of policies for ensuring such input. Defendants state that Resources and Support workers gather information from children and children's caseworkers about the care received during the annual reconsideration of foster homes. They acknowledge that they do not have a system to track and document the information that they receive but are exploring use of the CJAMS provider record as a place to document this information and feedback. Even so, this does not address placements beyond BCDSS approved resource homes (i.e., treatment foster care homes, group homes, residential treatment centers, etc.) since they are not subject to annual reconsideration by BCDSS.

3. Health Care

Additional Commitments Status: There are four Additional Commitments in the Health Care section. In the 65th report, Defendants have claimed compliance with Additional Commitments 1-3 and partial compliance with Additional Commitment 4.

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

Defendants: In compliance.

IVA response: In compliance.

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

Defendants: In compliance.

IVA Response: In compliance.

There is a Health Care Advisory Council that meets three to four times per year. Until this reporting period, the composition of the Council did not meet the requirements of the MCD. However, new members were added to the Council in the fall of 2020, and the IVA can now certify the Additional Commitment for this reporting period.

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

Defendants: In compliance.

IVA response: Partial compliance.

The effects of inadequate funding were discussed in the analysis commissioned by the IVA and completed in January 2020 by Health Management Associates. (IVA Resp. to 64th Rep., App. 1, Att. C). In addition, the lack of inadequate resources was reflected in continued poor compliance with MCD Health Care measures for children after the first sixty days in out-of-home care. A new five-year contract with MATCH was approved and began July 1, 2020. This contract includes an expanded scope of work and a significant increase in funding. With these additional resources the IVA hopes to see an increase in compliance rates for the health care measures and improved health outcomes for children in foster care.

The Health Care Advisory Council has not been consulted on a plan, timetable or funding strategy to accomplish full implementation of the requirements of the Health Care section of the MCD. However, with new members, an approved charter and the creation of a mental health sub-committee, the IVA is hopeful that the Health Care Advisory Council will play a larger role in ensuring that the health and mental health care needs of children in foster care are met as required by the MCD.

The IVA raised concerns with former BCDSS Director Randi Walters regarding the MATCH contract. The IVA is awaiting final MATCH Guidelines to ensure that the concerns raised have been addressed via the guidelines as Defendants said they would. The IVA will continue to monitor for full implementation of the expanded MATCH program.

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

Defendants: “commitment is an ongoing effort”

IVA response: Not in compliance.

In support of their claim of partial compliance, Defendants attach to their report the Behavioral Health Plan they provided at the *L.J.* Forum in February 2020. Defendants do not claim full compliance and have stated that their work on this Additional Commitment is an ongoing effort.

The IVA has voiced concerns about the inadequacy of the plan in previous reports to the court and directly to the Defendants. There have been some efforts made towards the goal of improving mental health care including: the hiring of three mental health navigators, expanded hours of the consulting psychiatrist (as of July 1, 2020); and the expanded availability of the

BCARS program for crisis response. Additionally, a subcommittee of the Health Care Advisory Council has been meeting to discuss the mental and behavioral health needs of children in foster care. It is the goal of the agency to use the information provided at these meetings as well as the input and expertise of the various committee members to develop recommendations for the agency as they develop the mental health care system for children and youth in foster care. However, the impact of these steps on securing “ongoing treatment that meets the needs of children in OHP” has yet to be demonstrated. Furthermore, there remain significant gaps in the scope of the plan and services. Defendant DHS’ failure over the past decade to accomplish the promised rate reform, further delayed until at least 2025, which would separate the payment of board costs to private foster care agencies from the payment for services such as mental health continues to have a negative impact on meeting the goals of this Additional Commitment and, more importantly, the needs of the children in OHP.

4. Education

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

Defendants: In compliance.

IVA response: Insufficient information and documentation to determine compliance.

In support of their claim of compliance, Defendants referenced a Memorandum of Agreement with Baltimore City that they provided with their 63rd Report. This is an important step towards compliance. However, as the IVA stated in their 64th report, a significant number of children in Baltimore City OHP live and attend school outside of Baltimore City. Defendants do not present any documentation of how they work with the other school systems to ensure educational stability and timely enrollment.

In their 63rd report, the IVA raised the concern that the School Placement Stabilization Memo contains a disturbing error. The memo provides, “The OOE specialist is responsible for completing the BID [Best Interests Determination] form within five business days of being assigned the case” and “[i]f a student must transfer, then the OOE specialist will enroll the youth in the new school five business days of the completion of the BID (Best Interests Determinations Form).” These provisions would appear to permit enrollment of a child in more than ten business days of entry into OHP, far longer than within the five days required by *L.J.* and Maryland regulations. The Defendants did not address this issue in their 64th or 65th reports and it not known if this form has been amended.