

**L.J. V. MASSINGA MODIFIED CONSENT DECREE**

**IVA CERTIFICATION REPORT FOR DEFENDANTS' 64<sup>TH</sup> COMPLIANCE REPORT**

**APPENDIX 1, IVA RESPONSE TO ADDITIONAL COMMITMENTS**

**1. Preservation and Permanency**

There are seven Additional Commitments in the Preservation and Permanency section. In the 64<sup>th</sup> 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

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 claim that they rely on the data collected through the Child and Adolescent Needs and Strengths - Family (CANS-F) tool "to determine needs and strengths of families served by Family Preservation." They attach a one-page report of Baltimore City's FY20 Q1 CANS data (Defts' 64th Report, Att. H) – which (1) addresses Out-of-Home Placement, not Family Preservation; (2) does not cover the report period in question; and (3) does not constitute an analysis.

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 ...." (Defendants' 64th Report, p. 40). 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.

The IVA reiterates the response provided in the response to the 63<sup>rd</sup> Report: For this Additional Commitment, Defendants provide no justification or documentation for explaining why the \$4 million in super flex funds is sufficient to "ensure that services and assistance are available for all children (and their families) at risk of placement ... into OHP or who are in OHP and have permanency plans of reunification with their families."

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 more than 10 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.

Defendants provide information about the activities of the Youth Advisory Board (YAB) and describe other Ready by 21 programs. While this information is helpful and the programmatic offerings encouraging, this information 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. 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 63<sup>rd</sup> 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 and documentation to determine compliance.

Defendants have created an intensive case management unit. In their 63<sup>rd</sup> report, the Defendants stated that they would submit a new draft version of an SOP for the Intensive Case

Management (ICM) unit during the 64<sup>th</sup> reporting period. This SOP was not shared with the IVA until October 24, 2020 (during the 65<sup>th</sup> reporting period). Director Stocksdale offered the IVA an opportunity to provide feedback, and a meeting was held on November 10, 2020. At the time of this report, the IVA is unaware of the status of the SOP and its implementation. Defendants have shared with the IVA that the age of eligibility has been extended to include youth as young as 10 due to the recognition of significant placement instability among some much younger youth . The IVA will reconsider certification for the 65<sup>th</sup> reporting period after a review of the final SOP and its implementation.

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.

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 lifeskills classes, the Jim Casey Opportunities Initiative, Keys to Success, tutoring, and pregnancy prevention. They do not, however, provide evidence 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 64<sup>th</sup> Report, Defendants have claimed compliance with Additional Commitments 1, 5, and 8, and partial compliance with Additional Commitments 3 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 and February 18, 2021 with

Director Stocksdale 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. 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 67<sup>th</sup> 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. See the IVA's discussion of this Additional Commitment in their 63<sup>rd</sup> report (pp. 26-27).

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 55<sup>th</sup> reporting period, no such emergency shelter care homes have been reported as being on retainer in associated Measure 38. Defendants state in their 64<sup>th</sup> Report that they have

identified such homes but provide no documentation. In fact, the data provided for Measure 38 contradicts this assertion. An email from the BCDSS Finance Unit states that they did not receive a request to process payments for Emergency Foster Care Homes for the service dates 01/01/2020 through 06/30/2020 and that no payments were processed.

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: “working towards the goal of a fully implemented 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. Since the update on the Kinship Resource Center provided in the IVA’s 63<sup>rd</sup> report and the Defendants’ 64<sup>th</sup> Report, Alicia Nance, the BCDSS Foster American Fellow designated to work on the Kinship Resource Center, left the agency. The Defendants report that a steering committee is now in place to work on the development of the center. 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. No information about the steering committee or the timeline for the center has been provided to the IVA for review.

The IVA views the creation of a fully functioning and supported Kinship Care Resource Center as essential to BCDSS's goal of placing more children with kin providers. The disparity between the Defendants' support of licensed resource homes (many of which are not kin of the children) - with 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. This disparity undermines Defendants' stated goal to increase 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 receiving information about how the addition of that position is enhancing the experience of 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.



6. *DHR shall set the foster care payment rate at no less than the Foster Care Minimum Adequate Rates for Children (“MARC”)<sup>1</sup> 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: No clear claim of compliance.

IVA response: Not in compliance.

Current foster care rates are \$887 for children under the age of 12 and \$902 for children and youth 12 years of age and older. As stated in the IVA’s 63<sup>rd</sup> Report, these rates are significantly below the required MARC rates. MARC rates *in 2016* (the most recent year published) were \$748 for children aged 2, \$857 for children aged 9, and \$940 for children aged 16. (App. 1, Att. A , Ahn, DePanfilis, Frick, and Barth, “Estimating Minimum Adequate Foster Care Costs for Children in the United States.” (2018)). 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, and none has been announced for FY22. Using the U.S. Department of Labor’s Consumer Price Index increases for the Baltimore area for 2017-2020 (App. 1, Att. B), the current rates are at least \$25 to almost \$100 monthly (depending on the age of the child) less than it should be.

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*

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<sup>1</sup> 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.]

*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 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 to ensure the services. In their 64<sup>th</sup> report, Defendants reference an "Expecting and Parenting Supervision Addendum Form" but did not attach it to their

report. Furthermore, they do not explain how this supervision addendum form meets the goals of the Additional Commitment. The Defendants also reference a tracking form for pregnant and parenting youth that is used by Ready by 21 and shared with MATCH. However, they not share any of the data about these youth and whether they are receiving needed services and support to assist them with acquiring parenting skills. In addition, there is no information provided about support to fathers in parenting their children.

*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 this information during the annual reconsideration of foster homes but acknowledge that they do not have a system to track and document the information that they receive. Furthermore, 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 64<sup>th</sup> 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: Not in compliance.

While there is a Health Care Advisory Council that meets three to four times per year, the composition of the Council during the 64<sup>th</sup> reporting period did not meet the requirements of the MCD. However, new members were added to the Council in the fall of 2020, and the IVA will consider certification for the next 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: Not in compliance

As discussed in the IVA's 63<sup>rd</sup> report (pp. 32-33), the system was not funded adequately to accomplish full implementation. The effects of inadequate funding were discussed in the analysis completed in January 2020 by Health Management Associates. (App. 1, Att. C). In addition, it was reflected in continued poor compliance with MCD Health Care measures for children after the first sixty days in out-of-home care. (App. 1, Att. D, Woodward, "Health Services and MATCH Review" (8.5.20)). (In-depth analysis of health care for children in OHP by independent medical case management expert). However, a new five-year contract with MATCH was

approved to begin July 1, 2020 and included an expanded scope of work and a significant increase in funding.

The IVA raised concerns with former BCDSS Director Randi Walters regarding the MATCH contract. (App. 1, Att. E, Memo dated June 1, 2020 from IVA to Director Walters). The IVA is awaiting final MATCH Guidelines to ensure that the concerns raised have been addressed via the guidelines as Dr. Walters said they would. The IVA will continue to monitor for full implementation of the expanded MATCH program.

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, a newly approved charter and the creation of sub-committees, 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.

*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. (App. 1, Att. F, IVA Response to BCDSS Behavioral Health Plan (5.4.20)). There have been some notable gains since the 63<sup>rd</sup> report including: (1) the hiring of three mental health navigators, (2) expanded hours of the consulting psychiatrist (as of July 1, 2020) and (3) the expanded availability of the BCARS for crisis response. Additionally, a subcommittee of the Health Care Advisory Council recently has been created to provide input and expertise in the development of 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 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 63<sup>rd</sup> Report. As stated in the response to the 63<sup>rd</sup> report, the IVA believes this is an important step towards compliance. However, a significant number of children in Baltimore City OHP live outside of Baltimore City, but

Defendants do not present any documentation of how they work with the other school systems to ensure educational stability and timely enrollment.

In their 63<sup>rd</sup> 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 64<sup>th</sup> report and it not known if this form has been amended.

List of Attachments to Appendix 1

Att. A - Ahn, DePanfilis, Frick, and Barth, "Estimating Minimum Adequate Foster Care Costs for Children in the United States." (2018).

Att. B - U.S. Department of Labor, Consumer Price Index, Mid-Atlantic Region (2010-2020).

Att. C - Health Management Associates, "BCDSS MATCH and Health Services Evaluation" (1.25.20).

Att. D - Woodward, "Health Services and MATCH Review" (8.5.20).

Att. E - IVA Memo to Director Walters re MATCH Contract SOW (6.1.20).

Att. F - IVA Response to BCDSS Behavioral Health Plan (5.4.20).