

L.J. v. Lopez Independent Verification Agent

Certification Report for Defendants' 71st Compliance Report

November 29, 2024

Appendix 1

IVA Response to Defendants' Report on Additional Commitments

Defendants' 71st Report, pp. 30-43

(July 1 - December 31, 2023)

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1. Preservation and Permanency

There are seven Additional Commitments in the Preservation and Permanency section.

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.

Defs.’ Report: In compliance. (Defs.’ 71st Rep., p. 30)

IVA response: Cannot determine certification due to lack of documentation to support assertions.

Defendants fail to provide any specific data or documentation to support their assertions. They do not provide information as to how many families requested services, the problems presented by those families, what services were provided, the impact of those services or whether those services were provided “in a duration and intensity reasonably calculated to enable the child to remain with the family without removal.” They do not document the number or percentage of children removed or the relationship in time between services and removal.

As urged in prior reports, the parties should determine what data and documentation must be included in an analysis to meet the requirements of this Additional Commitment.

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.*

Defs.' Report: In compliance. (Defs.' 71st Rep., pp. 30-31)

IVA response: Cannot determine certification due to lack of documentation to support assertions.

For this Additional Commitment, Defendants provide no justification or documentation to explain why the \$4 million in super flex funds is sufficient to meet the requirements of this Additional Commitment. The amount allocated by DHS to BCDSS for flex funds has remained at "over \$4 million" since they began reporting on this Additional Commitment for the 63rd reporting period (2019) through the 71st reporting period (December 2023) without providing documentation of the basis for this amount being sufficient or how it could remain sufficient given the substantial amount of inflation in costs between 2019 and 2023.

This Additional Commitment is closely tied to the first Additional Commitment in this section. Again, as urged in prior reports, the parties should discuss what process or documentation can be provided to demonstrate compliance with this requirement of the MCD.

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.*

Defs.’ Report: In compliance. (Defs.’ 71st Report, p. 31)

IVA response: Partial compliance.

The “Evaluation of the Integrated Practice Model in Maryland” provided with Defendants’ report does not, in fact, “evaluate the efficacy of the family-centered initiatives” for Maryland at least in part because Maryland’s largest jurisdiction and the subject of the MCD - Baltimore City - failed to submit any data for two of the three data sources used by the authors for that evaluation. Baltimore City failed to submit Facilitator surveys (p. 13) or any self-reports (p. 51). Furthermore, this Additional Commitment requires collection of data on *“the efficacy and safety of [DHR/BCDSS] practices in utilizing family-centered practice and team decision-making to avoid the removal of children.”* The self-reports are the critical component for determining the efficacy and safety of the practices since CJAMS does not currently collect sufficient information to correlate the FTDMs with outcomes. One of the necessary, but relatively simple steps that Defendant DHS needs to take to collect the required data is to add in the meetings section of the CJAMS application a field to require input of the outcomes of Family Team Decision-Making Meetings (FTDMs).

Given the time frame initially placed on this requirement and the passage of time since the signing of the MCD, we once again urge the parties to discuss what documentation would demonstrate compliance with this requirement in the future.

4. *BCDSS shall continue to provide opportunities for youth in OHP to meet with one another 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.

Defs.' Report: In compliance. (Defs.' 71st Rep., pp. 32-33)

IVA response: Partial compliance.

Defendants provide no information to support a finding that they provide opportunities for youth to meet with the BCDSS Director or providers of youth services to talk about problems and needs for children in OHP. They also do not address how they provide opportunities to express concerns and report problems.

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.*

Defs.' Report: No claim of compliance. (Defs.' 71st Report, pp. 33-34)

IVA response: Not in compliance.

Defendants created an Intensive Case Management (ICM) unit and released a new standard operation procedure regarding the unit. However, due to significant staffing issues, the unit has not been fully staffed, and many youth who could benefit from the services of the ICM unit are not receiving ICM services. Defendants state that alternatives to meet the needs of these youth “are the subject of the daily Placement Huddle, the weekly Overstay Meeting, and weekly meetings with SSA” but have not shared any information about these alternatives.

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.*

Defs.’ Report: In compliance. (Defs.’ 71st Rep., pp. 34-35)

IVA Response: Progress towards compliance.

Defendants do not provide any new information in this report about how the activities and services they provide are effective in meeting “the goals of youth being “ready by 21” for successful transition to adulthood.” They still do not discuss the impact of those strategies and what has been put in place to maintain successful implementation of the plan. They do not discuss what is being done to address areas where implementation has been unsuccessful such as the low percentage of transition plan meetings taking place. Without transition meetings being held and transition plans being completed, Defendants cannot plan for youth to get the individualized services needed for successful transition to adulthood.

7. *By December 2009, DHR shall develop and implement a program pursuant to which each child whose caregiver seeks and receives custody and guardianship from the juvenile court and meets the legal requirements for a guardianship subsidy receives such a subsidy in an amount that conforms to the requirements of federal law. Such subsidy shall continue until the child is eighteen years of age or, if disabled or attending school or training, until the youth is 21 years of age.*

Defs.’ Report: In compliance. (Defs.’ 71st Rep., p. 35)

IVA response: In compliance.

While this requirement is in technical compliance, it is important to note that the foster care rate to which the guardianship subsidy rate is tied, is not in compliance with the MCD (see discussion at pp. 11-12, below) and that inflation is a very serious concern. This rate has remained the same for many years and, given the current high levels of inflation, could not possibly go as far as needed to meet the financial needs and costs of those taking custody and guardianship of children from the foster care system.

2. Out-of-Home Placement

There are ten Additional Commitments in the Out-of-Home Placement section.

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.*

Defs.' Report: 2022 report was in compliance. New report to be issued Summer 2024. (Defs.' 71st Rep., p. 35)

IVA response: Not in compliance.

The IVA has explained in detail in correspondence with Defendants and in prior reports why the 2022 University of Maryland report did not meet the requirements of this Additional Commitment.

Defendants have informed the parties that they have contracted with Chapin Hall to complete a placement needs assessment for the state that includes Baltimore City. They state that the report should be available in Summer 2024. However, as of November 22, 2024, the IVA has not received any updates about the completion of this report.

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.*

Defs.' Report: In compliance. (Defs.' 71st Rep., pp. 35-36)

IVA response: Not in compliance.

Defendants rely solely on an assertion that DHS/BCDSS is below the national average for children placed in congregate care, and above the national average for children placed with kin to support its claim of compliance despite the lack of clear connection with the requirements of this commitment. That assertion is insufficient to meet this commitment.

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. 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.*

Defs.' Report: No claim of compliance. (Defs. 71st Report, p. 36)

IVA response: Not in compliance. Defendants filed a motion to eliminate this commitment, but the court dismissed their motion (without prejudice) in July 2024.

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.

Defs.' Report: In compliance. (Defs.' 71st Rep., pp. 36-38)

IVA response: In compliance.

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.*

Defs.' Report: In compliance. (Defs.' 71st Rep., p. 38)

IVA response: In compliance.

Defendants apparently are in compliance with this requirement. As Defendants have acknowledged, however, the governing regulations (.07.02.10.15.B(3)) 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.

While this requirement is in technical compliance, the foster care rate to which the SILA rate is tied is not in compliance with the MCD (see discussion, below). Given increases in the cost

of living, it is unlikely that the stipend could go as far as would be required to meet the financial needs of foster youth in the SILA program.

6. *DHR shall set the foster care payment rate at no less than the Foster Care Minimum Adequate Rates for Children (“MARC”) [1]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.*

Defs.’ Report: No claim of compliance. (Defs.’ 71st Rep., p. 38)

IVA response: Not in compliance.

Defendants do not address the concerns raised in prior IVA responses. In order to meet the MARC and maintain it, Maryland should be providing an annual increase matching the increase in the cost of living. The cumulative rate of inflation has been 23.5% between 2019 to 2024 (usinflationcalculator.com, accessed 11/18/24), yet there has not been an increase in the public foster care board rate since FY2019 when there was a 1% rate increase. In their 66th Report, Defendants stated that an increase in the foster care board rate was planned for January - June 2022. However, no such increase has occurred. Defendants do not even attempt to justify their

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.]

violation of this requirement. They simply state, “The foster care payment rate did not change during this reporting period.” (p. 28).

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.*

Defs.’ Report: In compliance. (Defs.’ 71st Rep., p. 38-40)

IVA response: Certified based upon activities conducted throughout 2024.

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.*

Defs.’ Report: In compliance. (Defs.’ 71st Rep., p. 40)

IVA response: In compliance.

The IVA has no information that caregivers needing childcare have been denied access to the necessary funding. Defendants issued SSA/CW Policy #23-03, Child Care Services for

Children in Out-of-Home Care - 1 (eff. 9/25/23).² The policy appears to provide for at least the same services as the old policy, which was found to be compliant.

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.*

Defs.' Report: In compliance. (Defs.' 71st Rep., p. 40).

IVA response: Not in compliance.

For the same reasons stated in the IVA's previous responses to this Additional Commitment, the IVA is unable to determine compliance. Defendants do not provide information about or documentation of any actual policies that outline and ensure the services.

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.*

Defs.' Report: In compliance. (Defs.' 71st Rep., pp. 40-41)

IVA response: Not in compliance.

Defendants provide no documentation of policies or implementation of policies for ensuring such input. Defendants state that resource home caseworkers communicate with children's caseworkers to solicit feedback about care provided as part of every reconsideration of foster homes. The IVA has not been provided a copy of the referenced "template for reconsiderations" which they state now includes "obtaining a child's input."

² <https://dhs.maryland.gov/documents/SSA%20Policy%20Directives/Child%20Welfare/SSA%2023-03%20CW%20Child%20Care%20Services%20for%20Children%20in%20Out%20of%20Home%20Care.pdf> (last accessed 11/20/24).

3. Health Care

There are four Additional Commitments in the Health Care section.

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.*

Defs.' Report: In compliance. (Defs.' 71st Rep., p. 41)

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.*

Defs.' Report: In compliance. (Defs.' 71st Rep., p. 41)

IVA Response: In compliance.

During the reporting period, the Health Care Advisory Council continued to meet quarterly. The Council now has representation from the dental community and two youth on the Council. Parents and caregivers still are not represented on the Council.

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.*

Defs.' Report: In compliance. (Defs.' 71st Rep., pp. 41-42)

IVA response: Substantial compliance due to an outstanding issue.

On July 1, 2020, a five-year contract with the MATCH program was implemented. This contract included an expanded scope of work and a significant increase in funding. With these additional resources the IVA had hoped to see an increase in compliance rates for the health care measures and improved health outcomes for children in foster care. The IVA will continue to monitor for full implementation of the expanded MATCH program including health-related documentation in CJAMS.

The Defendants have not provided any documentation to support their claim of compliance related to “consultation with the medical director and the Health Care Advisory Council.” As members of the Health Care Advisory Council, the IVA and Plaintiffs’ counsel have not been a part of consultation on a plan, timetable or funding strategy to accomplish full implementation of the requirements of the Health Care section of the MCD.

The IVA encourages the parties to discuss this Additional Commitment and how the requirements can be met. The Council members are not selected for the purpose of developing budget requests and may not have the expertise needed for health care management. However, data has shown that some of the health needs of children in foster care continue to go unmet, and it is vital for the parties to determine if this is an issue of insufficient funding, flawed deployment of resources, or some other cause.

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.*

Defs.’ Report: In compliance. (Defs.’ 71st Rep., p. 42)

IVA response: Not in full compliance.

Lack of quality mental health care services and continuity of services for children, particularly for those who experience placement instability, has been a long-standing and continuing problem. See section on Mental Health in IVA’s Certification Report for discussion of this issue.

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.”

Defs.’ Report: No clear statement of compliance. (Defs.’ 71st Rep., pp. 42-43)

IVA response: Insufficient information and documentation to determine compliance.

Defendants updated their Education Stability Policy effective December 15, 2023.³ Defendants reference an updated Memorandum of Agreement with Baltimore City executed on January 21, 2024, but did not provide a copy with their report. Defendants do not present any documentation of how they work with the other school systems to ensure educational stability and timely enrollment and present no information about progress towards completing MOUs with other school districts.

³ SSA/CW # 23-04, <https://dhs.maryland.gov/documents/SSA%20Policy%20Directives/Child%20Welfare/SSA%2023-04%20CW-Education-Stability.pdf> (last accessed 11/27/24).