

L.J. v. Massinga Independent Verification Agent

Certification Report for Defendants' 70th Compliance Report

Appendix 1

IVA Response to Defendants' Report on Additional Commitments

Defendants' 70th Report, pp. 23-32

(January 1 - June 30, 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: BCDSS is compliant based on a “historical look back.” (Defs.’ 70th Rep., p. 23)

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.

The IVA continues to urge the parties to 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 "BCDSS/DHS have complied with this requirement." (Defs.' 70th Rep., p. 24)

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 70th reporting period (June 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 since between 2019 and 2023.

This Additional Commitment is closely tied to the first Additional Commitment in this section. The IVA urges the parties to 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: “BCDSS is compliant with this commitment.” (Defs.’ 70th Rep., p. 24)

IVA response: Not in compliance.

Defendants discuss the launch of the Place Matters Initiative in 2007 (two years prior to the signing of the MCD) followed by the implementation of the Integrated Practice Model and the FIM ‘reboot’ in response to this Additional Commitment. However, this does not constitute a “*formal evaluation of the efficacy of its family-centered practice initiatives*” as required. The IVA is unable to certify this Additional Commitment without the required evaluation. 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.*” There is no such data included with this report to meet this requirement. 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 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: “BCDSS is compliant with this commitment.” (Defs.’ 70th Rep., p. 24-25)

IVA response: Not in compliance.

In their 67th, 68th and 69th Reports, Defendants announced plans and a pilot for “[q]uarterly ‘Talk with the Director’ meet-ups to systematize opportunities for young people to speak with Agency leadership.” (Defs.’ 69th Rep. (p. 27); 68th Rep. (p. 57); 67th Rep. (p. 56)). Instead of providing the results of those plans and pilot, Defendants now state that “the broad array of opportunities to provide feedback has been reported in detail over the last several reporting periods.” They do not explain why the plans for the “Talk with the Director meet-ups” have been abandoned and are no longer necessary to meet this commitment.

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.*

Dfts.’ Report: No claim of compliance. (Defs.’ 70th Rep., p. 25)

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. There is no attempt to claim that the current staffing is adequate to meet the needs of the significant number of youth “who frequently are missing from placement or are experiencing multiple disruptions in placement,” as is demonstrated by the high number of youth spending multiple nights in BCDSS office buildings and hotels as well as the number of runaway reports provided regularly by Defendants.

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: No statement of compliance. "The work continues to be completed." (Defs.' 70th Rep., p. 25)

IVA Response: Progress towards compliance.

Defendants do not provide any new information in this report. 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 and transition plans being approved. Reports from CJAMS show that transition planning for youth ages 14 and over is not happening as required by both the MCD and state policy. 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 twenty-one years of age.*

Defs.' Report: In compliance. (Defs.' 70th Rep., p. 25)

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: “An assessment was conducted by the University of Maryland School of Social Work in May 2022. In collaboration with BCDSS, a new needs assessment is in the planning stages.” (Defs.’ 70th Rep., p. 26)

IVA response: Not in compliance.

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

At the November 28, 2022, LJ forum, Plaintiffs’ counsel and Defendants agreed to work together to design a new placement assessment. After the parties agreed that a statewide assessment would be more appropriate than one solely addressing BCDSS, there was no further contact from Defendants to continue the planning process. Instead, Plaintiffs’ counsel and the

IVA learned in March in Defendants' response to litigation that Defendants have contracted with Chapin Hall to conduct the next assessment.

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: "BCDSS is compliant with this commitment." (Defs.' 70th Rep., p. 26)

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.*

Defendants: No claim of compliance.

IVA response: Not in compliance.

Defendants continue to provide conflicting information regarding this Additional Commitment. In their 69th report, Defendants describe the retainer for emergency foster homes

as an “outdated concept.” and make the same claim in their 70th Report. However, despite these claims, Defendants state that they have identified 30 homes willing to accept emergency placements for children newly entering care, and these placements are eligible for a higher board rate for a limited period of time. (Defs.’ 70th Rep., p. 26-27).

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: “BCDSS is in compliance with this commitment.” (Defs.’ 70th Rep., pp. 27-28)

IVA response: Progress towards compliance.

Defendants have now made substantial progress on the creation of a Kinship Resource Center. This project is not being developed through an RFP, but rather through resources and staff at BCDSS. According to Defendants’ Report, Phase III of the development of the Center was not complete. In addition, from the description of activities, it is unclear whether two of the requirements of the additional commitment have been met: *transportation assistance to referrals, activities and appointments related to the care of children ... and the development and support of a statewide network of support groups for kinship 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. (Defs.' 70th Rep., p. 28)

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 (most recently, SSA 19-16 (5.28.19)) 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, it is important to note that the foster care rate to which the SILA rate is tied is not in compliance with the MCD (see discussion, below) and that inflation is a very serious concern. Given current high rates of inflation, it is unlikely that the stipend could go as far as would be required in order 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*

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.]

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 claim of compliance. (Defs.' 70th Rep., p. 28)

IVA response: Not in compliance.

The Defendants have again failed to address the concerns raised in the IVA's previous reports regarding this Additional Commitment. In order to meet the MARC and maintain it, Maryland should be providing an annual increase matching the increase in the cost of living. Despite the fact that the cumulative rate of inflation has been 22.2% between 2019 to 2024 ([usinflationcalculator.com](https://www.usinflationcalculator.com), accessed 5/9/24), there has not been an increase in the public foster care board rate since FY2019 when there was a 1% 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 appears to have occurred. Defendants state that private agency providers received an increase in 2022 but do not provide any explanation for why the public foster care board rate was not increased. Given the current rate of inflation, this should be a priority.

Defendants do not even attempt to justify their violation of this requirement. They simply state, "The foster care payment rate did not change during this reporting period." (p. 28). At the time of this IVA Report, a year later, the foster care payment still had not been raised, putting foster parents (as well as those providing permanency through adoption and guardianship, and youth in the SILA program) even further behind inflation.

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: No claim of compliance. (Defs.' 70th Rep., p. 29)

IVA response: Steps taken towards compliance.

To meet its goal of 50% kin placements and 90% of kin placements being licensed homes, the agency needs to make it as easy and supportive as possible for kin to care for their relative foster children. Defendant BCDSS recently has taken an important step towards fulfilling the first requirements of this Additional Commitment by contracting with A Second Chance, Inc., a well-known successful program for providing support for kinship caregivers. Defendant DHS has provided oral information of its intention to revise the kinship and foster care regulations to take advantage of the recent federal approval of regulations (45 CFR Parts 1355 and 1356 (eff. November 27, 2023)) recognizing the need to differentiate requirements for licensing between kinship caregivers and non-kinship caregivers to “place as few burdens on such families as possible, consistent with ensuring the safety and well-being of children in foster care.”² Further discussion of this topic can be found in the section on Kinship Care (p. 29) in the IVA’s Certification Report for Defs.’ 70th Report.

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,*

² <https://www.govinfo.gov/content/pkg/FR-2023-09-28/pdf/2023-21081.pdf> at p. 66701. (last visited October 24, 2023).

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. (Defs.' 70th Rep., p. 30)

IVA response: In compliance.

The IVA has no information that caregivers needing childcare have been denied access to the necessary funding. Defendants recently have issued a new SSA Policy concerning childcare - SSA-23-03, Child Care Services for Children in Out-of-Home Care - 1 (eff. 9/25/23).³ The new 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.*

Defendants: "continues to meet this commitment" and "is compliant with this additional commitment" (Defs.' 70th Rep., p. 30).

IVA response: Not in compliance.

³ <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 5/21/24).

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.

Defendants: No claim of compliance. (Defs.' 70th Rep., p. 31)

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. They claim to be "exploring with the IVA other methods to meet this commitment." The IVA is unaware of that exploration. In addition, as of the drafting of this report, it is not known if reconsiderations of foster homes are even being completed timely. The CJAMS provider module which should supply that information still has numerous defects which are hindering the agency's ability to obtain accurate data on a number of aspects of their work in licensing and monitoring foster homes, including timely reconsiderations. The IVA has not been provided a copy of the "reference to obtaining a child's input" which Defendants state has been added to the template for completing a reconsideration.

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.*

Defendants: In compliance. (Defs.' 70th Rep., p. 31)

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. (Defs.' 70th Rep., p. 31)

IVA Response: In compliance.

During the reporting period, the Health Care Advisory Council continued to meet quarterly. The Council does not have a practicing dentist but has filled the positions for a representative from the Baltimore City Health Department and a representative from The Center for Hope. A youth was recruited for the Council and has participated actively in recent meetings. The IVA remains concerned about the lack of parent and caregiver voice on the Council. Youth, parents, and caregivers should be represented on the Council in ways that facilitate their full involvement.

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. (Defs.' 70th Rep., p. 31)

IVA response: Not in full compliance.

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.

Defendants: “This commitment is an ongoing effort for BCDSS.” “BCDSS is in compliance with this commitment.” (Defs.’ 70th Rep., pp. 31-32)

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 problem. See section on Mental Health (p. 31) in IVA’s Certification Report for Defs.’ 70th Report for further discussion.

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: No clear statement of compliance. (Defs.’ 70th Rep., p. 32)

IVA response: Insufficient information and documentation to determine compliance.

Defendants updated their Education Stability Policy effective December 15, 2023.⁴ Defendants continue to reference updating a Memorandum of Agreement with Baltimore City that they provided with their 63rd Report. However, there are Baltimore City children enrolled in other school districts across the state. Defendants do not assert nor do they present any documentation of how they work with the other school systems to ensure educational stability and timely enrollment.

As far back as the 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 more than ten business days from entry into OHP, double the five days required by *L.J.* and Maryland regulations. The Defendants have not addressed this issue in any of their reports since it was raised in the IVA’s Response to Defendants’ 63rd Report (August 6, 2020), and it is not known if this form has been amended.

⁴ <https://dhs.maryland.gov/documents/SSA%20Policy%20Directives/Child%20Welfare/SSA%2023-04%20CW-Education-Stability.pdf> (last accessed 5/21/24).