L. J. v. Massinga Independent Verification Agent

CERTIFICATION REPORT FOR DEFENDANTS' 68th COMPLIANCE REPORT

January 1, 2022 to June 30, 2022

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April 17, 2023

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EXECUTIVE SUMMARY

This is the Independent Verification Agent's (IVA) Certification Report for the Defendants' 68th Compliance Report covering the reporting period of January 1 - June 30, 2022. Defendants' final report was not received by the IVA until January 6, 2023.

HISTORY OF THE CASE AND COMPLIANCE WITH CONSENT DECREES

The original *L.J. v. Massinga* case, filed in U.S. District Court in December 1984, alleged statutory and constitutional violations due to the failure to protect foster children in the custody of the Baltimore City Department of Social Services. Litigation ensued, and in July 1987, the court found for Plaintiffs on both statutory and constitutional grounds. After a series of unsuccessful appeals by Defendants, the parties entered into their first consent decree in September 1988; in 1991, the Consent Decree was extended to children placed with relatives through kinship care. Following a Motion for Contempt by Plaintiffs in November 2007, alleging multiple violations of the original court order, the parties entered into negotiations, and a new Modified Consent Decree (MCD), the current one, was approved by the court on October 9, 2009.

While there has been progress, after more than thirteen years since the MCD was entered, the Defendants remain non-compliant with nearly all of the MCD's requirements. For this 68th reporting period, one Exit Standard will be certified as compliant. The lack of certification is rooted in several problem areas including lack of proper documentation in the Child Juvenile and Adult Management System (CJAMS); failure to meet all elements of the requirements; inability to report data accurately and reliably out of CJAMS; delays in report development and validation; and invalid, inaccurate or unreliable data. Because of the data problems, it has not been possible to determine if the activities required by the MCD are being done.

CRITICAL ISSUES: CASELOADS, KINSHIP CARE AND PLACEMENTS

Vacancies and turnover of staff at both the state and local levels continue to be a problem. In 2022, staff turnover at Defendant Department of Human Services (DHS), particularly those staff who work on CJAMS, and staff vacancies at DHS' Social Services Administration (SSA) impacted the pace of development of CJAMS reports required to report on the MCD measures. Turnover of caseworkers and supervisors at the local level has resulted in high caseloads, further complicating the necessary work of service provision and CJAMS documentation necessary to produce accurate, valid, and reliable data from CJAMS. As of June 30, 2022, only 10% of Out-of-Home (hereafter "OHP" or "foster care") caseworkers met the caseload requirement of 12 children. More than 60% of all OHP caseworkers had caseloads between 16 - 25 children. The IVA recognizes staffing shortages in social services exist nationwide. However, this challenge must be addressed, and it will require creative and thoughtful solutions, as well as obvious ones such as increased salaries. It is imperative that Defendants urgently consider other personnel changes and supports that may help overloaded caseworkers better support children and families and perform the documentation necessary to report on that work.

The Defendants have identified increasing the percentage of kinship care placements as a priority in their efforts to improve placement stability and outcomes for children. By prioritizing kinship care many children can avoid removal from their extended families and communities, avoid separation from siblings, and avoid the needless trauma of moving to a stranger's home, or, worse, group care. According to BCDSS data, as of the end of December 2022, the kin placement rate in Baltimore City was 32%, which is 3% lower than the national rate of 35%. Placement with kin alone is not enough - it is vital that kin receive the support they need when stepping in to care for children. One way to do this is through the licensing process. Without a license, kin caregivers

receive significantly less monthly financial and caseworker support than licensed kin homes. Unfortunately, the percentage of licensed kin was only 26% as of the end of 2022.

The IVA remains concerned about the availability of placements for some children, particularly those with complex mental health needs, LGBTQ youth and large sibling groups. The lack of appropriate placements for children and youth with significant physical and mental health problems, especially when those problems are complicated by developmental disabilities, is particularly pressing. The placement of youth in hotels, some for weeks or months at a time, is a too-often used and inadequate strategy for the shortage of appropriate placements. The IVA has highlighted the cases of some children and youth who have experienced hotel or office stays and hospital overstays in Section IV of this report.

DATA COLLECTION AND REPORTING

Progress on the goal of reporting accurate, reliable and valid data from CJAMS has begun to accelerate. A significant barrier remains the backlog of needed changes to the CJAMS user interface. Needed changes include both those to correct defects and those to enhance current functionality. The concerns expressed in the previous IVA reports about the impacts on data availability have been borne out, and without significant additional resources, it is unlikely that there will be reasonably accurate, reliable and valid reporting on all measures until late 2023 or early 2024 at the earliest. Neither party to this lawsuit should find this situation acceptable.

This IVA report is the first following the election of Governor Wes Moore and the appointment of DHS Secretary Rafael López, an experienced child welfare expert. We look forward to working with the new administration to address the ongoing challenges faced by children and their families in the child welfare system.

IVA CERTIFICATION REPORT FOR

DEFENDANTS' 68th COMPLIANCE REPORT

This is the IVA's Certification Report for the Defendants' 68th Compliance Report covering January 1, 2022 to June 30, 2022.

I. INTRODUCTION

Defendants Baltimore City Department of Social Services (BCDSS) and Maryland Department of Human Services (DHS) provided their 68th Report to the IVA and Plaintiffs on January 6, 2023, more than six months after the end of the reporting period.[1] We urge the new administration to work towards more timely report submission.

II. BCDSS AND DHS LEADERSHIP

Since the signing of the MCD in October 2009, there have been multiple changes in leadership at the state and local levels including four DHS Secretaries and six BCDSS Directors. These changes are likely to have contributed to the lack of progress towards compliance with the MCD. At the local level in Baltimore City, there is now greater continuity as BCDSS Director Brandi Stocksdale has served in her position since November 2020. The stability and growth of her leadership and data analysis teams has been valuable. We look forward to continuing our work with her and her staff.

[1] A final corrected and updated report was provided on April 12, 2023. While the MCD does not specify a timeline for Defendants' report submission following the end of a reporting period, this length of time between the end of the reporting period and the submission of the report to the Plaintiffs and IVA is excessive for a six-month reporting cycle. In this case, the IVA did not receive the Defendants' report for the 68th reporting period until after the start of the 70th reporting period. This delay results in the IVA reviewing data for certification that is over a year old when the IVA begins work on the certification report. This issue has been raised repeatedly in previous IVA reports and continues to be of concern.

In November 2022, Wes Moore was elected Governor of Maryland, and, on January 12, 2023, he announced the appointment of Rafael López to serve as the Secretary of the Department of Human Services. Although new to state government, Secretary López has an extensive background in child welfare both in Baltimore City and nationally. He has served as Commissioner of the Administration on Children, Youth and Families, U.S. Department of Health and Human Services, and before that as Associate Director for Talent and Leadership Development at the Annie E. Casey Foundation and as President and Chief Executive Officer of The Family League of Baltimore City.

Secretary López appointed Carnitra White as DHS Deputy Secretary of Programs. She previously has served in that position and as Social Services Administration (SSA) Executive Director. Most recently she has been Anne Arundel County DSS Director for a number of years. Her knowledge and experience with child welfare at both state and local levels hopefully will allow a smooth transition and quicker action on the many issues that must be addressed at the state level.

III. L.J. v. MASSINGA

A. Background and History

The original *L.J. v. Massinga* case, filed in U.S. District Court in December 1984, alleged statutory and constitutional violations due to the failure to protect foster children in the custody of the Baltimore City Department of Social Services. Plaintiffs alleged that the mis-administration of Maryland's federally-funded foster care program in Baltimore City had resulted in deplorable conditions and treatment, including egregious physical and sexual abuse, medical neglect, denial of appropriate care and education, and lack of permanent homes for children in foster care. Litigation ensued, the class was certified as "all children who have been, are or will be placed in BCDSS custody," and on July 27, 1987, the court found for Plaintiffs on both statutory and

constitutional grounds. A preliminary injunction was granted requiring home visits of all foster children, assessment and monitoring of foster homes, prompt reports of suspected maltreatment, and medical care for all children. Defendants appealed the decision and in 1988, the Fourth Circuit affirmed the preliminary injunction. *L.J. v. Massinga*, 838 F2d 118, 122 (4th Cir. 1988). The Defendants petitioned the United States Supreme Court for review but certiorari was denied. 488 U.S. 1018 (1989). Subsequently, the parties entered into their first consent decree, approved by the District Court on September 27, 1988. 699 F. Supp. 508 (D. Md. 1988). When a study of children placed with relatives through kinship care determined that these children were at high risk, the parties modified the Consent Decree in 1991 to extend the protections of the Consent Decree to them. 778 F. Supp. 253 (D. Md. 1991).

Although both decrees ordered specific actions to be taken by Defendants to improve the safety, permanency and well-being of the children in their custody, the decrees did not contain specific targets for compliance with those requirements and implementation proved difficult. For example, while the original decree required that every child have an initial health screen within five days of entering into foster care, it did not specify how to determine compliance nor what level of compliance, e.g., 100% of children, 90% of children, or some other compliance level, would be considered sufficient.

Over the next decade and a half, Defendants filed the required semi-annual reports. In 2003-2007, a series of Department of Legislative Service audits and other reports confirmed Plaintiffs' concerns about widespread violations of the consent decrees. After nearly two years of failed negotiations, Plaintiffs filed a Motion for Contempt on November 5, 2007, alleging violations of nearly every requirement of the original court orders and demonstrating over ninety violations. The Motion alleged that, based upon data gathered from Maryland Public Information

Act requests, the high level of compliance claimed in the recent semi-annual reports was inaccurate. At the September 9, 2008 contempt hearing the Defendants approached Plaintiffs and offered to negotiate a modified consent decree with enforceable compliance and exit standards. The parties entered into lengthy facilitated negotiations, and a new Modified Consent Decree (MCD), the current one, was approved by the court on October 9, 2009.[2] Unlike the earlier orders, the MCD contained specific outcomes to be achieved prior to termination of the case, and forty Exit Standards which comprise the measurement standards for achievement of those outcomes. However, more than thirteen years after the MCD was entered, the Defendants remain non-compliant with nearly all of the MCD's requirements.

B. Other Child Welfare Litigation

The lack of significant progress towards compliance and exit after such an extended time period remains a major concern. Many other states/systems experiencing child welfare litigation over the years have been able to make progress and move towards settlement or exit, many in considerably shorter time periods compared to the *L.J.* case. For example, litigation was filed in Ohio, Alabama and Connecticut during the 1980's (1983, 1988 and 1989, respectively) resulting in consent decrees in all cases. All three of these states have since exited their consent decrees.

More regionally, significant progress in child welfare litigation and reforms has occurred in the cases of *LaShawn A. v. Bowser* in Washington, D.C. and *Charlie & Nadine H. v. Murphy* in New Jersey. *LaShawn A.* is a federal class action suit filed in 1989 on behalf of the District of

[2] The road to final approval of the MCD was not a smooth one. After the parties jointly submitted the proposed MCD in June 2009, Defendants reversed their position and claimed that the Court lacked subject matter jurisdiction to approve the MCD and that the Court also lacked jurisdiction over the original consent decree. After a hearing denying Defendants' motion to vacate all orders and to terminate the case for lack of jurisdiction, the Court entered the MCD on October 9, 2009 over the objection of the Defendants. Defendants appealed and the decision by the District Court was affirmed by the Fourth Circuit in 2011. *L.J. v. Wilbon*, 633 F.3d 297 (4th Cir. 2011), cert. denied, *Dallas v. L.J.*, 565 U.S. 1058 (2011).

Columbia's abused and neglected children.[3] Initially captioned *LaShawn A. v. Barry*, the lawsuit challenged nearly every aspect of the District's child welfare system and sought extensive reform of the city's child welfare agency. This included developing policies and procedures in the areas of child protective services; family preservation and preventive services; child placement; case reviews; adoption; staffing (qualifications, training, and caseload standards); resource development (foster homes, adoptive homes, and community-based services); contracts with private providers and agencies; and development of a uniform computerized information system. Years of continued litigation, failed reforms, sluggish progress, a period of receivership, and amended implementation plans followed. Ultimately, this case resulted in the creation of a new city agency, the Child and Family Services Agency (CFSA). An Implementation and Exit Plan was approved by the court in 2010. In October 2019, the city had met 56 of the 80 metrics for improvement necessary to end the suit. (This stands in stark contrast to the compliance status of the *L.J.* Exit Standards). Following a 2019 updated Implementation and Exit Plan and the court approval of a settlement agreement in 2021, the *LaShawn A.* case is now closed after nearly 32 years.

Charlie & Nadine H., filed in August 1999 and originally captioned *Charlie & Nadine H. v. Whitman*, is another federal class action lawsuit.[4] The lawsuit alleged, among other issues, that the New Jersey Division of Youth and Family Services (DYFS) failed to protect children in DYFS custody from abuse, failed to provide them with services such as medical care, and failed to provide DYFS caseworkers with adequate resources and training. The parties reached a settlement agreement approved by the court in September 2003. The state failed to make adequate progress under the settlement agreement, and, in December 2005, the Plaintiffs moved to hold the state in

[3] Summary and copies of documents are available at https://clearinghouse.net/case/11049/.
[4] Summary and copies of documents are available at https://clearinghouse.net/case/11057/.

contempt of the consent decree. However, the election of a new governor brought about the opportunity for change, including the creation of a new cabinet-level children's agency and a new round of negotiations with the Plaintiffs resulting in a new settlement agreement in July 2006.

Following phased implementation of the settlement agreement, a second modified settlement agreement was entered in November 2015. This second modified agreement required progress with timely completion of quality investigations of alleged child abuse and neglect, timely execution of initial and subsequent family team meetings, proper needs assessment, timely quality case planning, proper management of intake/adoption workers' caseloads, proper parent-child/sibling visitation, stable placements (with siblings, where possible), prevention of repeat maltreatment and re-entry to placement, timely discharge to permanent placement, independent living assessment and provision of services to older youth to support their transition to adulthood. Significant progress was made under the modified settlement agreement and in June 2022, the parties to the lawsuit presented the court with an Exit Plan and Agreement that would allow full exit from the lawsuit by December 2022 and a transition period of court jurisdiction ending no later than June 2023. We encourage the parties to read the final court monitoring report to understand how the Defendants in this case were able to bring about significant and sustainable change that led to the likelihood of exit from this more than twenty-year-old lawsuit.[5]

While these other lawsuits may differ in issues, scope, and remedies, they have ended with compliance, system improvement and exit (or an exit plan) that has resulted in child welfare systems that better serve families and children. We believe this can happen in the *L.J.* case, too. Much like in New Jersey, the election of new governor in Maryland brings with it hope for a renewed commitment to the *L.J.* case, with significantly increased compliance rates and system

[5] https://cssp.org/wp-content/uploads/2022/10/Charlie-and-Nadine-H-Report-on-Progress-from- Jan-to-June-2022.

improvement that could result in exit from this several decades-long lawsuit. While only Baltimore City is subject to the MCD, improvement will require significant effort from the State due to the structure of the child welfare system in Maryland. Many of the problems that Baltimore City faces are also experienced by other jurisdictions given shared statewide resources (or lack thereof) and the failure to enact long overdue placement and services' rate reform. While a final set of measure instructions for the MCD measures has been substantially completed, this is only a portion of what is needed to exit this decree. Data must not only be accurate but also trending in the right direction. A renewed commitment to the goals and outcomes of the MCD, which reflect best practices in child welfare, is essential to helping many of Maryland's most vulnerable families.

C. Who Are the Children in Baltimore City Foster Care?

First and foremost, the children and youth in Baltimore City foster care are individuals who have experienced the trauma of removal from their families. All of them have their own particular strengths and needs, and the plans to ensure their well-being and plans for exit from the foster care system should be determined by those strengths and needs. That said, some data around the population as a whole may be helpful in developing policy and practice to better address the needs of children and families impacted by the foster care system.[6]

Just over 1,500 children and youth were in the foster care system in Baltimore City as of the end of December 2022. This number represents a vast improvement from the 7,000 children documented to have been in the foster care system when the MCD began in 2009. While some of

[6] The data in this section is compiled from a combination of data sources: federal (Att. 1, AFCARS FFY2021 Preliminary Estimates), state (2022 Foster Care Milestone Reports and Att. 2, SSA 2022 Baltimore City Headline Indicators) and local (Att.3, BCDSS Child Welfare Trends (December 2022); Att. 4, Casey BCDSS Assessment (January 2020); Att. 5, MATCH Case Assignment Definitions (Guidelines, 2019); and MATCH health data). There are small discrepancies in the data and timeframes for the data between the different sources. However, the foster care population has remained sufficiently stable over the past several years to allow the data to be comparable.

the reduction is likely to have been due to data clean-up, the majority resulted from (1) the "aging out" of significant numbers of youth who, tragically, had spent their entire childhoods in foster care since entering foster care in the 1990's and (2) reforms to local, state and national policy and practice which have led to more timely permanent placements for children in foster care and less children entering foster care each year.

Of the children in out-of-home placement at the end of December 2022, 23% were less than 2 years old; 13% were between the ages of 3 and 5 years old; 31% were between the ages of 6 and 13 years old; 22% were between the ages of 14 and 18 years old; and 11% were between the ages of 19 and 21years old. 81% of the children were Black; 16% were White; 1% were Latino; and the race of 2% of the children had not been recorded.[7]

Unfortunately, Black children and youth continue to enter foster care at a disproportionate rate in Baltimore City; in 2022, 77% of the new entrants were Black, compared to a child and youth population in Baltimore City of 68% Black.[8] This is essentially unchanged from the data provided by the Annie E. Casey Foundation in an assessment completed for BCDSS in January 2020. That assessment found that for BCDSS entries into foster care from 2014-2019, 77% were Black children and youth while the Baltimore City child and youth general population was only 67% Black.[9] While the rate of Black children entering foster care has remained static, the rate of White children and youth entering foster care in Baltimore City has decreased. In 2022, 9% of the entries were White, from a child and youth population in Baltimore City of 17% White. For 2014-2019, the Casey assessment found that 13% of the new entrants were White from a population of 19% White.

[7] Calculated from BCDSS December 31, 2022 Foster Care Milestone Report.
[8] 2022 data in this paragraph is from Att. 2, Headline Indicators, p. 13.
[9] 2014-2019 data in this paragraph is from Att. 4, Casey Assessment, p. 12.

As of the end of December 2022, the children and youth in foster care were in the following types of placements: 32% relative placements, 46% non-relative family placements, 10% congregate (group) care, 3% independent living and 9% other (including own apartments, runaways, jails and prisons, etc.).[10] BCDSS' MATCH program, which provides health management services for the children in BCDSS foster care, assigns children to medical case managers based upon physical and mental health status.[11] As of March 2023, approximately 51% of all of the children and youth ages 0 to 20 were categorized as physically and mentally healthy; 31% were considered to be moderately or high-risk behaviorally; 3% were pregnant and parenting youth; and 12% were medically fragile. (The remaining 3% were new entrants into foster care for whom a health and mental health status had not yet been assigned.)[12]

Nearly 40% (594) of the children in Baltimore City foster care at the end of December 2022 had been in foster care for three or more years. For the children who exited foster care during that six-month period, the average length of stay was 40 months.[13] Nationally, the average length of stay for children who exited foster care during FFY 2021 was 22 months - nearly 18 months shorter.[14] Black children also have had disproportionately long stays in foster care, and disproportionate numbers of those youth have not been placed in a permanent home during their years in foster care. In its 2020 assessment, Casey reported that, for calendar year 2018, 155 youth "aged out" of foster care at age 21. 95% of those aging out were Black. Of the total number of youth leaving foster care for any reason that year who had been in foster care for five or more

[10] Att. 3, BCDSS December 2022 Child Welfare Trends, p. 12.
[11] Att. 5, MATCH Case Assignment Definitions.
[12] Information containing children's names provided in Excel spreadsheet from MATCH on March 22, 2023.
[13] Calculated from BCDSS Foster Care Milestone End of the Month Final Exit Report (December 2022). In calculating length of stay, Maryland excludes children who were in foster care for less than 8 days; it is unclear from the federal data whether all states use this standard or not. If other stays include children with shorter foster care stays, Maryland's data would be skewed towards a higher average length of stay than other states and, thus, the national average.
[14] Att.1, AFCARS FFY 21, p. 3.

years, 92% were Black.[15] The IVA has not been able to determine if there has been any improvement since 2019 due to race data not being regularly reported by Defendants in the past.

IV. CRITICAL CHILD WELFARE POLICY AND PRACTICE ISSUES: CASELOADS, KINSHIP CARE, PLACEMENTS AND MENTAL HEALTH

A. Caseloads

One of the most critical issues facing BCDSS is caseloads - they remain unacceptably high, and there are no short- or even medium-term solutions on the horizon. As of June 30, 2022, only 10% of OHP (foster care) caseworkers met the caseload requirement of 12 children.[16] More than 60% of all OHP caseworkers had caseloads between 16 - 25 children. By the beginning of 2023, the percentage of caseworkers meeting the caseload requirements of 12 or less children per caseworker had increased slightly to 15%, but the percentage of caseworkers with 16 to more than 20 cases had increased to 73%. The total number of OHP caseworkers with three or more cases had fallen from 99 to 89 caseworkers, a loss of 10% of the caseworker staff.

To put it into stark perspective, in order to attain a compliant average caseload ratio of no more than 12 cases per caseworker, the agency needs 125 OHP caseworkers - a 40% increase. Given that new caseworkers should have less than the full caseload for some reasonable period of time - and the need to anticipate continued turnover, especially retirements, BCDSS should be looking to "overhire" to bring the OHP workforce up by approximately 10% - to at least 135 caseworkers. Instead, unfortunately, between July and December 2022, only 10 OHP caseworkers were hired while another 14 had resigned.

[15] Att.4, Casey Assessment, p. 20.
[16] The data in this section is calculated from BCDSS Personnel Transaction Reports.

There also is a critical shortage of direct supervisors. Between July and December 2022, no supervisors were hired while 3 had resigned. Although, at least as of the beginning of January 2023, the caseworker to supervisor ratio had improved so that no more than one OHP supervisor at that time had more than 5 caseworkers under their supervision, that is only because of the dramatic and precipitous decrease in the number of caseworkers.

These high caseloads and lack of sufficient direct supervisors impact the children in foster care and their families as well as the caseworkers. Not only are these increased caseloads a violation of the MCD, but they also make it much more difficult to resolve any of the issues discussed in this report.

Although the MCD Workforce Exit Standards focus on caseloads and supervision ratios for OHP and Resources and Support, sufficient staffing of the Family Preservation program is no less critical to meet the MCD outcomes of preservation of families and timely permanency as well as the overall mission of the Defendants to protect the safety of children. Unfortunately, because immediate staffing pressures have focused hiring on the Child Protective Services (CPS) and OHP units, staffing of the Family Preservation program had fallen to approximately twenty (20) caseworkers and four (4) direct supervisors as of January 2023. While at least 12 Family Preservation caseworkers and 3 Family Preservation supervisors left in 2022, only 4 caseworkers and no supervisors were hired during that time period.

The IVA acknowledges that hiring and retaining staff is a challenge beyond just Baltimore City and beyond just the social work profession. Because these complex problems will not be resolved all at once, Defendants urgently need to consider other personnel changes and supports, e.g., requesting additional pay for caseworkers under certain conditions and additional transportation and family support workers who may help overloaded caseworkers better support

children and families. The Defendants are well aware of the problem and should be pursuing ways to address it before the problem worsens further.[17]

B. Kinship Care

The IVA's Response to Defendants' 66th and 67th Reports addressed in detail the importance of kinship placements and encouraged Defendants' strengthened efforts to increase the percentage of children and youth in kinship care. (See IVA Resp. to 66th Rep., pp. 11-14, IVA Resp. to 67th Rep., pp. 30-33). However, the issue of kinship care and the need to increase the percentage of children placed with kin is so critical as to require its discussion again in this report.

Why the focus on kinship care? Because the benefits of kinship care are well-documented and well-known.[18]

- Greater stability: Children placed with kin experience greater stability in placement and fewer moves during their time in foster care.
- Improved well-being: When compared to children in non-relative foster care, children in kinship care have been found to experience fewer behavioral and mental health challenges, have better adaptive behaviors, and fewer psychiatric disorders.
- Limiting trauma: Removal and the circumstances that led to the removal are traumatic experiences. However, the impacts of this trauma can be minimized by prioritizing kinship care. Many children can avoid being removed from their families and communities, avoid separation from siblings, and avoid the needless trauma of moving to a stranger's home,

[17] There are many resources devoted to this topic with examples of the ways that different jurisdictions have worked to ameliorate their staffing problems. See, e.g., HHS Children's Bureau, Capacity Building Center for States, https://content.govdelivery.com/accounts/USACFCBCS/bulletins/350030a (March 23, 2023).

[18] See, e.g., https://www.casey.org/adapting-home-studies-for-kin/; https://www.casey.org/ kin-first-approach/; https://jlc.org/news/family-preservation- matters-why-kinship-care-black-families- native-american-families- and-other; https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/.

or, worse, group care. When children live with kin, they are often able to maintain connections and familiar supports, which can reduce the trauma of removal and help children heal from past trauma.

- Promoting sibling ties: Children in kinship care are more likely to live with siblings. Even if not placed together in the same kin home, siblings are more likely to maintain connections than if placed with non-relatives. Maintaining sibling relationships can lead to greater stability in placement as well. Sibling relationships are long-term relationships that can help children who were in foster care continue to heal from trauma long after leaving foster care and into adulthood.
- Improved permanency outcomes: Living with kin results in an increased likelihood of achieving permanency through guardianship or adoption by their relative caregivers to maintain life-long connections with their family if they are unable to safely return home. Additionally, children in kinship care achieve permanency more quickly than children in non-relative care.
- Maintaining cultural identity: Living with kin helps children preserve and strengthen their cultural identities by maintaining connections to their communities and culture, including language, food, holidays, clothing, and other traditions. Having a strong cultural identity can lead to greater well-being.

According to the federal adoption and foster care report (AFCARS), of the 391,093 children in foster care in the United States on September 30, 2021, 35% of these children were in kinship care.[19] According to the BCDSS Child Welfare Trends data, as of the end of December 2022, the kin placement rate in Baltimore City was 32%.[20] BCDSS recognizes that this rate should

[19] Att. 1, AFCARS FFY 2021, p. 1.
[20] Att. 3, Child Welfare Trends, p. 12.

be higher and, at the *L.J.* Problem Solving Forum held on June 23, 2022, BCDSS Director Stocksdale shared with forum members that BCDSS had set a goal to place 50% of all children in foster care with kin. This is a laudable goal and would be a significant improvement from the current 32% kin placement rate. However, it is unclear *how* Defendants plan to achieve such a significant increase in kinship care placements. The rate of kinship care in Baltimore has remained nearly unchanged for several years. In 2019, former Director Randi Walters invited Annie E. Casey's Center for Systems Innovation (CSI) to conduct a full assessment of BCDSS outcomes. One of the many findings of this assessment was that in October 2019, 36% of all BCDSS placements were with relative/kin caregivers.[21] Following this assessment, the Defendants identified the goal of increasing the percentage of youth placed with kin as a priority in their efforts to improve placement stability. It is important to understand why this rate has not increased over time - and has actually decreased slightly - in order to make the necessary changes that will lead to a significantly higher rate.

An increase of 18% such as Director Stocksdale has set as a goal is not unattainable but will require informed and well-planned efforts, including understanding of the barriers to kinship care. Some states that have significantly improved their rate of kin placements include New Mexico, Connecticut and Oklahoma.

- New Mexico: The percentage of children living with relatives and fictive kin rose from 27% in 2019 to 39% in 2021.[22] Between June 2019 and June 2022, the percent of children placed with relatives as their first placement upon removal rose from 8% to 41.6%.[23] This

[21] Att. 4, Casey Assessment, p. 15.
[22]See https://publiccounsel.org/wp-content/uploads/2022/11/ 11-15-2022-Kevin-S-v-Blalock-Co-Neutrals-2021-Annual-Report.pdf (p. 14).
[23] See Kevin S., 2022 Annual Progress Report - August 1, 2022 (p. 58) downloaded at https://www.cyfd.nm.gov/kevin-s-settlement/.

increase was achieved through the creation of a dedicated kinship care unit, overhaul of the kinship care licensing process, the use of software to better locate family members, expanded family support services to relatives including annual respite care for relative caregivers as well as other strategies.[24] The commitment to kin placement is so strong that a manager's approval is required for all placements with a non-relative. According to a report by monitors for a statewide class action, "Data and information from 2020 and 2021 show the importance of placing children with kin is ingrained in CYFD practice."[25]

- Connecticut: In January 2010, the kinship rate was at 21%; by January 2022, the rate was 42.3%. This significant increase was touted in the State's motion to exit from the oversight of the federal court in the *Juan F. v. Lamont* child welfare litigation in Connecticut. This motion was granted, and the 32-year-old case was closed.[26]
- Oklahoma: Since at least 2015, Oklahoma, under court monitoring and a Compromise and Settlement Agreement (CSA) as a result of the *D.G. v. Yarborough* class action lawsuit (filed in 2008), has maintained a kinship home placement rate between 42.8% and 45.6%. This rate is over 50% if trial home visits are included (as BCDSS includes) in the kinship placement rate. [27]

We encourage Defendants to consider efforts and policy changes of other states that have led to increased or sustained high levels of kinship care for children in foster care.

[24] See https://www.newsnationnow.com/us-news/foster-care-evolving-through-kinship/. Also, www.prnewswire.com/news-releases/fostering-family-new-benefits-available-for-kin-caregivers-in-new-mexico-301177664.html and https://fosteringfamily.com/caregiver-resources/.
[25] https://publiccounsel.org/wp-content/uploads/2022/11/11-15-2022-Kevin-S-v-Blalock-Co-Neutrals-2021-Annual-Report.pdf, p. 9.
[26] See https://www.ctinsider.com/news/article/Connecticut-DCF-touts-enormous-progress-17007357.php.
[27] See https://oklahoma.gov/okdhs/services/child-welfare-services/the-oklahoma-pinnacle-plan/coneutralcommentary.html.

In addition to the benefits of kinship care discussed earlier, kin placements can divert children from non-kin placements including BCDSS foster homes, therapeutic foster homes and congregate care. This leaves a greater number and range of placements available to other children who do not have kin available to care for them or who require a more intensive or more restrictive level of care.

While kinship placements help to alleviate some of the issues with placement shortages for children in foster care, they also address issues beyond placement. For example, increasing the rate of kinship care may also address the rate of siblings placed together and sibling visitation issues. MCD Measure 31 looks at the percent of all children in OHP placed with all siblings.[28] As reported by Defendants for the 67th reporting period ("TBD" for the 68th), this rate is only 40.2% (Defts' 68th Rep., p. 92). Measure 43 of the MCD requires Defendants to report the rate of twice monthly sibling visitation for siblings not placed together. In the current version of Defendants' 68th Report, Measure 43 is indicated to be "TBD." (Defts' 68th Rep., p. 98). However, drafts of the report have shown very low rates of compliance with this requirement.

Even if siblings are placed in the homes of different kin, these kin placements may lead to improved compliance with visitation requirements as sibling groups may see each other more often if residing with family members who maintain family and cultural connections. For children not placed with kin, the search for relatives should continue beyond initial removal and placement; however, this does not appear to happen in many cases as indicated by Quality Service Review (QSR) data presented by Defendants. MCD Measure 14 looks at the percentage of children for whom BCDSS searched for relatives or other resources. For those children and youth in the QSR

[28] The measure requires placement with all siblings for compliance except that youth in the following placement types are not included in the requirement: college, corrections or secure detention facilities, inpatient/hospital care, RTCs, the military, independent living programs including teen mother programs, semi-independent living, or their own apartments; trial home visits.

sample who were not living with a relative and for whom relatives had not been located, there was no evidence of a search for a relative within the past 12 months in 56% of the cases (Defts' 68th Rep., p. 12).

Kinship placement alone is not enough to address trauma, ensure stability, and improve well-being and permanency for children who are removed from their parents. Once kin placements are identified, caregivers often require significant support and services including financial assistance, childcare, housing and therapeutic supports. Foster children need individualized services to ensure that their emotional, physical, educational, and cultural needs are met even when they are placed with kin.

One way to offer additional support to kin is through the licensing process. BCDSS has set a goal of having 90% of its kin caregivers licensed. Unfortunately, the percentage of licensed kin was only 26% as of the end of 2022.[29] Without a license, kin caregivers are only eligible to receive monthly Temporary Cash Assistance (TCA) payments for the youth in their care, and only if they qualify as "caretaker relatives" (defined as "related by blood, marriage or adoption" COMAR 07.03.03.02B(10)). In addition, the monthly amount for one child - $373[30] - is significantly less than half the amount received for a licensed foster home, which is a minimum of $887 ($902 for children twelve and older) per month. For children considered as needing an "intermediate" level of care due to physical or mental health issues, this disparity between TCA and the foster care rate - $1,008 ($1,024 for children twelve and older) - is even greater.[31]

[29] Calculated from DHS Foster Care Milestone Report.
[30] As of July 2022, the previous monthly TCA amount of $328 increased by $45 per household member. DHS FIA Information Memo #22-31 (September 1, 2022). https://dhs.maryland.gov/documents/FIA/Action%20Transmittals-AT%20-%20Information%20Memo-IM/AT2022/22-31%20IM%20-%20TCA,%20TDAP%20BENEFITS%20INCREASE%20UPDATE.pdf
[31] https://dhs.maryland.gov/foster-care/financial-information/.

In addition to receiving less monthly financial support, unlicensed kin providers are not assigned a Resources and Support worker like other BCDSS licensed foster homes who receive support from both a Resources and Support worker and an OHP caseworker. Kin providers need assistance to obtain immediate financial support through "provisional licensing" (COMAR .07.02.25.12) and to overcome barriers to licensing, ensuring that they receive the financial and case work support they need. However, while kin providers may benefit from licensing, they should not be required to go through the same process as non-kin foster parent applicants, often viewed as intrusive to families who have voluntarily stepped up to care for family members, in order to get the support they need. Licensing should not be a barrier to receiving many of the same supports that non-relative resource homes receive. (See Additional Commitments, Appendix 1, p. 16).

In the fall of 2022, BCDSS opened their kinship resource center. The creation of a "brick and mortar" center, now called the KinCARE Center, was delayed due to COVID restrictions, and the opening was phased in, first opening only to BCDSS staff before opening to the public. This center is discussed more fully in the Additional Commitments section of this report. (See Additional Commitments, Appendix 1, p. 12 for further discussion.)

BCDSS has a Kinship Advisory Group, composed of representatives from Child Protective Services, Family Preservation and OHP, as well as a Casey consultant, and BCDSS Innovations (data) and other staff. The group currently is meeting monthly, and the IVA has been invited to attend. It is planning a communication and training strategy for staff to understand BCDSS' goals for kinship care (50% of OHP placements, and 90% of those kin being licensed). The strategy emphasizes that this is "not an initiative" but the work and focus of the agency. Current plans have

training and a manual completed by the end of May with implementation of new policies and practices by July 1, 2023.

The change in focus and practice needs to occur not just in Baltimore City but across the state of Maryland with DHS leading the transformation from the norm of stranger foster care to a new norm of placement with kin as the priority from prior to the child's out-of-home placement through permanency when family reunification is not possible. Upcoming opportunities are coming with new federal agency emphasis on kin placement, including newly proposed regulations to recognize that different licensing standards should be in place for kin caregivers. (See Appendix 1, p. 16.) Maryland also should give serious consideration to some of the strategies, discussed above, being implemented by other states, with good success in increasing kin placement numbers.

The IVA asks that Defendants provide more details in future reports as to how they will increase the rate of kin placements, how they will meet the needs of children and youth in kin care, and how they will support the kin who step in to provide care for a family member.

C. Placement Needs

The lack of appropriate placements and treatments for children and youth with significant physical and mental health needs, especially when those problems are complicated by developmental disabilities, remains a significant concern. Some of these children have suffered multiple traumas prior to entering foster care and have been further traumatized by instability in the foster care system, having been ejected or run away from multiple placements.[32] Due to the lack of available appropriate placements, some of these children have spent multiple nights in

[32] Defendants, in the 68th Report, downplay how widespread the problems of finding appropriate placements are, and state that it is only the older children for whom this is an issue. In fact, DHS data on placement stability for children in even their first year in foster care, shows that of the 327 children under the age of 13 who entered foster care in 2022, nearly half (157) had one or more placement moves during that same year. (SSA 2022 Placement Stability Report, provided to IVA on February 8, 2023.) While chronic instability might primarily be an issue for older youth, BCDSS' younger children clearly are not exempted from the problem.

BCDSS' office buildings in violation of the MCD, while others have been placed in hotels with supervision by one-to-one service providers, an expensive and questionably safe or appropriate practice.[33]

Hotels are not approved placements and their use is a violation of Measure 68 of the MCD (p. 25). Yet, the use of hotels to house children continues due to a lack of available placements, particularly for children and youth with mental health issues, teenagers with a history of running away, medically fragile children awaiting placement and other high needs children. A few examples of children who have experienced multiple night overstays in a BCDSS office or hotel are shared below.

> *KM, a 7-year-old male, entered foster care in March 2018 at the age of 2. According to court records, he is diagnosed with Autism Spectrum Disorder, Associated Language Impairment, Global Development Delay, Speech Delay, Other Personality and Behavioral Disorders, Cognitive and Neurobehavioral Dysfunction, Insomnia, Unspecified Feeding Disorder, ADHD and dermatitis. KM is receiving speech and language therapy which includes feeding and occupational therapy in his school. KM is prescribed multiple medications including Clonidine, Risperidone, and Trazodone daily. For nearly four years (March 2018 - February 2022), KM resided in the same therapeutic foster home until his foster parent became ill and was hospitalized and the provider did not have another foster parent available as a placement resource. KM was moved to a hotel with 24-hour nursing coverage where he stayed for more than two months until he was moved to a group home for medically fragile children in another jurisdiction in Maryland.*
>
> *HN, a medically fragile and developmentally disabled 15-year-old girl with a history of a bleeding disorder, spina bifida, neurogenic bowel/bladder, and end-stage renal disease, was removed, along with her siblings, from the care of her*

[33] See Att. 6, Baltimore Banner, "Maryland Foster Children are Being Kept Overnight in Hotels and Downtown Office Buildings" (September 15, 2022).

mother and other family members in October 2022 due to severe neglect. HN is also dialysis dependent and in need of a kidney transplant. However, upon removal a placement for HN could not be found, and she was placed in a hotel with nursing care. Even after a placement was identified, there were multiple delays and miscommunication between the Defendants and the provider. As a result, HN spent more than three months (10/27/22-2/6/23) in a hotel room after being removed from her family for neglect.

JB is a 15-year-old male, diagnosed with ADHD-combined type, Major Depressive Disorder and Anxiety Disorder. He spent 15 nights in a DSS office building in December 2021 followed by a month-long stay, including Christmas, in a hotel with a one-to-one provider from December 23, 2021 to January 24, 2022. Following more failed placements, time at an RTC and psychiatric hospitalizations, JB again spent many nights in a DSS office building and in hotels. From October 25, 2022 through December 6, 2022, JB resided in eight different hotel locations provided by BCDSS under one-to-one supervision. Placement in these hotels put JB at risk for interaction with law enforcement due to his behavior problems with hotel staff and guests, which seemed to become more erratic with each move to a new hotel. Long before the nights spent in an office building and hotels, JB was well known to the Defendants and had experienced multiple inpatient psychiatric stays and significant placement instability including multiple therapeutic foster homes, therapeutic group homes and a residential treatment center since he entered foster care in 2018. JB has a significant trauma history including the death of his father and grandmother, incarceration of his mother and neglect. JB was finally placed in a therapeutic group home in December 2022. [34]

Other children have spent not just hours but days in hospital emergency rooms waiting for beds in psychiatric units, or placements in group homes, diagnostic centers, or residential treatment centers. Some children are forced to remain in emergency rooms and psychiatric units long past

[34] JB's case illustrates another problem exacerbated by lack of appropriate placements - its impact on education. BCDSS apparently failed to enroll JB in school from the time he was placed in the group home on December 12, 2022 until at least January 18, 2023.

the time they are ready for discharge ("overstays") due to a lack of available and appropriate placements.[35] These are just two examples of recent hospital overstays:

> *JS, 8-years-old at the time, was removed from his mother's care on April 26, 2022. Shortly after entering foster care, JS was taken to University of Maryland Medical Center following an outburst over a television remote at the foster parent's home. University of Maryland did not recommend inpatient admission and JS was considered on overstay status as of April 30, 2022. BCDSS was unable to locate a placement for JS so he remained at University of Maryland, in violation of both the MCD and Maryland law, and he was placed on a waiting list for St. Vincent Villa Group Home. St. Vincent was willing to accept JS but did not anticipate having a bed available for him until mid-June. JS remained at University of Maryland where he had limited opportunities for activities outside the unit and limited schooling. More than a month and a half after being ready for discharge from University of Maryland, JS was placed in a regular (non-therapeutic) foster home on June 16, 2022. JS remained with this foster parent for more than a month with the foster mother's only recorded concern about JS' behavior being that he was very picky about his choice of food. After a short interim placement with a kin caregiver, the court, on July 29, 2022, found that JS was not a Child in Need of Assistance and placed him in the custody of his father.*
>
> *DL is a 17-year-old male. He re-entered the foster care system on June 29, 2021 after he was unable to remain with his caregiver. DL has been diagnosed with Mild Intellectual Disability; Trauma and Stressor Related Disorder; Disruptive Mood Dysregulation Disorder; Reactive Attachment Disorder; and Attention Deficit Hyperactivity Disorder. Because no licensed facility in Maryland would accept DL, he was placed out of state in a program in Michigan. He was discharged from that program after seven months (7/8/21 - 2/22/22) when they said they were unable to meet his needs. After his return to Baltimore, DL experienced significant placement instability, including more than 60 nights spent in a BCDSS office building. DL*

[35] See Att. 7, Baltimore Banner, "Maryland Kids in Distress Are Being Kept in Emergency Departments For Weeks, Months" (August 9, 2022).

> *was admitted to Spring Grove Hospital Center (SGHC) on August 25, 2022 for inpatient neuropsychological testing. On September 15, 2022. SGHC recommended a therapeutic group home with 1:1 support for a period of time. Despite this recommendation, he remained at SGHC through the end of 2022 and well into 2023, still awaiting placement. DL was on the BCDSS Overstay/Waitlist for ten months - from May 27, 2022 until he finally was placed in a congregate care facility on March 24, 2023.*

These overstays are a clear violation of the MCD. Children and youth should not be placed in, nor left in, a more restrictive placement than they need. Even a short but unnecessary hospital stay can be traumatizing to a child.[36]

Appropriate and high-quality placements must be available to all children and youth who are in foster care at the time they are needed, not many days, weeks or months later. The least restrictive family settings should always be sought first and should include individualized, intensive, wrap-around services to ensure that children and youth can remain in the community and in a family setting either with kin or foster parents. However, some children and youth with the greatest needs or additional risk factors may need a higher level of care for a period of time during their stay in foster care in order to stabilize them until their needs can be met in a less restrictive community setting. Therefore, a range of placements, including therapeutic foster care, therapeutic group homes and residential treatment centers, as well as individualized services that can meet the complex needs of foster children must be available to BCDSS. Children must not be forced to wait in office buildings and hotels for these placements to become available. While BCDSS is responsible for recruiting local non-therapeutic foster families and identifying kin providers, all other types of placements are the responsibility of DHS and their state partners at

[36] This problem clearly is not limited to Maryland; other states are tackling the issues as well. See,, https://www.npr.org/sections/health-shots/2023/02/09/1154953475/one-state-looks-to-get-kids-in-crisis-out-of-the-er-and-back-home (February 9, 2023).

Maryland Department of Health through state contracts and licensing. While there have been a very limited number of "high end" resources added since 2020, these are all very restrictive congregate care placements, and they must be shared statewide. DHS has failed to craft and implement appropriate solutions to long-standing placement problems such as children staying in hospital emergency rooms long after they are ready for discharge.

Maryland has had information and recommendations for many years that the current placement system needed substantial reformation. In 2008 - 2009, while the parties in *L.J.* were discussing placement issues, there already was understanding that in order for children to receive the appropriate individualized services, contractual reimbursement rates for providers needed to be restructured to separate reimbursement for placement from reimbursement for services. In 2013, the Interagency Rates Committee reported to the legislature that a "radical restructuring" was needed. In particular, the rates paid to contractual providers needed to be separated into those for placement and those for services, in order to allow children to get the individualized services they needed.[37] In 2020, DHS reported to Plaintiffs' counsel and the IVA that the process for rate reform had begun and that a pilot of the new rate-setting process should begin in January 2022. In November 2021, however, University of Maryland School of Social Work's Institute for Innovation and Implementation and DHS reported on the efforts to date with a timeline that the pilot would not occur until February 2024.[38] The latest report to the legislature is that rate reform will be delayed until Fiscal Year 2026.[39] These delays are unacceptable and inexplicable. The

[37] Maryland Interagency Rates Committee, 2014 [Maryland General Assembly] Joint Chairmen's Report (10/1/2013), https://marylandpublicschools.org/programs/Documents/Special-Ed/IRC/IRCResponse2014JointChairmensReport.pdf.
[38] UMSSW, Institute for Innovation, "Quality Service Reform Initiative (QSRI) Update," (November 2021), https://marylandpublicschools.org/programs/Documents/Special-Ed/IRC/20-QSRIUpdatePresentationNovember2021.pdf.
[39] Att. 8, DHS, 2022 Jt. Chairmen's Report, "Status and Timeline for the New Provider Rate Structure" (December 31, 2022).

IVA urges this administration to take a closer look at whether there really needs to be additional delay in making this critical, long-awaited reform.

The ongoing problem of placement challenges is evidenced by the Overstay and Waitlist Report (weekly) and the Children in the [Office] Building Report (daily) provided by BCDSS to the parties and IVA under the requirements of the MCD. Those reports provide important insight into the daily experience of BCDSS staff trying to place children:

- Therapeutic foster care agencies, group homes and therapeutic group homes are not accepting placements of children and youth for a multitude of reasons, including a lack of beds, lack of foster families, an inability to meet the needs of the child referred to them, and lack of resources to monitor placements.
- Many placements, including therapeutic foster care providers and group homes, will not accept a child/youth with behavior problems or a history of running away.
- Many decline to accept teenagers saying that they have no placements available for them.
- Many private providers are now telling BCDSS that they do not accept emergency placements, despite the consistent need for them to do so, given that children enter foster care at all hours and on all days of the week. This leaves a child entering foster care in the evening or on the weekend to remain in office buildings or hotels until their cases can be reviewed by provider staff during "regular business hours" for acceptance or rejection.

Under the MCD, Defendants are required to conduct biennially "an assessment of the range of placements and placement supports required to meet the needs of children in OHP. . ." (MCD, Part Two, Section II. Out of Home Placement, E. Additional Commitments, pp. 26-27). In

response to the IVA's and Plaintiffs' concerns about the inadequacy of the Defendants' previous biennial needs assessments, the Defendants contracted with the Institute for Innovation and Research at the University of Maryland School of Social Work to complete the assessment. (See Defts' 68th Rep., Att. 1, Baltimore City Placement Review (Jun 2022)). The completion of this assessment was delayed by more than a year, until June 2022, by issues related at least in part to barriers to CJAMS access for the report researchers.

The IVA determined that this assessment does not meet the MCD requirements as outlined in the Additional Commitment (see discussion in Appendix 1, p. 9).[40] However, although not meeting the MCD requirements, the report does provide some valuable information and recommendations. While there was little discussion regarding specific placement needs, the assessors did acknowledge that the presence of an overstay/waitlist is problematic in that it suggests that those children included on the list are not being served in the most appropriate setting to meet their needs. The report lays out short (within the next year), medium (2-3 years) and long (3-5 years) term recommendations. Many of these recommendations center around needed state-level changes to practice and policy.

Although helpful in confirming many of the issues that children with higher level needs in foster care face, these recommendations contain little new information for Defendants. The needs of children and their families in the child welfare system are well-known. What has been missing is a comprehensive plan, particularly at the state level, to implement the needed services and placements. Defendants should create specific and detailed action plans to implement these

[40] In addition, Plaintiffs' counsel sent a letter and critique of the placement needs assessment to Defendants in September 2022. Copies are included with this report as Attachments 9 and 10.

recommendations and address longstanding needs.[41] In the meantime, children continue to experience unmet needs, placement instability and further trauma in the child welfare system.

D. Mental Health

Defendants provide a copy of the BCDSS Behavioral Health Plan with the 68th Report (Att. 4). Over the past year, BCDSS has been working with Behavioral Health Systems Baltimore (BHSB) to implement a new program for BCDSS to contract directly with mental health providers for services for children and youth. BCDSS also recently issued a Standard Operating Procedure (SOP) to require improved procedures for psychotropic medication decision-making. Given the recency of implementation of the program and procedures, the IVA will refrain from comment at this time other than to re-emphasize that high quality, culturally responsive mental health care is essential to the well-being of children and youth in foster care. The failure to provide this care exacerbates the placement problems discussed above. Furthermore, there continues to be a lack of data around the mental health needs of children in BCDSS, a frustration frequently voiced by the IVA and Plaintiff's counsel. Information such as the percentage of children and youth in need of mental health services, percentage of children and youth receiving mental health services, common diagnoses, frequently prescribed medications, and treatment outcomes, is essential to ensuring that services are available to meet the needs of children and their families/caregivers. It is disappointing that even with MATCH case management services these data points are not available for children in BCDSS's care.

[41] On March 29, six months after it was sent to Plaintiffs' counsel, Defendants provided to the IVA a document entitled "Response to UMSSW Recommendations from the L.J. Placement Assessment." (Defts' 68th Rep., Atts. 2 and 3). This was provided to the IVA only after the IVA requested that Defendants provide exhibits referenced in their report but not provided with the report on January 6. As a result of the delay, the IVA is unable to address the specifics of that Response here.

V. MEASURES, DATA COLLECTION AND REPORTING

The MCD is divided into five substantive sections - Preservation and Permanency Planning, Out-of-Home Placement (OHP), Health Care, Education and Workforce with multiple required Outcomes for which compliance is measured by Exit Standards and Internal Success Measures.[42] In order to exit the MCD, Defendants must be certified by the IVA as compliant with each of the MCD Outcomes for three consecutive reporting periods. The data for reporting on the Exit Standards and Internal Success Measures comes primarily from three sources: (1) CJAMS (Child, Juvenile, and Adult Management System),[43] Maryland's human services database system; (2) QSR (Quality Service Reviews), intensive case reviews of a random sample of children's cases; and (3) other miscellaneous sources, such as data from BCDSS legal services, human resources and training. The parties and the IVA have agreed that some measures require both quantitative and qualitative measurement. (For these measures, there are subparts "a" and "b" for quantitative and qualitative compliance levels, respectively.) Measure instructions set out what activity is required by each measure, and how that measure will be tracked and documented in order to produce the required compliance data for reporting.

A. Measure Instructions

In 2019, the parties agreed that the measure instructions then in place were inadequate to meet the MCD requirements. At the October 2020 *L.J.* Problem Solving Forum, Defendants agreed to submit a full set of draft measure instructions in January 2021. By June 2021, almost all

[42] Within those five sections, there are a total of 28 Outcomes, which are further comprised of 40 Exit Standards, 86 Internal Success Measures (ISMs) as well as 22 Additional Commitments and various other reporting requirements. Twenty-six of the ISMs are the same as the associated Exit Standards. Therefore, there actually are 60, not 86, independent ISMs for measurement and reporting purposes for a total of 100 separate measures for which reports must be designed and validated.

[43] In Defendants' Data Summary beginning on p. 70 of their 68th report, they refer to data originating from the CJAMS system as "MDTHINK" data.

of the measure instructions had been finalized.[44] However, some of the measure instructions will need to be revised and re-reviewed with the parties for final approval in order to match the specifications for the CJAMS reports which required some adjustments and greater specifics. This process will need to take place before any reports are finalized.

B. The Role of MD THINK

Seven years ago, DHS began the development of Maryland's Total Human-Services Integrated Network (MDTHINK) and the CJAMS application which have emerged as key components of meeting the Outcomes of the MCD. The importance of MDTHINK to the continued implementation of the MCD lies primarily in the role of its staff in (1) developing the reports to provide data for the majority of the MCD measures, and (2) the continued development and correction of defects in the CJAMS application itself to allow for accurate data input and reporting.

C. Development of Accurate, Reliable and Valid Data Reports from CJAMS

Nearly two years after the completion of the measure instructions, Defendants remain a significant distance from the goal of having reports that are capable of extracting accurate, reliable and valid data from CJAMS. The progress has been so slow as to impede the Defendants' ability to input properly and to collect sufficiently accurate data for the 68th, 69th and now 70th (January – June 2023) Report periods, likely postponing once again the ability to create a reasonably accurate, reliable and valid report until well into 2024. While about 80% of the planned reports had passed initial screening sufficiently to be moved to the validation stage, as of December 31, 2022, there were no reports which could be considered finalized and validated as accurate and

[44] The measure instructions for Internal Success Measures 95 and 96 and Exit Standard 99 were not finalized because the Defendants reported that they had no way to obtain the necessary school attendance data to meet the complete requirements of those measures. They set a goal of the end of 2021 to develop a resolution to that problem. As of 2023, the problem remains unresolved.

reliable. Lack of sufficient staff for an extended period of time at the state and local levels, turnover of MD THINK staff and a failure to develop the necessary structure to document CJAMS application and report development contemporaneously, have resulted in the need to revise and restructure every report previously developed. Although MD THINK report developers have developed more familiarity with the system and facility with accessing the data needed for report development, and staffing at the state and local levels has increased and improved greatly, other problems identified in the IVA's last Certification Report continue unsolved.

1. The CJAMS application needs numerous defect corrections and enhancements so that staff can enter the needed data, and reports can extract that data accurately and reliably. This is true not just for the *L.J.* reports but also for federal and state reporting requirements and to respond to issues raised in audits of SSA and the local departments of social services. The IVA identified in early May 2022, nearly one hundred such changes needed for *L.J.* reports. Only a small proportion of those changes have been made to date, more have been identified since then, and only a few application changes of any kind are scheduled for development every two weeks. Furthermore, the schedules for CJAMS application changes continue to be filled with non-*L.J.* report demands. At this rate, it is not an exaggeration to say that, without substantially more resources dedicated to this work, the needed application changes will not be completed until well into 2024, if not 2025.
2. CJAMS has been poorly documented; development of a comprehensive data dictionary did not begin until recently. As a result, accessing fields that have not been used in prior reports has been time-consuming and much too dependent on the time and accessibility of a small number of MD THINK staff who are well versed in the "back end" of the CJAMS application where the tables reside.

3. The technical specifications for completed reports have not been well documented. Many of the reports have programming elements that should be the same. For example, the denominator for a number of the reports is the population of children who were in OHP during a specific *L.J.* reporting period. In order to ensure reliable results, the computer code for the denominator for all of those reports should be the same. However, due to the lack of documentation of the coding for each report in an organized and accessible way, that consistency has not been achieved. At this point, every report already produced must be reviewed to determine and document the common elements and ensure that they are applied in the same way in each relevant report.
4. SSA does not appear to have a well-developed monitoring system for ensuring that conflicting application change requests are reconciled. There has not been a system to alert SSA of the impact of a particular application change on (1) other application issues and (2) existing or planned reports. This can easily result in multiple instances of unintended and unanticipated consequences from application changes. There also appears to be an insufficient process in place to alert caseworkers and other staff statewide immediately of application changes and provide them with training and instruction on the impacts of those changes.
5. Despite the passage of more than 18 months after the state began implementation of CJAMS, reliable basic population-level reports were only begun to be developed in the second half of 2021. The IVA had advised DHS that no report validation was going to occur until a basic OHP/foster care "milestone" report was created. That report - and a comparable report for Child Protective Services - were only substantially completed in the second half of 2022. Needed milestone reports for foster/resource home providers and for

Family Preservation are just being completed; reports for kin, adoptive and guardianship providers have not been done.

D. Other Ongoing Data Validity, Reliability and Accuracy Concerns

Staff continue to be challenged by using CJAMS to do such critical tasks as creating case plans and service plans, timely and sufficiently documenting conversations and the results of meetings and uploading important documents. These problems must be resolved if Defendants are to report accurate, valid and reliable data that will permit the IVA to certify compliance with the *L.J.* measures. Given current caseload levels - 90% of the caseworkers with active caseloads in December 2022 had caseloads over the required 12 cases - it is an ongoing challenge for workers to fully document CJAMS. It appears that this problem only be resolved only by the hiring of additional staff or other supports to meet the critical responsibility of documentation in CJAMS. (See Caseloads, Section IV.A., above.)

E. Quality Service Reviews (QSR)

Quality Service Reviews (QSR) provide a "a case-based assessment for learning and development, and the results can be used to improve outcomes for all children and families who are served by systems."[45] Cases for review using the QSR process are selected through a stratified random sampling of cases. The QSR uses a standard protocol to measure the current status of a child and the child's family life in key life areas of safety, permanency and well-being and to appraise practice performance of key service system practices for the same child and family. This qualitative process used in combination with quantitative data has been considered best practice in

[45] Center for the Study of Social Policy, "Quality Service Reviews," p. 3 (2019), downloaded at https://cssp.org/wp-content/uploads/2019/03/QSR-Advocacy-System-Reform.pdf. The QSR process was developed by Child Welfare Policy and Practice Group, Quality Service Review Institute, Montgomery, AL and Tallahassee, FL. See IVA Report in Response to Defendants' 56th Report for a more complete description of the QSR process and Defendants' implementation.

the litigation-related as well as non-litigation-related assessment of child welfare system performance. Many of the *L.J.* measures have a qualitative component to them; the results of QSRs are used to determine compliance with these measures.

The QSR program has been collecting data for many MCD measures since the program was implemented in 2014 using the BCDSS Out-of-Home Placement (OHP) QSR protocol. Currently, the QSR process is used for 33 measures, both Exit Standards and ISMs.[46] Beginning in 2020, the QSR Program Manager worked closely with her staff, the Family Preservation Program Manager and the IVA staff to develop, train on and implement a QSR process for Family Preservation. This new QSR process is designed to assess the Family Preservation practice and make recommendations for improvement, but it also will provide the data necessary to report on the MCD measures related to the Family Preservation Program - Exit Standards 3b and 4 and Internal Success Measure 2.

A first group of 30 Family Preservation QSR reviews was completed during the 68th reporting period, and the IVA staff were able to participate in a couple of the Inter-rater Reliability sessions and provide feedback. The IVA staff worked with the QSR and Family Preservation Program Managers to update the Family Preservation protocol and case review tool in preparation for another round of 30 cases that were to be reviewed from October - December 2022. At this time, given staffing limitations and the hundreds of OHP cases reviewed by QSR since 2014, the IVA has agreed that during each reporting period, it will be sufficient for reporting purposes for Defendants to do QSR reviews for 30 OHP cases and 30 Family Preservation cases.

[46] Exit Standards 3b, 4, 15, 16, 29b, 33, 44, 72b, 88b, 104, 105, 106, 110 and 111. Internal Success Measures 2, 7, 8, 14, 25b, 40, 41, 42, 71b, 85b, 86, 87, 97, 101, 102, 103, 107, 108, and 109.

F. Compliance Plans/Strategies for Improvement

Without valid, accurate and reliable data, it is difficult to address how to improve performance on the MCD measures. However, even without a full set of data, Defendants acknowledge that many of the measures are not compliant with the MCD. Plaintiffs' counsel has urged the development of compliance plans, and the IVA agrees that there is enough information available to the Defendants that they can develop plans to increase compliance rates. The Defendants have responded to the request for compliance plans with "Strategies for Improvement." These strategies are categorized under: Workforce, Preservation, Permanency and OHP, and Education. These categories align with four of the five substantive sections in Part Two of the MCD ("Substantive Requirements and Exit Standards"). As discussed in the IVA's Response to Defendants' 67th Report (pp. 27-29) and summarized here, there are problems with these "Strategies for Improvement."

1. For many measures the Defendants have presented the strategies for improvement broadly, often grouping multiple measures with the same strategies. While some measures will benefit from similar action to move them towards improved compliance levels, linking a single strategy with too many disparate measures diminishes the likelihood of a significant impact on any one measure.
2. These broad responses to multiple measures lack specific goals or timelines for compliance or rely on limited actions such as improved documentation when it is unlikely that documentation alone will bring these measures into compliance.
3. Where Defendants have presented strategies for improvement that include a timeline and specific tasks, because report development has progressed so slowly or is problematic, it remains unknown if the strategies have led to improvement.

4. The "strategies for improvement" for the Health Care section of the MCD focus on improvements needed to the work done by MATCH in documenting health care for the children in BCDSS custody. Since 2009, Defendants have contracted with Health Care Access Maryland (HCAM) for MATCH to provide health care management services to children and youth in foster care. In 2020 a new contract was agreed to by HCAM/MATCH and the Defendants. This contract provides $5,000,000 per year (an increase of $2,000,000 per year) for health care management services and expands the scope of MATCH's work.

   The contract between Defendants and MATCH for health management services requires that MATCH submit corrective actions plans for areas that need improvement. (MATCH's corrective action plans should be included with Defendants' six-month compliance reports for all health care measures that are non-compliant.) Because non-compliance with the health measures may also be due to situations outside of MATCH's scope of work or control, e.g., timely attendance at doctor's appointments which rely on caregivers and caseworkers, the Defendants and MATCH need to work together to determine the reasons for non-compliance and develop strategies for both MATCH and BCDSS in order to meet the required thresholds for compliance with the MCD.

5. Defendants present the QSR data specific to the MCD in the beginning of the 68th report with detailed information about the number of cases reviewed and the QSR compliance ratings. The QSR practice and the many years (since 2014 for out-of-home placement) of data which it has produced provides Defendants with an important opportunity to look at practice trends and to use those trends to develop agency-wide strategies for practice improvement, not just for *L.J.*-specific indicators. The IVA urges BCDSS to utilize QSR

as it was conceived and implemented to go beyond compliance with *L.J.* to improve results for all of the child welfare work of BCDSS.

Until data trends show movement towards compliance (which is, of course, contingent upon accurate data), Defendants should provide more detailed plans for improvement that include specific actions, timelines, and compliance percentage goals (e.g., "increase compliance by 10 percentage periods in next reporting period").

VI. IVA CERTIFICATION DISCUSSION

Part Two of the Modified Consent Decree contains five sub-sections:

I. Preservation and Permanency Planning

II. Out of Home Placement

III. Health Care

IV. Education

V. Workforce

Each of these five sub-sections contains Outcomes with Definitions, Internal Success Measures (ISMs), Exit Standards and Additional Commitments. The IVA is responsible for review of Defendants' assertions of compliance and may certify compliance only after determining that the data reported, and the measures and methods used to report that data are accurate, valid and reliable. (MCD, p. 4).

Defendants request certification for two Exit Standards: Measures 52 and 121. The IVA is only able to certify Measure 121. In addition, Defendants continue to state that much of the data presented cannot be provided ("TBD") or, even if provided, some data cannot be certified as accurate, valid or reliable for a number of reasons. Defendants include:

- The [data] report has been developed but has not been validated.
- The report has been developed but is currently known to be inaccurate, and revisions are required to produce accurate data.
- The report has been developed and is pulling data accurately, but staff have not been trained in proper documentation.
- The report is completed, but adequate training was [only] recently developed to ensure accurate CJAMS documentation.
- State policy was issued during the reporting period that required staff be retrained on the CJAMS documentation.
- The report has been developed, but CJAMS system fixes to allow accurate reporting were not made until late 2021 or into 2022. (See Section V.C., above, for a discussion about the number of CJAMS "fixes" that are yet to be made even now.)

A. Exit Standards and Internal Success Measures in the 68th Reporting Period

Of the 126 measures, 48% are reported as "TBD" for the 68th reporting period, ending June 30, 2022. As of the writing of this report, ten CJAMS reports are still in development. Even those reports which have been developed cannot be certified as accurate, reliable and valid due to errors in the original business specifications, errors in report development and subsequent changes to the CJAMS application requiring revision of the original reports. Unfortunately, this means that far fewer measures are reported than the IVA and parties had hoped for the 68th reporting period. Even more concerning is that there still will not be accurate, reliable and valid data available for many measures in the 69th and (now) 70th reporting periods. At the current pace of work, it will be another two or more six-month reporting periods before accurate, valid and reliable data will be available for all of the measures.

B. Data Discussion

The IVA continues to be concerned about reporting of data that is not accurate, reliable and valid to both this court and for public posting. Concerns include:

1. Reporting of data that is known to be inaccurate due to lack of, or incomplete training, on documentation. Given the large number of measures that indicate this as a reason for inaccurate data, there will need to be extensive training completed before accurate data can be reported.
2. The compliance levels for many of the measures are alarmingly low. Even if cases are properly documented as to result in accurate data, will these levels rise considerably in the next reporting period or will these levels remain low due to reasons beyond documentation?
3. Many of these measures have been TBD for multiple reporting periods.
4. A number of the measures are not reported from CJAMS but rather from other data sources such as BCDSS' Legal Department, Quality Assurance (QA) (now Innovations) Unit, and QSR Unit. These measures include, but are not limited to, the requirement to notify kinship care providers of training opportunities (Measure 46), annual training requirements for supervisors and caseworkers (Measures 119/122), and notification to child's attorney and Plaintiffs' counsel of maltreatment reports and dispositions (Measure 66). For these measures, Defendants have "N/A" in the column entitled "BCDSS confirms report is accurate." It is unclear to the IVA why the report's accuracy would be "N/A" regardless of its source or what, if anything, has been done to determine the accuracy, validity and reliability of this data. Defendants are asked to clarify this issue in future reports. In addition, they should offer an explanation of why so many of these measures remain non-compliant and what steps they will take to come into compliance.

C. Certification Discussion

"Certification" of individual measures involves a combination of (1) determining if the measure instruction for preparing and extracting the reported data meets the requirements of the MCD, (2) validation of the way the reported data was obtained and the reported data itself to determine if what is reported as the level of compliance is accurate, reliable and valid; and (3) for Exit Standards only, determination if the validated compliance level meets the MCD requirements. The IVA reviews each substantive section of the MCD below.

1. Preservation and Permanency Planning

The Preservation and Permanency Planning section of the MCD includes five Outcomes containing a total of 7 Exit Standards and 22 Internal Success Measures. Defendants do not claim compliance with any of the seven Exit Standards in this section. Seventeen measures are reported as "TBD": Measures 3a, 20, 24, 29a (Exit Standards) and Measures 1, 2, 6, 9, 11, 12, 17, 18, 19, 21, 22, 25a, and 26 (ISMs).

Although the Defendants are not seeking certification of any measures for this section of the MCD, the IVA has selected one measure for discussion because of its known inaccuracy.

Internal Success Measure 28: *Number of youth, ages eighteen to twenty-one, who exited OHP through rescission.*

Data Reported: 7 youth

IVA Response: Not certified as accurate. The measure instructions for newly revised Internal Success Measures 28 (Att. 11, p. 1) accurately reflect the requirements of the MCD. For the seven youth who are reported to have exited care through rescission, the IVA reviewed the individual cases in the Quest court data system. The cases appear to have met the agreed-upon criteria and procedures. However, the IVA, through review of the Foster Care Milestone Exit data, found one

additional case which should have been reported: A 19-year-old youth requested rescission. BCDSS opposed the rescission. Rescission was granted by the magistrate. This case falls into the category of cases which Defendants are required to report.

2. Out-of-Home Placement

The OHP section of the MCD includes twelve Outcomes containing a total of 14 Exit Standards and 29 Internal Success Measures. Twenty-six measures are reported as "TBD": Measures 36, 48 57, 58, 60, 65, 70 (Exit Standards) and Measures 30, 31, 32, 34, 35, 37, 38, 43, 45, 53, 54, 55, 56, 59, 61, 62, 63, 64, 69 (ISMs). Defendants claim compliance and request certification of one Exit Standard, Measure 52. The certification decisions for these Exit Standards and any related Internal Success Measures are discussed below. A brief discussion of two additional measures - 39 and 67 - are included because of the importance of the requirements to placement issues.

Exit Standard 39: *The array of current placements matched the recommendation of the biennial needs assessment.*

Data Reported: Defendants attached a copy of the Biennial Needs Assessment to their report (Defts' 68th Rep., Att. 1) and stated "BCDSS has received the placement assessment and has responded to the recommendations. Please see Exhibit 1 Biennial Needs Assessment." (Defts' 68th Rep., p. 96).

IVA Response: The measure instructions for Measure 39 are incomplete and, therefore, cannot be assessed for adequately reflecting the requirements of the MCD.

As discussed in the IVA's Response to the Additional Commitments (Appendix 1, pp. 9-10), the Biennial Needs Assessment that Defendants completed (through a contract with the University of Maryland School of Social Work) did not meet the requirements of the MCD.

Without an acceptable biennial needs assessment, the Defendants cannot be in compliance with this Exit Standard.

Internal Success Measure 49: *Number of Special Support team positions funded by the Department, by type.*

Data reported: 14 specialists

Internal Success Measure 50: *Number of Special Support positions filled, by type.*

Data reported:

Education: 5; Employment: 1; Housing and Employment: 1; Independent Living Coordinator: 1; Ready by 21/SOAR/SSI: 1; Developmental Disabilities: 1; Substance Abuse Disorder: 1; Mental Health Navigator: 3

Internal Success Measure 51: *MCDSS MS-100 (job descriptions for all positions)*

Data reported: Posted MS-22 (job description). (The parties have agreed that the correct state form for job descriptions is the MS-22, not the MS-100. Defendants have agreed to submit an MS-22 or resume (for non-agency specialists) for each position instead.)

Exit Standard 52: *BCDSS employed a staff of non-case carrying specialists to provide technical assistance to caseworkers and supervisors for cases that require specialized experience and/or knowledge.*

Data reported: "Yes for each month January to June 2022."

IVA Response: The IVA is unable to certify this Exit Standard.

The measure instructions for Measures 49-52 (Att. 11, pp. 4 - 14) accurately reflect the requirements of the MCD. However, Defendants have not met the substantive requirements for these measures. Following the submission of the IVA's 67th Report in September 2022, the IVA staff met with Innovations staff to discuss this measure and how compliance could be

demonstrated. The IVA reiterated the need to follow the requirements of the measure instructions for Measures 49 - 52 and clarified that the following is necessary:

1. Defendants must have specialists in the following areas: substance abuse services, mental health services, developmental disabilities, independent living, housing and education services, including special education. Defendants may choose to employ additional specialists, but these are the minimum required by the MCD.
2. Defendants must provide a list of available specialists and include their name, subject area, a copy of their resume,[47] MS-22 (job description), unit assignment, and dates of employment.
3. Defendants need to demonstrate that these staff are non-case carrying.
4. Defendants must document sharing of the list of the specialists via the "Ask the Experts" section of the Friday Focus email newsletter. This information must be included in at least one issue per month of the Friday Focus. This list must include all specialists required by the MCD but may also include additional specialists as the Defendants wish to include.
5. The listing of the specialists in the Friday Focus must include direct contact information for each of the specialists. The specialist's contact information must be provided, not their supervisor's contact information.
6. As explained to Defendants in our meeting, it is vital that these designated specialists are available to caseworkers to discuss not only children's needs but also the needs of their parents and caregivers. As the IVA has raised in past reports, it is unclear from the reported data whether any of the specialists provide badly needed technical assistance to

[47] Resumes are required by the measure instruction, but the IVA recognizes that many BCDSS staff members may not have resumes. The parties should consider revising this measure instruction to require only a resume or some other statement of qualifications to be a "specialist" in the area listed.

caseworkers to help families and caregivers, not just children in OHP. For example, all of the housing and employment specialists are housed within the Ready by 21 units and their job descriptions do not address providing assistance to caseworkers working with biological parents or kins providers.

Due to the timing of the meeting between the IVA and Innovations staff, the necessary changes were not able to be made for the 68th reporting period, and, therefore, this Exit Standard cannot be certified.

Internal Success Measure 67: *Number of children who spent four hours or more in an office, motel, or unlicensed facility.*

Data Reported: Defendants report 56 children and 196 incidents.

IVA Response: The measure instruction for ISM 67 (Att. 11, p. 15) reflect the requirements of the MCD. However, the data reported by Defendants is not accurate, reliable and valid. The data provided to the IVA for Measure 67 ("Extended Hours Log Jan-June 2022") does not match the information sent to the IVA with notices of office overstays. Problems exist in the following areas: (1) The IVA was not notified of overstays in all cases. (2) In other cases, the IVA was provided notice of an overstay but this information is not captured on the Extended Hours Log. (3) In several cases, the length of time a youth spent at Extended Hours is different on the Extended Hours Log from the information sent to the IVA. (4) There are several duplicates on the Extended Hours Log. While Defendants have identified some of the duplicates, they have not identified all of them. It is unknown how these duplicate entries impact the number of children and incidents reported for the 68th reporting period.

In addition, Defendants do not include in the report any of the stays in motels/hotels by youth during the reporting period. Under the requirements of the MCD and its measure instruction,

these also should be reported on a daily basis and included in the total count. The only information provided by Defendants about the hotel stays has been through the weekly "Overstay/Waiting List" distributed to *L.J.* plaintiffs' counsel and the IVA. There is no indication of whether or not children's CINA counsel has been notified of the hotel stays, as the MCD requires.

Furthermore, the data for this measure is trending in the wrong direction, with both the number of children and the number of incidents increasing from the 67th to 68th reporting periods. In fact, until this reporting period, the number of children staying overnight in office buildings had not been above 50 since the 61st reporting period in 2018. Additionally, given the number of incidents reported, it is clear that some children are spending multiple nights in office buildings. Some of these are the same children who have spent multiple nights in hotels. (See Section IV. C., above).

Finally, although the MCD does not specify, Defendants traditionally have reported only overnight and weekend stays of four hours or longer in offices. To understand the true scale of the problem, it is important to know that in the vast majority of the office overstays during and since this reporting period, the children and youth were never placed in a new placement during the overnight or weekend hours. Instead, Defendants report that they "left before placement" at 8:00 a.m., meaning that when the extended hours office closed, they were taken to a different office building where they would spend more hours waiting for a placement or to return to the office building or a hotel if a placement was not found.

3. Health Care

The Health Care section of the MCD includes five Outcomes containing 7 Exit Standards and 15 Internal Success Measures. Defendants do not claim compliance with any of the Exit

Standards. Eight measures are reported as "TBD": Measures 83, 93, and 94 (Exit Standards) and Measures 78, 81, 89, 90, and 92 (Internal Success Measures).

As indicated by Defendants in their report, many of the measures in the Health Care section of the MCD, as reported out of CJAMS, are not complete or not accurate. For almost all of the measures, Defendants comment that "[b]ecause of the inaccuracy of the CJAMS report, QA has calculated data stored in eCW to determine if criteria was met." (Measures 73-76, 79-83, 85a, 88a, 89-90, 92-94; Defts' 68th Rep., pp. 119-133). eClinicalWorks (eCW) is the medical database adapted by MATCH for its use in recording health information for the children in BCDSS foster care.

The problem with presenting MATCH eCW data as an alternative to or instead of accurate CJAMS data is that Defendants do not show that they have been able to validate the data reported from eCW. Defendants are aware that there have been problems with the accuracy of that data in the past.[48] In addition, MATCH staff was required to enter all health care documentation into CJAMS beginning in January 2022 (the beginning of the 68th reporting period) after extensive and detailed training was provided on CJAMS usage and documentation for health-related measures in the fall and early winter of 2021. CJAMS is the only system of record for BCDSS child welfare; the IVA requests that in future reports only CJAMS data be presented.[49]

BCDSS is responsible for monitoring the MATCH contract, and if compliance is not achieved, BCDSS and MATCH need to work together to determine barriers to compliance and then submit plans to reach the required compliance levels. With proper documentation and the

[48] See Section VI.E.2, below, and Att. 12, DLS, Audit Report, DHS Local Department Operations (March 2022).
[49] Prior to IVA certification, Defendants will need to attach to their compliance reports the qualitative assessment required in the measure instructions for Exit Standards 79 (comprehensive health assessment), 82 (medical, dental and mental health exams provided in the first 60 days after entry into foster care), 83 (periodic and annual medical (EPSDT) and dental exams), 88 (all health care needs met), and 94 (annual passport/health plan). MATCH is required to contract with a health care management professional to provide those qualitative assessments twice a year (for each six-month reporting period).

development of accurate reports, the IVA hopes to see improvement in the accuracy of reported data and the reported compliance levels.

4. Education

The Education section of the MCD includes three outcomes containing 6 Exit Standards and 11 Internal Success Measures. Defendants do not claim compliance with any of the Exit Standards. Four measures are reported as "TBD": Measure 99 (Exit Standard) and Measures 95, 96, and 98 (Internal Success Measures).

As with many other measures, accurate, reliable and valid data is not available for several reasons including reports not being developed yet; reports not including all required elements of the measure (e.g., school enrollment but not school attendance); lack of staff training on proper CJAMS documentation for the report period; the need for CJAMS application improvements and the need for developing data exchange agreements with school systems other than Baltimore City. Many of the measures in the Education section of the MCD rely on qualitative data gathered through the QSR program. These measures are: 97 and 101-111. Whether or not all of these measures are best assessed through QSR needs to be re-evaluated in light of the enhanced education section in CJAMS, the requirements of the MCD and the structure of the education practice at BCDSS.

5. Workforce

The Workforce section of the MCD includes three outcomes containing 6 Exit Standards and 9 Internal Success Measures. Defendants have reached certification-level compliance for one Exit Standard - Measure 121. Defendants also report data for two Internal Success Measures (117 and 118) related to this Exit Standard. Five measures are reported as "TBD": Measures 115, 116 (Exit Standards) and Measures 112, 113, 114 (Internal Success Measures). Several of the

measures (117-126) in this section of the MCD rely on data collected by BCDSS through their Quality Assurance program. Defendants have not provided the IVA with information regarding the accuracy of these reports. Certification decisions for Measure 121 and related Internal Success Measures 117 and 118 are discussed below.

The most critical measures in this section of the MCD address caseloads and supervision. (Exit Standards 115 and 116). At this time, the CJAMS reports for these measures are still under development. Regardless of the status of the reports themselves, the data is irrefutable that caseloads are unacceptably high. We cannot emphasize enough the importance of caseload reductions to meeting the Outcomes of the MCD and, most importantly, meeting the needs of children and families.

Internal Success Measure 117: *Percent of caseworkers who qualified for the title under Maryland State Law.*

Data reported: 100%

IVA Response: Internal Success Measure 117 has the identical requirements to Exit Standard 121. Therefore, the reasoning and findings made for Exit Standard 121, below, are the same for Internal Success Measure 117. The measure instruction for ISM 117 (Att. 11, p. 17) meets the requirements of the MCD, and the 100% compliance level reported for Measure 117 is certified as accurate, reliable and valid.

Internal Success Measure 118: *Percent of case-carrying workers who passed their competency exams prior to being assigned a case.*

Data reported: 100%

IVA Response: Internal Success Measure 118 is a subset of the requirements of Exit Standard 121. Its requirements are limited to ensuring the passage of competency exams prior to

caseworkers being assigned their first cases. The measure instruction for ISM 118 (Att. 11, p. 21) meets the requirements of the MCD. Defendants have provided reasonable documentation of the dates of passage of the competency exam and of assignment of first cases for all of the new caseworkers to whom cases were assigned during the 68th Report period. Therefore, the 100% compliance level reported for Measure 118 is certified as accurate, reliable and valid.

Exit Standard 121: *95 percent of caseworkers met the qualifications for their position title under Maryland State Law*.

Data reported: 100%.

IVA certification: Yes.

The measure instruction for Measure 121 (Att. 11, p. 25) accurately reflects the requirements of the MCD. It follows the language of Maryland Human Services Article §4–301 which requires, with one exception, that Defendants hire as caseworkers only human services professionals who are licensed by the state in areas such as social work and psychology. Unlicensed individuals may be hired only if they meet the following criteria: (1) have a bachelor's degree in an "appropriate behavioral science"; (2) complete mandatory pre-service training; and (3) are supervised by licensed social workers. All new caseworkers must pass a competency test after the pre-service training and prior to being granted permanent employment and assigned cases.

For this Measure 121, the Defendants report a compliance level of 100% which meets the MCD requirements but also state, "BCDSS has been certified in this measure" and do not specifically request certification of this measure. The IVA has certified this measure in previous reporting periods. However, compliance with an individual Exit Standard over three consecutive reporting periods does not relieve Defendants of any reporting or certification requirements. Part One, Section V. of the MCD reads:

> Defendants shall be in compliance with an *Outcome* of this Decree after Defendants have submitted periodic certified reports showing, with certification by the Independent Verification Agent, that Defendants have met the identified Exit Standard*s* for that Outcome for three consecutive six-month reporting periods. (MCD, p. 8) (emphasis added.)

The second Outcome for the Workforce section includes two Exit Standards (121 and 122). Defendants must be in compliance with all of the Exit Standards under the Outcome in order to stop reporting on the measure. Therefore, Exit Standard 122 must also be certified for three consecutive reporting periods before the Defendants can stop reporting on Outcome 2 and its related measures.

The IVA has reviewed the data and determined that Measure 121 can be certified as compliant for this reporting period.

Measure 121 requires reporting on newly hired caseworkers during the reporting period in which they are first assigned a case. For all of those caseworkers, Defendants provided (1) documentation of either an MSW in social work or related field or a bachelor's degree in an "appropriate behavioral science," and (2) proof of completion of the mandatory pre-service training and passage of the competency examination prior to assignment of a first case. For those new caseworkers without a social work license, they also provided documentation of their supervisors' social work license. The IVA finds that the procedures used by Defendants to collect this information and the data provided are reliable, valid and accurate. For that reason, the IVA certifies Defendants' compliance with Exit Standard 121 for the 68th Report period.

Exit Standard 122: *90% of caseworkers and supervisors had at least twenty hours of training annually.*

Data reported: 60.63%

IVA Response: The measure instruction for Measure 122 (Att. 11, p. 29) accurately reflects the requirements of the MCD. While the Defendants are not seeking certification of this measure, the IVA believes it is important to note that the number of caseworkers and supervisors meeting the annual training requirements is much too low. The Defendants are not now, nor have they been in compliance with this measure since the IVA's appointment in 2011. This issue was raised in the IVA's 67th report and the lack of compliance remains puzzling. The Defendants do not offer an explanation for *why* nearly 40% of caseworkers and supervisors are failing to meet the annual training requirement.

D. Additional Commitments

Four of the five subsections in Part Two of the MCD also have Additional Commitments included. These 22 Additional Commitments are included in the MCD to cover issues of importance to the welfare of the children served by BCDSS which do not fit neatly into the ISMs/Exit Standards measures format. Defendants are required to report on compliance with the Additional Commitments in each six-month compliance report. As in previous reports, Defendants again report compliance or partial compliance with many of the Additional Commitments but still did not provide the documentation needed to support most claims of compliance. The IVA is able to certify Defendants' full compliance with 5 of the 22 Additional Commitments. They are as follows:

Preservation and Permanency, E. 7. - Guardianship Subsidies

Out-of-Home Placement, E. 5. - Semi-Independent Living Arrangement Rate

Out-of-Home Placement, E. 8. - Funding for Child Care to Caregivers

Health Care, E. 1. – BCDSS Health Care Initiative

Health Care, E. 2. – BCDSS Health Care Advisory Council

Much of the rationale for the certification decisions remains the same for the 68th reporting period as it did for the 67th Report. A review of the Additional Commitments and the reasons for certification decisions are included as Appendix 1 to this report.

E. Other Reporting Requirements

Both the first and second parts of the MCD contain a number of other reporting requirements. (See IVA Resp. to 64th Rep., Att. 1, *L.J.* MCD Notification and Reporting Requirements). Defendants have reported on five of these other reporting requirements in the 68th Report.

1. MCD Part One, Section II. Verification Activities and Information Sharing

F. The Plaintiffs shall have access to the following: ... 4. Within one working day, Plaintiffs' counsel shall be notified of the serious injury or death of any class member and shall be provided timely the incident report, any reports of the investigative outcomes, and access to the child's case file.

Defendants state: "BCDSS notifies Plaintiffs' counsel of the death or serious injury of any class member as required by this provision of the MCD. The Agency is committed to ensuring the timely submission of required critical incident and fatality reports. … The Agency continues to explore process changes that will assure the highest level of compliance with all the requirements of this section." (Defts' 68th Rep., p 41).

During 2022, Defendants provided 13 initial fatality reports, all promptly (if not within one working day). For the two fatalities that were deaths of youth in foster care, the fatality reports were provided on the day of their deaths. Once again, however, final fatality reports have not been provided as timely. Furthermore, the IVA remains concerned about the paucity of information

and recommendations provided in some of the final fatality reports (where the reports appear to be solely a summary of the neglect and abuse investigation dispositions).

During 2022, Defendants provided approximately 35 critical incident reports involving physical abuse or injuries to children in OHP. In two cases, the reports were not received for more than a month; most of the others were received within a couple of business days. Follow-up reports continued to be provided only inconsistently.

2. MCD Part One, Section II. Verification Activities and Information Sharing

> *F. The Plaintiffs shall have access to the following: … 5. Defendants shall promptly provide to the Independent Verification Agent and to Plaintiffs' counsel all publicly available reports that Defendants receive indicating that they are not in compliance with a requirement of this Decree.*

The Defendants state: "There are no such reports known to the Department at this time." (Defts' 68^{h} Rep., p. 41).

Defendants are incorrect. In March 2022, the Department of Legislative Services issued an Audit Report of DHS Local Department Operations (included as Attachment 12 to this report), which includes several repeat findings against DHS concerning Child Protective Services and OHP operations, including failure to investigate maltreatment reports on a timely basis and failure to document (and therefore prove) timely monthly visits for each child in foster care. (Att. 12, p. 14). Furthermore, DLS' review of the BCDSS contract with MATCH found that MATCH, in January 2021, reported to BCDSS that 796 children under age 18 had not received an annual health exam in the prior year. "Although during our preceding audit the vendor had advised us and BCDSS that the reports may have been incomplete or inaccurate, at the time of our current audit, BCDSS could not document its efforts to investigate the reliability of the reports, nor had it obtained revised

reports. included information concerning significant lapses in CJAMS documentation of annual health care visits." (Att. 12, pp. 16-17).

3. MCD Part One, Section III, Communication and Problem-Solving

> *E. By December 31, 2009, Defendants, after consultation with the Internal Verification Agent, Plaintiffs' counsel and stakeholders, shall establish a standardized process for resolving issues related to individual class members. … Records shall be kept of the issues raised and their resolutions, and summary reports shall be provided to the Internal Verification Agent and Plaintiffs' counsel every six months.*

In its 68th Report (pp. 41-42), Defendants repeat their previous response to this requirement (Defts' 67th Rep., pp. 38-39) without responding to questions and concerns raised by the IVA's Response to the 67th Report (pp. 51-52): the summary does not speak to questions about whether the process as presented to Plaintiffs' counsel and the IVA and described in the brochure created for public dissemination was followed. For example, were complaints acknowledged in writing within three business days? After the review/investigation of the reported issue was completed, was a letter sent to the complainant by the Director with the outcome?

Defendants do not include a summary for the January - June 2022 report period with the 68th Report. After request by the IVA, they provided the IVA with a "Complaint Process Summary Report for the 68th *L.J.* Compliance Report," (included as Attachment 13 to this report) in which they further state, "No current changes have been made to the complaint process. There will be noticeable changes coming in the 71st reporting period [July – December 2023] resulting from feedback provided by the Internal Verification Agent. The most noticeable change will be the provision of access to the complaint tracker for class members, beginning July 1st, 2023." The

IVA cannot certify compliance when Defendants themselves state that the policy and process are not finalized.

Defendants' Complaint Process Summary provides some useful information about the types of complaints received - described as primarily related to payment issues and relative concerns about visitation or children's placements; the rest are broadly categorized as "under the umbrella of lack of communication." Although Defendants do not need to go into explicit detail about every single complaint, the current summary is unacceptably vague and also fails to address the procedural process (timeliness of response, etc.). Furthermore, without the promised access to the complaint tracker, the IVA cannot respond as to whether or not the summary adequately represents the issues raised.

4. MCD Part Two, Section II. Out of Home Placement

D 1. a. (4) Plaintiffs' counsel will be notified within ten working days of any child being placed on a waiting list or in temporary placement.

Defendants report on this requirement in the 68th Report by stating that "BCDSS is in compliance with this requirement … and is respectfully requesting certification for this reporting period." (pp. 64-65). BCDSS has continued to send a weekly list of children who have overstayed the period of medical necessity in hospitals and children who are on waiting lists to locate or be placed in new settings. So far as the IVA is aware, this requirement was met for the 68th reporting period. For future reporting periods, the IVA will attempt to validate whether Defendants are reporting all required cases.

5. MCD Part Two, Section II. Out of Home Placement

D. 9. a. (1) (b) … Within five business days of receipt of a [maltreatment in care] report, BCDSS shall notify the attorney for the child, the child's parents and their attorneys …,

Plaintiffs' counsel …. An unredacted (except the name of and identifying information about the reporter and privileged attorney-client material) copy of the report must be provided to the child's attorney and Plaintiffs' counsel. The completed unredacted … disposition report must be provided to the child's caseworker, child's attorney and to Plaintiffs' counsel within five business days of its completion. …

Defendants reported on this requirement through its report of data for Exit Standard 66, which requires 95% compliance with those requirements. By its own measurement, it complied with the requirement of providing the maltreatment report within five days in 82.35% of cases and the requirement of providing the disposition within five days in 0% of cases. (Defts' 68th Rep., p. 113). This requirement is not just a procedural one. To meet their obligations to the children in BCDSS foster care, Plaintiffs' counsel, the children's and parents' CINA (Juvenile Court) attorneys and the IVA need timely notice of maltreatment reports and the outcome (dispositions) of those reports. Since the beginning of implementation of this MCD, Defendants continually have promised – and failed to make – the changes necessary to fix the problem of late provision of reports and, especially, dispositions (which often have not been provided until specifically requested by the IVA).

VII. CONCLUSION

Defendants, at both the state and local level, have continued in the past six months to show a much greater commitment to the work of data collection and reporting. However, the CJAMS application itself still needs significant updates which will require additional resources if reporting is to be made accurate and reliable in the foreseeable future.

Substantively, the focus needs to be on increasing staffing at the caseworker and supervisor levels to reduce caseloads and ensure adequate oversight and coaching; creating a truly "kin first" culture for placements and support for children and families; and a full assessment and bold action at the state level to ensure adequate and appropriate placements and services for children and their families.

Respectfully Submitted,

/s/
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Copies provided on April 17, 2023, by email to:

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LIST OF ATTACHMENTS

Attachment 1. AFCARS FFY 2021 Data (as of 6.28.22).

Attachment 2. SSA, 2022 Baltimore City DSS Headline Indicators (received 2.27.23).

Attachment 3. BCDSS December 2022 Child Welfare Trends (downloaded 2.26.23).

Attachment 4. Annie E. Casey Foundation, BCDSS Assessment Findings and Recommendations (January 2020).

Attachment 5. MATCH Case Assignment Definitions (Guidelines 2019, App. C) (confirmed 3.23.23).

Attachment 6. The Baltimore Banner, "Maryland Foster Children Are Being Kept Overnight in Hotels and Downtown Office Buildings" (9.15.22).

Attachment 7. The Baltimore Banner, "Maryland Kids in Distress are Being Kept in Emergency Departments for Weeks, Months" (8.9.22).

Attachment 8. DHS, 2022 Joint Chairmen's Report, "Status and Timeline for the New Provider Rate Structure" (12.31.22).

Attachment 9. Plaintiffs' Letter re Placement Needs Assessment (9.22.22).

Attachment 10. Plaintiffs' Placement Needs Assessment Critique (9.22.22)

Attachment 11. Selected Final *L.J.* Measure Instructions (28, 49 - 52, 67, 117, 118, 121, 122) (2021).

Attachment 12. MD Department of Legislative Services, Audit Report, DHS Local Department Operations (3.30.22).

Attachment 13. BCDSS, Complaint Process Summary Report for 68th Reporting Period (January - June 2022) (received 3.27.23).