

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

B.H., et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 88 C 5599
)	Hon. Jorge L. Alonso
GEORGE H. SHELDON, Director,)	Judge Presiding
Illinois Department of Children and)	
Family Services,)	
)	
Defendant.)	

**PLAINTIFFS' ADDITIONAL SUBMISSION
ADDRESSING THE SECOND TRIANNUAL INTERIM STATUS REPORT
ON THE B.H. IMPLEMENTATION PLAN**

Plaintiffs respectfully provide this Additional Submission, which presents Plaintiffs' assessment of the Department of Children & Family Services' ("DCFS" or the "Department") ongoing reform efforts under the current Implementation Plan and, more generally, under the B.H. Consent Decree.

Introduction

The Second Triannual Interim Status Report¹ to the Court, filed today, shows that the Department has made some incremental progress toward reform under the Implementation Plan. Some of the Department's program initiatives are beginning to show signs of promise in the form of improved outcomes for children. In addition, the Department is moving forward with the rollout of its new Core Practice Model in specified Immersion Sites, and while it is certain that there will

¹ The "Second Triannual Interim Status Report on the B.H. Implementation Plan" is referred to herein as the "Second Triannual Interim Status Report."

be some glitches along the way, the parties are hopeful that this will be a substantial first step toward reform throughout the Department. But whether this initial, hard-won progress can be sustained, much less built upon to achieve actual improvement in service to the B.H. class, is far from clear.

Last week, the Department's Director announced that he is resigning effective June 15, 2017. That resignation comes just two weeks before the end of the State's fiscal year and with no FY 2018 State budget in place.² As he exits, Director Sheldon leaves in his wake (i) four child deaths that signal deep dysfunction in the Department's investigative process; (ii) a scramble by the Department to react to unexpected announcements that several residential facilities will be downsizing and/or closing, thereby displacing as many as 45 high-needs children; and (iii) a reform process imperiled by the Department's persistent failure effectively to coordinate *internally*, so that its various initiatives are not developed in conflict with one another.³

Governor Rauner has announced that a nationwide search will be launched for Director Sheldon's replacement. In the meantime, the Department stands on the threshold of another period of revolving door leadership.⁴ That in the past inevitably has resulted in delaying, halting, and

² In the absence of an FY 2018 budget, Plaintiffs are preparing a motion that will ask this Court to issue an order requiring the Department's ongoing provision of the placements and services required under the B.H. Decree through FY 2018. This Court entered such orders for FY 2016 and FY 2017. *See* Dkt. Nos. 489 and 525. Plaintiffs previously filed these jointly with the Department (*see* Dkt. Nos. 486 and 521), and hope and anticipate that the Department will not oppose Plaintiffs' anticipated motion.

³ An example of the Department working at cross-purposes with itself occurred in respect to a residential program provider. While the program at issue was receiving assistance under a corrective plan to improve its performance in handling youth rated as having "moderate" needs, the Department's contracting unit simultaneously was preparing to modify that provider's contract to undertake a program for serving youth rated as having "severe" needs. The issue was addressed once identified, but it represents a shocking failure of communication within the Department that could have seriously impacted child safety.

⁴ The Department has had nine directors (some "interim" or "acting") since 2003. The Department has cycled through seven of those since 2013: Richard Calica, Denise Gonzales, Art Bishop,

even undermining the Department's efforts to achieve compliance with the B.H. Decree. Accordingly, it is Plaintiffs' view that significantly increased oversight of the Department's implementation efforts is needed in the near term, both by the Court and by the Expert Panel.⁵ In a separate submission to this Court, the Experts have outlined their observations and concerns regarding the Department's current implementation efforts, have committed to augment their already substantial involvement with the Department, and have indicated an intent to present the parties with requests for additional staff support.⁶ Plaintiffs are in complete accord with the Experts' views and remain hopeful that the Department will not object to the Experts' requests.

Plaintiffs' concerns regarding the Department's current compliance efforts are set forth more fully below. In the next reporting period, Plaintiffs expect that the parties will be intensely focused on the anticipated managed care program contract for B.H. class members that the Department of Healthcare and Family Services is scheduled to award on or about July, 2017. Plaintiffs are deeply concerned that such a contract will not fit easily, if it can fit at all, with the Department's development and implementation of its Core Practice Model. In addition, Plaintiffs are attempting to work with the Department to properly and fully evaluate and address what Plaintiffs believe are systemic problems with the Department's investigative process and delivery

Bobbie Gregg, Cynthia Tate, and George Sheldon, and now Lise Spacapan. That is instability by any definition.

⁵ This Court previously appointed Marci White, Paul Vincent, and Dr. Mark Testa to serve as experts assisting the Court and the parties in monitoring and evaluating the Department's attempts to achieve the reforms outlined in the Implementation Plan approved by the Court on October 20, 2015. *See* Dkt. No. 507 (citing Dkt. Nos. 484, and 531). Mr. Vincent's role later was modified so that he now serves as a consultant to the Department rather than as a Court-appointed expert. *See* Dkt. Nos. 515-517, 519.

⁶ *See* Dkt. No. 507 at ¶7 and Dkt. No. 484. Under these Orders, the Experts may retain consultants and assistants as they deem necessary to conduct their assessments of the Department's activities. Such retention is permitted after provision of written notice to the parties and allowing time for review and objection by the parties. *Id.*

of intact family services required under the Decree. Plaintiffs hope that the Department will work cooperatively to address these issues, as it has done in the past. But if that cooperation is not forthcoming, Plaintiffs will be seeking appropriate emergency relief from the Court.

Plaintiffs' Assessment of DCFS' Reform Efforts Under the Decree

I. Investigations.

As the Court certainly is aware from recent press reports and Director Sheldon's Illinois congressional testimony on May 23, 2017, four children known to the Department through hotline calls or other reports of abuse and neglect have died following tragically failed investigations and/or post-investigation errors. These cases are under investigation by the Inspector General, and Plaintiffs are anxious to learn from the Inspector General's findings and conclusions. But the deaths of these four children do not stand as lone, isolated indicators of dysfunction in DCFS' handling of investigations and intact family cases. Recent data from the Illinois Children and Family Research Center shows a troubling trend toward increased reabuse and neglect for children who have been the subject of substantiated investigations, as well as for some children in substitute care.⁷ The Department must proceed with its own examination of its investigation practices, staffing, and resources now, without delay.

Plaintiffs have already requested data from the Department in respect to investigative caseloads, and the Department is cooperating with that request. The Department in the past has compiled data to show that caseloads required under the B.H. Decree are being met if one looks to average case assignments statewide and/or region-wide. Plaintiffs believe, however, that

⁷ See Children and Family Research Center, University of Illinois School of Social Work, *Conditions of Children in or at Risk of Foster Care in Illinois*, 2015 Monitoring Report of the B.H. Consent Decree, Ch. 1 at 1-1 to 1-8 and Figs. 1.1, 1.3, and 1.12, Ch. 2 at 2-6 (2016), available at https://cfrc.illinois.edu/pubs/rp_20170101_ConditionsOfChildrenInOrAtRiskOfFosterCareInIllinois2015MonitoringReportOfTheB.H.ConsentDecree.pdf.

individual caseworkers routinely are carrying caseloads far exceeding the B.H. limits (which are based on accepted child welfare practice standards). In Plaintiffs' view, the Department is facing systemic problems with (i) chronic understaffing of investigators; (ii) inability to fill open investigator positions and then retain those new hires; (iii) fundamental deficiencies in the quality of investigations; and (iv) severe gaps in intact family services and resources that the Department is obligated to provide under the Decree.

Plaintiffs hope that the Department will work cooperatively to assess the investigative staffing, performance, and intact family service resources issues Plaintiffs have raised, and then agree to a plan for resolving issues identified through that assessment. Plaintiffs anticipate that the Expert Panel's assistance will be required for the assessment and development of a reformative plan.

II. The HFS Managed Care Contract.

On or about July, 2017,⁸ the Department of Healthcare and Family Services ("HFS") presently is set to award a Medicaid managed care contract that will include a separate, dedicated plan for provision of physical and mental health services to all children in the B.H. class (all youth in DCFS care). Notably, the contract will be issued by HFS, not DCFS, and DCFS has been unable to confirm to Plaintiffs that the Department has the power to require that HFS' managed care contract will fit with the Core Practice Model DCFS has adopted as part of its required reform under the Implementation Plan.

Under the Department's Core Practice Model, decisions regarding the services a child in care needs are developed through a Child and Family Team process. Under that Model, the final

⁸ The contract award date originally was set for June 30, 2017. HFS has updated the timeline for the RFP to indicate that bidders' oral presentations, which occur before award of the contract, likely will occur in early July, 2017.

decision-making power rests with the Department, and *not* with an outside care management entity. The model managed care contract put out for bid by HFS, however, contemplates that “care coordinators” employed by the contracting Managed Care Organization (“MCO”) will be responsible for that critically important decision-making. Plaintiffs and the Expert Panel have raised concerns about this apparent, fundamental conflict on numerous occasions. In response, the Department has insisted that final decision-making will remain with the Department, and that any potential conflict between its Core Practice Model and the anticipated managed care program can be worked out during negotiation of the final MCO contract. Yet at the same time, the Department has said that the contracting process remains in the control of HFS.

Plaintiffs are concerned that the Department is vastly underestimating the complexity of the situation it now faces. The Department is only beginning the rollout process for its Core Practice Model in the Immersion Sites. The Department has reported that it is too soon to know whether the September, 2019 target for statewide rollout of its Core Practice Model will be met. At the same time, the current schedule for rollout of the managed care program for B.H. class members is less than two years away. Further, Plaintiffs are informed that the timeframe for the managed care rollout is extremely aggressive given the complexity of the anticipated care program, but DCFS does not claim to have the power to delay that rollout.

The scoring process for HFS’ selection of the MCO to offer the plan for B.H. class members exacerbates Plaintiffs’ concerns. The scoring does not emphasize bidders’ prior experience in managing a plan for children in substitute care. Rather, scoring under the RFP places one factor far above all others: Rates. Bidders’ rates represent 300 available points on a 900 point scale. By comparison, the bidder’s response regarding service of “high needs children” only counts for up to 50 points – a point value even lower than the bidder’s response regarding IT

capabilities. The combination of a Department in the early stages of implementing a new Core Practice Model, the overlay of an MCO that may not have any familiarity with child welfare systems, and a lack of clarity regarding who will be responsible (both legally and procedurally) for deciding what care a child needs and receives *at the very least* will require strong leadership, intensive work, education, and coordination between DCFS, HFS, and the MCO once a contract is awarded.

To date, the Department has stated that it cannot discuss the MCO contract with Plaintiffs or the Expert Panel until HFS awards a contract. The Department contends that such discussions are prohibited under the Procurement Code. Plaintiffs intend to work closely with their own expert consultants, the Expert Panel, and the Department on these issues. Plaintiffs raise the matter now only to keep the Court apprised of this very significant, impending change to the manner in which services will be identified and provided to B.H. class members.

III. Data Systems.

Plaintiffs are concerned that the Department's efforts to revamp outdated data systems critical to its ability to monitor child safety, permanency, and wellbeing are now imperiled by contracting issues that should have been avoidable through appropriate planning.

First, the Department's contract with Five Points is set to expire in a matter of weeks, on June 30, 2017. The Department has acknowledged that Five Points has provided critical technical support and expertise DCFS needs to oversee and evaluate a feasibility study that must be done in order for the Department to complete a major initiative: Replacement of its SACWIS system (which stores case information regarding all children in care) with a new and upgraded CCWIS system. The loss of the support provided by Five Points poses the threat that the Department could

lose \$1,414,595 in federal funds⁹ that would help pay for the feasibility study. Further, a setback in this process could result in delay of the conversion to CCWIS system by as much as 18 months to two years. DCFS reports that it is currently evaluating various options with respect to the consultants employed by Five Points in an attempt to ensure that the CCWIS initiative is not jeopardized.

A like issue is raised by the Department's failure appropriately to plan around the expiration of the Mindshare contract at the end of 2017. DCFS selected Mindshare to develop an "interim" platform for its data analytics for tracking safety, wellbeing, and permanency, and to facilitate evaluation of the performance of programs and reform initiatives the Department has undertaken pursuant to the Implementation Plan. The Department further planned to have an internally developed and maintained replacement for the Mindshare platform and dashboards by December of 2018, approximately 18 months from now.¹⁰ The significance of the Mindshare platform and "dashboards" cannot be overstated – the Second Triannual Interim Status Report is replete with references to Mindshare. Yet in the last several weeks, the Department informed Plaintiffs that the Mindshare contract likely cannot be renewed past December, 2017, more than a year *before* DCFS planned to have its alternate system in place. DCFS now reports that it will "make a decision" about the Mindshare platform "in the next reporting period," and that a "transition plan will be developed once that decision is made." Plaintiffs read this as a concession that *nothing has been done* to prepare for the loss of the Mindshare platform effective December, 2017. Plaintiffs have received no assurance that it is feasible for a home-grown replacement system to be developed in just six months, so that the Department will not lose what progress it

⁹ See Dkt. No. 538 at 61 (citing Ex. GG, November 29, 2016 Letter from Commissioner Rafael Lopez to Director George H. Sheldon).

¹⁰ See Dkt. Nos. 538 at 60.

has made in developing the capability to track essential data, much less continue to improve its data analytics as required under the Plan.

Plaintiffs and the Department have a fundamental disagreement as to the significance of the likely loss of the support previously provided through the Five Points and Mindshare contracts. The Department focuses on the fact that it always planned to move such expertise and functions in-house. Plaintiffs acknowledge that the Department announced that intent, but are concerned that the transition to an internal system is not occurring in an orderly and planned fashion, but rather due to a failure timely to address contract issues that has left the Department flat-footed. Plaintiffs hope, but doubt, that they are wrong in considering these issues an emergency. Plaintiffs will continue to work with the Department on this with the anticipated assistance of the Expert Panel.

IV. Services and Unexpected Residential Program Closures.

The Second Triannual Interim Status Report shows that the Department has made some progress in increasing the array of services available to B.H. class members in some areas, including progress toward development of therapeutic foster homes. Those developments, while positive, still lag far behind what Plaintiffs had expected to see by this point. Further, Plaintiffs have not yet seen the Department engage in meaningful long-term planning to identify what services and resources it needs to develop, the geographic areas where such resource gaps exist, or the service capacity the Department must build to properly serve the youth in care. Plaintiffs understand that the Department intends to undertake such planning now, and will be working with the Expert Panel to do so.

At the same time the Department is achieving some incremental progress in its development of service resources, the Department received unexpected notifications from several

residential providers in the last few weeks regarding the impending closure of several residential programs. Plaintiffs understand that in total, 45 residential beds will be lost due to these closures. The Department is working to transition these youth to alternative placements, has informed Plaintiffs that some of the children may be ready for step-down to less restrictive settings, and has stated that its prior experience with closures that occurred last year (at Maryville and JCFS) has facilitated the Department's ability to react to this situation. Nevertheless, the need to promptly move this many children in a relatively short timeframe represents a significant disruption. Further, in Plaintiffs' view, the fact that most of these program closures came as a surprise to the Department indicates that the Department's relationship and communications with outside providers requires significant improvement.

Plaintiffs learned of the residential program reductions through reports from providers rather than from DCFS. Upon hearing of these issues, Plaintiffs asked the Department to involve the Expert Panel in the transition planning for the children at these facilities, and the Department willingly agreed to do so. The Department further has agreed to provide Plaintiffs with an analysis (which is still being drafted) of the safety and stability of the youth who were transitioned to new placements after the closings of residential programs in the late summer of 2016, and to provide similar reports in the future regarding the children involved by this current round of program closures.

The Department appears to be of the view that the recently-announced closures will not reduce available residential placements below the Department's need for FY 2018. Plaintiffs are not so sure. It is Plaintiffs' understanding that the gap between need and capacity at this point is very small. Plaintiffs appreciate that the Department hopes to reduce the use of residential programs through more appropriate use of therapeutic foster care and other less-restrictive

placements in FY 2018, but it is not clear that development of those resources will be sufficient to keep pace with need and to ensure that youth are only transitioned to less restrictive settings in a safe and principled manner. The parties and the Expert Panel will be monitoring this closely.

V. Communication.

Plaintiffs agree with the Department that there have been many, many telephone calls and meetings between the parties and with the Expert Panel. Likewise, the Department has provided Plaintiffs and the Expert Panel with extensive access to documents relating to the Department's programs and initiatives. Nevertheless, in Plaintiffs' view, a serious over-arching problem with communications remains unresolved.

While the Department generally will readily agree to provide information *after* Plaintiffs or the Expert Panel request that information, there continue to be instances where the Department does not affirmatively bring significant issues to the fore on its own initiative. As discussed above, that occurred in respect to the unexpected news regarding the upcoming residential program reductions. Plaintiffs simply do not understand how the Department could have failed to recognize that an event of that significance, which impacts some of the highest-need members of the BH class, should have been affirmatively raised with the Expert Panel and Plaintiffs when it arose.

In other instances, the Department's response to inquiries by Plaintiffs and/or the Experts has been wholly inadequate in Plaintiffs' view. That is best illustrated in respect to the managed care RFP. As discussed above, Plaintiffs and the Expert Panel raised questions regarding the apparent lack of a fundamental "fit" between the RFP model contract and the Department's Core Practice Model on several occasions. DCFS' representatives initially responded by stating that they saw no conflict. Later, they said that they could not discuss how the "care coordinator" function would work under the anticipated plan because the RFP remains open and a contract has

not yet been awarded. Now, however, the Department says in the Second Triannual Interim Status Report that it *already held* an initial meeting in May 2017 to begin addressing how the anticipated managed care program will work in conjunction with the Department's Core Practice Model and CFT approach. Neither Plaintiffs nor the Expert Panel were previously notified of that meeting. Plaintiffs are simply mystified by this apparent disconnect given the strong terms in which Plaintiffs and the Expert Panel communicated their level of concern and need for information regarding the managed care program.

Plaintiffs, in short, appreciate the efforts that the Department has made toward improved communications, but are concerned that the Department does not seem to recognize the need for improved *affirmative* disclosure of significant matters. Each time an instance of non-communication of this kind arises, the Department expresses surprise and usually provides further information within a reasonable timeframe. Plaintiffs hope that the Department will make a more concerted effort to proactively inform Plaintiffs and the Expert Panel when significant developments, whether positive or negative, arise in the future.

Dated: June 9, 2017

By: /s/ Claire Stewart

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CERTIFICATE OF SERVICE

I, Claire Stewart, one of the attorneys for the Plaintiff class in the above-captioned litigation, hereby certify that on June 9, 2017, I electronically filed the foregoing **Plaintiffs' Additional Submission Addressing the Second Triannual Interim Status Report on the B.H. Implementation Plan** with the Clerk of the Court using the CM/ECF system, which will cause an electronic copy to be served on all counsel of record. In addition, I served copies of that document to be served on the following individuals, who are Court-appointed experts in this matter, via email as set forth below:

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By: /s/ Claire Stewart