

**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
B.J. WALKER, Acting Director,	)	Judge Presiding
Illinois Department of Children and	)	
Family Services,	)	
	)	
Defendant.	)	

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

Plaintiffs respectfully provide this Submission addressing the Sixth Triannual Interim Status Report (the "Sixth Status Report") (Dkt. 687) filed by the Department of Children & Family Services ("DCFS" or the "Department").

**Introduction**

As with the last three Triannual Reports filed in October 2017, March 2018 and September 2018, neither the Expert Panel nor Plaintiffs have joined in the Department's Sixth Status Report.<sup>1</sup> And as before, Plaintiffs concur in the comments and conclusions that the Expert Panel have provided in their separately filed response. This Submission provides Plaintiffs' additional, global comments regarding the Department's reform efforts under the current Implementation Plan (the "Plan") and, more generally, under the *B.H.* Consent Decree.

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<sup>1</sup> The Department shared a draft of the Sixth Status Report with the Plaintiffs and Expert Panel on February 1, 2019. No update was provided thereafter, though the draft was incomplete.

As set forth more fully below, it is Plaintiffs' assessment that (i) the recommendations identified by the Expert Panel, and later adopted by the Department as the foundation of the Implementation Plan and its initiatives, remain critically important and focus on the goals the Department should be attempting to achieve; (ii) the Department's reform efforts are largely stalled; and (iii) the Department is in desperate need of guidance at multiple levels. With Acting Director Walker ending her tenure with the Department today, a search is underway for a new Director. That obviously is a critically important vacancy, but the Department needs other leadership as well. The Sixth Status Report demonstrates that at present, no one at the Department is capably promoting or managing the achievement of permanency for youth in care, the development and delivery of necessary services and placements for youth (and in particular, youth with significant behavioral and/or psychological needs), the integration of the Department's new Core Practice Model, or any of the system innovations envisioned under the Implementation Plan.

The failure of leadership at the Department is immediately apparent from the very first paragraph of the Sixth Status Report. While captioned as an "Introduction and Overview," the Department's lead-in to its 100+ page Report (*excluding* exhibits) is nearly indecipherable and gives no useful information. Plaintiffs will not engage in a point-by-point, project-by-project rebuttal to the Sixth Status Report, but instead will focus on a handful of illustrations that make clear the Department has no idea what it *is* doing or what it *should* be doing, and appears to have forgotten why it undertook the initiatives in the Implementation Plan in the first place: to improve the lives of high-needs youth in care.

**I. The Department Is Not Child-Focused in its Work or its Reporting.**

When this Court adopted the Expert Panel's recommendations for the Department, this Court instructed that the Department should submit periodic reports addressing "the Department's

progress toward compliance, and further recommending corrective courses of action for the Department when appropriate.” Order adopting expert recommendations, ¶ m (Dkt. 507). That instruction envisioned more than box-checking about the number of people trained to do X, and the number of times service Y was delivered. Certainly, some of that “bean counting” is needed in a progress report, but the import of the instruction was to *recommend corrective action* should it become apparent that a particular initiative was not “working.” And by “working,” Plaintiffs are certain the Court had in mind the simple test of whether the initiative was, in some way, making things better for youth in care. The Sixth Status Report focuses on bean counting administrative tasks, not child serving. And sadly, that is not simply a result of poor report drafting. It is a reflection of the Department’s misplaced focus.

An extraordinarily powerful illustration of the difference between focus on youth in care, rather than administrative tallies, is ready to hand. Just compare the Expert Panel’s Submission with the discussion of “Overarching Outcome Measures” in the Department’s Sixth Status Report. Hard as it may be to believe, the Expert Panel and the Department are discussing *the same data*. The Expert Panel is alarmed by the lack of improvement and, in some cases, worsening data regarding youth in care. The Department, in contrast, carves out snippets of information, cherry-picking microdata that the Department views as positive on varying scales (e.g., Region X this year compared to last year for one indicator, and Region Y for another indicator) :

- At entry into care, a substantial proportion of youth have well-developed or useful strengths;
- Of particular importance, at entry into care, over 50% of youth in the sample have a family member that offers support and strength to the child; demonstrate well developed interpersonal skills; are optimistic; have good coping and savoring skills; and show signs of resilience;
- A relatively small percentage of youth demonstrate moderate to severe needs;

- In the area of Adjustment to Trauma, the CANS was rated as “actionable” (indicating a moderate or severe need requiring action) for approximately one-third of the sample, and considered “in need of continued observation” for an additional 38.8% of kids.

Dkt. 687 at 9. And most significantly, the Department’s discussion of the data it showcases as “key highlights” *does not frankly disclose where Illinois’ performance stands in comparison to national benchmarks*. A cynic might think that is because Illinois now ranks among the worst in the nation in respect to the referenced measures.

Moreover, even apart from the Department’s bizarre presentation of the figures it deems to be “key highlights” of data measuring overarching outcomes for youth in care, the Department appears to think that the numbers reported for the measures the Department is tracking *are the findings*. Wrong. They are just a starting point for analysis to understand what is happening with youth in care, why it is happening, and what the Department might do to ensure that it keeps doing things that work, avoids wasting time on failing interventions, and tries new initiatives when it becomes clear that what has been standard and accepted practice in fact is ineffective, or worse.<sup>2</sup>

Plaintiffs are hopeful that with the anticipated appointment of a new Director, and with the significant assistance the parties already are receiving from the recently appointed Special Master (*see infra* at 10), the Department will shift its focus away from mere administration of reform *efforts*, and instead will prioritize real reform. And ironically, one of the most important steps the Department must take in that regard is ... more counting and data tracking. While the Department

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<sup>2</sup> Plaintiffs note that at present, the Department does not appear to have dedicated personnel with the expertise necessary to analyze data and help the Department understand what conclusions can appropriately be drawn from it. Plaintiffs appreciate that the Department has relied heavily on some of its University partners, including the Child and Family Resource Center, for such assistance. Those partnerships are important and should continue, but they are not a substitute for internal expertise the Department could draw upon for the sort of data analysis it should be performing on a routine basis.

is able to generate reports showing how many meetings have been held by its various BH-related committees, how many workers have completed various levels of training, and even how various child assessment “tools” have been administered to youth in a specific period of time, the Department does *not* have any systematic or reliable means to track such basic and essential information as:

- how many times in a particular region or area a particular variety of service or placement was recommended for youth in care;
- how many times youth did not receive services or placement called for in their plan; or
- why any such identified needs were not met.

Simply put, the Department cannot prepare a meaningful budget, sensibly develop the resources that youth in care need but cannot access, or function in a rational manner without the above data. The Department must finally do something to address this extraordinary gap in its basic operational information.

**II. By Failing to Analyze Data Regarding its Initiatives, the Department is Stalling Reform.**

We have already noted that the Department is not adept at understanding data it gathers or making appropriate management decisions based on that data. The following illustrates the devastating consequence of that failure in the context of the Implementation Plan and the Department’s initial reform initiatives.

While the Sixth Status Report contains more data than previous reports, critical data is missing, and what has been provided is in the form of an unrefined “data dump.” The Department’s failures in this regard matter, for they show the Department at most is paying lip service to true evidence-based practice. As the Experts state in their report, “there continues to be

an alarming lack of analysis of its implementation efforts that inform and then guide needed course corrections or the development of new strategies.” *See* Dkt. 693 at 1.

The depth of the Department’s failure of analysis, its deviation from evidence-based practice, and the devastating impact of those failings is best illustrated by discussion of two critically important initiatives in the Implementation Plan – the Immersion Sites and TFC.

**A. Immersion Sites**

The Immersion Site initiative was to serve as the “incubator” for the Department’s introduction of its new Core Practice Model. Workers were to be trained in family-centered case planning, a quality improvement system (QSR) was to be implemented, and workers in the sites were to be empowered to use “flex” spending and other creative approaches to secure the services identified for youth included in the Immersion Site project. In addition, the Department intended to use the Immersion Sites to identify systemic barriers impeding the Department from timely providing what youth in care needed and to experiment with strategies to break through those barriers.

Given the purpose of the initiative, one would have expected that by this time, the Sixth Status Report would be talking about whether there was improvement in promptly getting youth what they needed; what problems (including systemic barriers) the Department had encountered in trying to accomplish that and the strategies it was testing to solve them; what gaps in needed services or resources had been identified; and the Department’s progress toward filling those gaps. One would also expect some reporting of administrative data, such as the percentage of the workers in each site who had completed training in the new Core Practice Model and how well they were adhering to those new practices according to the QSR reviews. That is not what the Sixth Status Report delivers.

The Department certainly includes data about how many people have been trained and coached at various levels to conduct child and family team meetings for case planning. Unfortunately, we know that there has been significant turnover at private agencies involved with the Immersion Site pilot. That is a significant issue for the Department, yet the Sixth Status Report says *nothing* about the overall impact of employee turnover and the resource needs for constant training of newly hired workers. Likewise, we are aware that the Department is not able to run reports identifying when child and family team case planning meetings are being held or, as noted above, the services identified for youth and whether those needs have been met in a timely way. The Department thus does not have a reliable way to perform meaningful review using the QSR protocol or to measure how effective its new practice model is in delivering better care to youth. Those are critical and fundamental implementation gaps, but they go unmentioned and unaddressed. So, we know that X number of referrals were made to agency Y for service Z – does that mean all requests were met? Is there a resource deficit? The Sixth Status Report does not say. Equally useless is the data point that Agency X served Y number of families at a cost of Z. Without context regarding the anticipated need, the experienced need, and the extent to which experienced need was satisfied, the reported data has no meaning.

What the Department highlighted in the draft report provided to Plaintiffs were “key findings” that are incomplete and untethered to any sensible baseline data. The Department’s “key findings” as recited in the Report are:

**Permanency Achievement:**

- Adoptions increased by 29% in immersion sites compared to an 11% increase statewide from Calendar Year 2016 to Calendar Year 2017
- Guardianship increased by 69% in immersion sites as compared to a 28% increase statewide from Calendar Year 2016 to Calendar Year 2017
- Reunifications increased by 9% in immersion sites as compared to a 5% decrease statewide from Calendar Year 2016 to Calendar Year 2017

**Maltreatment in Care per 100K Days:**

- There was a slight increase in the maltreatment in care rate statewide from Federal Fiscal Year 2016 to Federal Fiscal Year 2017

**Permanency Achievement by CFSR Cohorts (12 months, 12-23 months and +24 months)**

- Statewide, permanencies increase the longer children remain in foster care

*See also* Dkt. 687 at 5-6. These statistics are simply dropped into the Report without explanation. The Department does not even indicate curiosity about *why* adoptions, reunifications, and guardianships increased, so that good practice can be identified and implemented more broadly. There is no discussion of what elements of the immersion sites had an impact on those measures and how can they be improved or built upon. Equally significant, there is no discussion of the increase in maltreatment in care – why is the statewide figure a “key finding” in respect to the Immersion Sites? Is the Department investigating why that troubling increase occurred?

In sum, the Sixth Status Report gives no comfort that the Department has a grasp on the fidelity with which its Core Practice Model is being executed in the original Immersion Sites, how service and resource delivery is being improved (if at all), or the *actual impact* on the families or youth receiving the services, to the extent that can yet be assessed.

**B. The TFC Pilot**

The Department’s misfocus on administration is apparent yet again in the discussion of the TFC initiative in the Sixth Status Report. And again, this is more than just a problem with reporting – the impetus for the Implementation Plan itself was to improve the Department’s care and treatment of high-needs youth, and the Department’s dismal failure in that regard has dire consequences. Some youth suffer while they remain in overly-restrictive settings and cannot “step down” to more family-like settings, while other youth cannot get the high-end services they need. Meanwhile, the Department continues to have these youth cycle through placements rather



than coming to grips with the reality that some youth will have *ongoing* need for short-term stints in residential placements and, possibly, periodic hospitalization when they are in crisis. But again, none of that is considered or referenced in the Department's discussion of TFC.

Putting aside the differences between the Parties and Experts about which programs are actually a "part" of the pilot, the Sixth Status Report again reports data in a meaningless fashion, without any informative context. For example, the Department states that 34 TFC-certified foster homes have been *created* (aside from those under a different model through Children's Home and Aid ("CHASI")).<sup>3</sup> The natural next questions are "How many are still serving, and how many have children placed with them?" The Department does not say. Similarly, though the Department sets out several tables of "program outputs" regarding program capacity, one cannot tell whether the Department's apparent experience – that only approximately 1/3 of youth referred to TFC ultimately receive a TFC placement – is to be expected, or whether it indicates a mismatch between the design of the programs in place and the Illinois youth who need TFC placements.

The Sixth Status Report also fails to analyze the root cause for the TFC providers' apparent inability to recruit (and retain?) TFC homes, or what new strategies are being adopted to address that problem. Instead, the Department simply states that it may lower the expectations for the program to match its poor performance. That is not evidence-based practice, as the Expert Panel already has made clear to the Department.

In contrast to the dearth of analysis regarding the TFC pilot's performance, the Sixth Status Report contains fulsome data about how many people were trained by the providers, the number of meetings held, and the number of family therapy sessions conducted. Again, that is information worthy of note, but they are purely administrative data. Did the youth and families that participated

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<sup>3</sup> Dkt. 687 at 13.

in the therapy sessions experience better outcomes in any respect due to that participation? Similarly, for the “8 youth successfully graduated with 17 youth currently in placement” and “2 youth needed residential care,” (Dkt. 687 at 19) is the Department monitoring how those youth are doing, or analyzing whether their time with TFC was or was not beneficial? One cannot tell from the Sixth Status Report, as only the numbers themselves are provided.

### **III. Future Work With the Assistance of the Special Master and NIRN.**

On December 7, 2018, the Court appointed the Honorable (Ret.) Geraldine Soat Brown to serve as the Special Master, pursuant to Federal Rule of Civil Procedure 53. *See* Order of Appointment of Special Master, Dkt. 680. As noted in the Order, the purpose of the appointment is for Judge Brown to assist the parties with mediation and dispute resolution. *Id.* The parties and the Expert Panel have begun working with the Judge Brown and appreciate the assistance she already has provided. Indeed, Judge Brown’s assistance and involvement likely will be even more important in the near-term given Acting Director Walker’s departure and the need for continued progress toward reform while the search for a new Director is underway.

In addition, Plaintiffs emphasize here their strong agreement with the Expert Panel that the Department further needs substantial additional assistance from Dr. Allison Metz, with the National Implementation Research Network (NIRN). The Department committed to working with NIRN as part of its obligations under the Implementation Plan, but to-date has had minimal contact with NIRN and has not remotely followed the principles of implementation science in its reform efforts. Plaintiffs agree with the Expert Panel’s previously expressed recommendation that the Department should engage at least 25% of Dr. Metz’s time for the foreseeable future. Such involvement by an expert in reform efforts of the magnitude required for the Department is critical at this juncture.

**Conclusion**

The Sixth Status Report reflects no significant changes in the Department’s implementation progress. The same issues that Plaintiffs raised when opposing the Department’s recent motion to amend the Implementation Plan remain – the Department routinely objects to undertaking analysis of programs even after they have “run their course,” rejects calls for the identification and implementation of new strategies for developing services and resources for high-needs youth, and refuses to act even when it is apparent that significant initiatives (like implementation of the Core Practice Model) are not being implemented with fidelity. The Department’s penchant for dropping initiatives without gaining any understanding for why they failed is strong and runs directly counter to the evidence-based practice principles the Department has committed to adopt. Continued enforcement of the Implementation Plan, potentially with modifications for the next set of initiatives the Department undertakes, will be essential if the Department is to make any progress toward the goals identified by the Expert Panel.

Dated: February 15, 2019

Respectfully submitted,

By: /s/ Heidi Dalenberg

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v.	)	No. 88 C 5599
	)	Hon. Jorge L. Alonso
BEVERLY J. WALKER, Acting Director,	)	Judge Presiding
Illinois Department of Children and	)	
Family Services,	)	
	)	
Defendant.	)	

**NOTICE OF FILING**

To: All counsel of record.

PLEASE TAKE NOTICE that on the 15th day of February, 2019, the **PLAINTIFFS' SUBMISSION ADDRESSING THE SIXTH TRIANNUAL INTERIM STATUS REPORT ON THE B.H. IMPLEMENTATION PLAN** was filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, at the U.S. Courthouse, 219 S. Dearborn Street, Chicago, Illinois 60604.

Dated: February 15, 2019

Respectfully submitted,

By: /s/ Heidi Dalenberg

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**CERTIFICATE OF SERVICE**

I, Heidi Dalenberg, one of the attorneys for the Plaintiff class in the above-captioned litigation, hereby certify that on February 15, 2019, I caused the foregoing **PLAINTIFFS' SUBMISSION ADDRESSING THE SIXTH TRIANNUAL INTERIM STATUS REPORT ON THE B.H. IMPLEMENTATION PLAN** and **NOTICE OF FILING** to be electronically filed 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 the foregoing **PLAINTIFFS' SUBMISSION ADDRESSING THE SIXTH TRIANNUAL INTERIM STATUS REPORT ON THE B.H. IMPLEMENTATION PLAN** and **NOTICE OF FILING** on the following individuals, who are Court-appointed experts in this matter, via email as set forth below:

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/s/ Heidi Dalenberg