

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

BRIAN A., et al.)	
)	
Plaintiffs,)	Civ. Act. No. 3:00-0445
)	Judge Todd J. Campbell
v.)	Magistrate Judge Joe B. Brown
)	
BILL HASLAM, et al.)	
)	
Defendants.)	

**JOINT STIPULATION SEEKING COURT APPROVAL OF PROPOSED
APRIL 2015 MODIFIED SETTLEMENT AGREEMENT AND EXIT PLAN**

1. Pursuant to Section XVIII.C.3 of the September 2014 Modified Settlement Agreement and Exit Plan (Dkt. No. 525-2), which remains in full force and effect, the parties hereby jointly file with the Court a proposed joint modification to the September 2014 Modified Settlement Agreement and Exit Plan that includes revisions in the identification of provisions as MAINTENANCE. These revisions are based upon the Monitoring Report of the Technical Assistance Committee (“TAC”) dated January 30, 2015 (Dkt. No. 535-1), negotiations between the parties and the TAC, and the TAC Supplement to the January 30, 2015 Monitoring Report, dated April 7, 2015, attached hereto as Exhibit A. The supplemental report attached hereto was created by the court-appointed monitor(s) / TAC, pursuant to Section XV.A of the September 2014 Modified Settlement Agreement and Exit Plan (Dkt. No. 525-2) as modified in Dkt. No. 529 and Dkt. No. 534.

2. If approved, the proposed April 2015 Modified Settlement Agreement and Exit Plan, attached hereto as Exhibit B, will replace and supersede the September 2014

Modified Settlement Agreement and Exit Plan in its entirety. The parties request that the April 2015 Modified Settlement Agreement and Exit Plan be signed by the Court and entered as a separate docket entry in this action. Also attached hereto as Exhibit C, for the Court's convenience, is a version of the April 2015 Modified Settlement Agreement and Exit Plan that shows the changes in MAINTENANCE designations in redline. As reflected in the three exhibits to this Joint Stipulation, through the processes set forth in Section XIII.C, approval is requested for all or part of 22 new provisions to be identified as MAINTENANCE: Sections III.C, IV.B.2, V.C.3, V.D.3, V.F, V.J sentences 4 and 5, V.N, VI.A.1.f, VI.C sentence 1, VI.F, VI.G sentence 3, VIII.D.1, VIII.D.3, VIII.D.4, IX.B.3, X.A sentences 2 and 3, X.B, X.C, XI.E.7, XI.E.8, XVI.A.5, and XVI.B.1. No provisions, or any part of any provision, are proposed to be removed from MAINTENANCE.

DATED: April 7, 2015
Nashville, TN

APPROVED FOR ENTRY:

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SO ORDERED:

HONORABLE TODD J. CAMPBELL, U.S.D.J. DATE:

CERTIFICATE OF SERVICE

I, Sarah Russo, hereby certify that, on April 7, 2015, a true and correct copy of this Joint Stipulation Seeking Court Approval of Proposed April 2015 Modified Settlement Agreement and Exit Plan in the case of *Brian A. v. Haslam* has been served on Defendants' counsel Martha A. Campbell, Deputy Attorney General, General Civil Division, P.O. Box 20207, Nashville, TN 37202, and Jonathan Lakey, Pietrangelo Cook, PLC, 6410 Poplar Avenue, Suite 190, Memphis, TN 38119, electronically by operation of the Court's electronic filing system.

DATED: April 7, 2015

/s/ Sarah Russo _____
Sarah Russo

EXHIBIT A

**THE TECHNICAL ASSISTANCE
COMMITTEE**

IN THE CASE OF

BRIAN A. v. HASLAM

**SUPPLEMENT TO THE
JANUARY 30, 2015 MONITORING REPORT**

April 7, 2015

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I. INTRODUCTION

This Supplement to the January 2015 Monitoring Report contains additional information which the Technical Assistance Committee (TAC) provided to the parties on a number of provisions covered in the January 2015 Monitoring Report to help inform the “maintenance discussions.”

Based on the combination of the information presented in the January 2015 Monitoring Report and the additional information included in this Supplement, the parties have agreed that the following 22 provisions of the Settlement Agreement should be designated in “maintenance”:

- III.C (Multiple Investigations Involving a Particular Caregiver for a Particular Class Member)
- IV.B.2 (Intensive Family Based Services to Support Transition Home)
- V.C.3 (New Supervisor Training)
- V.D.3 (New Supervisor Training)
- V.F (Department Review of Provider Training Curriculum)
- V.J (Caseload Limits)
- V.N (File Maintenance and Documentation)
- VI.A.1.f (Limits on Placement of Children in Group Care Facilities with Capacity Greater Than Eight Beds)
- VI.C (Ensuring Access to Reasonable and Appropriate Education)
- VI.F (Ensuring a Full Range of Independent Living Services for Older Youth)
- VI.G (Maintaining a Central Office Child Placement and Private Provider Division)
- VIII.D.1 (Requirement of Prompt FOCUS Team Review of Each Child Entering Full Guardianship)
- VIII.D.3 (FOCUS Process for Children without Permanent Families Identified: Required Action Steps)
- VIII.D.4 (Individual Tracking and Monitoring and Outcome Data Analysis and Reporting)
- IX.B.3 (Exit Interview Requirement)
- X.A (Elements of the Statewide Information System)
- X.B (Elements of the Statewide Information System)
- X.C (Elements of the Statewide Information System)
- XI.E.7 (Quality Assurance Oversight Related to Overdue Initial Permanency Plans)
- XI.E.8 (Quality Assurance Oversight Related to Overdue Annual Permanency Plan Update)
- XVI.A.5 (Reentry into Foster Care)
- XVI.B.1 (Parent-Child Visits)

The parties have also agreed to postpone maintenance discussions related to Sections III.A and VI.B until after the issuance of the June 2015 Monitoring Report to allow the TAC to present additional information in that Report to assist the parties in the assessment of the Department’s performance related to those two provisions.

II. SUPPLEMENTAL INFORMATION

IV.B.2 Availability of Intensive Family Services for a Transition Period

The TAC has interpreted this provision to encompass short term, **intensive therapeutic in-home counseling and support to facilitate the transition home for children with behavioral health needs that pose special parenting challenges.**

As part of a multi-faceted approach to monitoring this provision, the TAC examined and made reference in its January 2015 Monitoring Report to a set of cases that were reviewed in the 2013-14 Quality Service Review (QSR). The TAC was asked to provide additional information to help the parties better understand the TAC's approach to selecting and analyzing these QSR cases.

The TAC identified two QSR indicators which were most likely to identify cases relevant to this provision: *Emotional and Behavioral Well-Being* and *Successful Transitions*. The TAC reviewed every QSR case that scored unacceptable for *Emotional & Behavioral Well-Being* (because those children/youth would likely have behavioral health needs that pose special parenting challenges) to see whether in any of those cases the lack of intensive family services was preventing the child from being transitioned home. The TAC also reviewed every QSR case that scored unacceptable for *Successful Transitions* to determine whether the transition in question was a transition home (rather than a school transition or a transition to another DCS placement) and if so whether it was a lack of intensive family services for a transition period that accounted for the case being scored unacceptable.

The January 2015 Monitoring Report identified a total of 42 cases in the 2013-14 QSR that scored unacceptable for one or both of these indicators, but concluded that "in 30 of these 42 cases, reunification with a parent was not imminent, and the issues resulting in the unacceptable score for these indicators were therefore unrelated to the availability of intensive home based services to support reunification." The TAC was asked to provide additional detail to help understand the reasons that those 30 cases were excluded.

The following table shows the breakdown of the cases that scored unacceptable for the indicators of *Emotional and Behavioral Well-Being* and *Successful Transitions* during the 2013-14 QSR year and shows the number of cases from each of those categories included and excluded from the TAC's review.

QSR Indicator	# Unacceptable	# included in TAC IV.B.2 Review	# excluded from TAC IV.B.2 Review
Successful Transitions only	28	10	18
Emotional & Behavioral Well-Being only	8	1	7
Both Successful Transitions AND Emotional & Behavioral Well-Being	6	1	5
TOTAL	42	12	30

For the 30 cases excluded from the TAC review, the following table shows the reasons for exclusion (for cases excluded for multiple reasons, the case was assigned a category based on the primary reason for exclusion).

QSR Indicator	TOTAL excluded from TAC Review	Children in Full Guardianship or Sole Adoption Goal	Transitions score unrelated to reunification (e.g., involved a transition to a resource home or a school transition)	Transition home not appropriate to consider because of birth parents' current circumstances (e.g., parents are in prison; parents are not participating in permanency plan)	Plan is Exit to Relative (but not a relative from whom the child had been removed) and unacceptable transition score unrelated to intensive family services)	The child continues to have significant emotional and behavioral issues that need to be addressed before transition home will be appropriate
Successful Transitions only	18	4	5	6	3	0
Emotional & Behavioral Well-Being only	7	1	NA	4	0	2
Both Successful Transitions AND Emotional & Behavioral Well-Being	5	2	NA	2	0	1
TOTAL	30	7	5	12	3	3

V.C.3 and V.D.3 Requirement of Supervisory Training and Competency Assessment for DCS Case Manager Supervisors

In the January 2015 Monitoring Report, the TAC described the Department's revised and more robust and intense approach to supervisor training and included data (through November 15, 2014) on the time it has taken for new supervisor candidates to complete that training. The TAC has been asked both to update that information through March 2015 and to address specifically the question of whether the TAC has concerns about supervisor candidates who have taken more than six months to complete their new supervisor training.

At the time that the current Settlement Agreement provision was drafted, the parties had contemplated that new supervisors would simply attend 40 hours of classroom training and that this kind of traditional training could reasonably be accomplished within six months of promotion. In 2013, the TAC endorsed the Department's decision to adopt a more rigorous and personnel-intense approach to new supervisor training. Instead of having a single trainer standing in front of a class, each new candidate, in addition to participating in group discussions led by a master trainer, is expected to receive a significant amount of individual coaching and mentoring from their supervisors, culminating in a "high stakes" panel assessment. However, successfully completing this more rigorous training within six months of promotion is substantially more challenging than delivering a 40-hour classroom course within six months.

Between May 1, 2013 and March 16, 2015, a total of 40 supervisors of *Brian A.* cases were enrolled in the current new supervisor certification program.¹ As of March 16, 2015, 29 of the 40 had completed the training and been certified; eight were in the midst of the training and not yet eligible for the panel assessment, and three were unable to successfully complete the process and are no longer in supervisory positions. Of the 29 supervisors who successfully completed the certification process, 14 did so within the specified time frame of six months or less; 12 completed the process within six to 10 months; and three completed the process in over 12 months.²

Eleven candidates were promoted between January 1 and June 30, 2014. Of the 11 candidates, 10 have completed the supervisory certification process, including receiving 40 hours of training. Seven candidates did so within six months, one within seven months, one within eight months,

¹ These data include all new supervisors of *Brian A.* cases.

² In one instance, the training was completed 13 months after the date of hire (the supervisor was hired into a supervisory position and completed pre-service training prior to beginning the supervisor certification process); the delay resulted from the supervisor (a CM4) going on extended leave between the pre-service training and supervisor certification; when the supervisor returned from leave, she began the supervisor certification process in earnest (and completed it in seven months). In another instance, training was completed 16 months after the date of the promotion; at the time of the promotion (to a CM3 position) the case manager was handling a full caseload and therefore was not assuming supervisory responsibilities; some additional factors (including a period of reconsideration by the case manager about whether she wanted to assume supervisory responsibilities, and a period when that case manager's supervisor was on leave) contributed to the delay. The third supervisor had been promoted almost 14 months before completing the supervisor training, but had not assumed supervisory responsibilities at the time of her promotion. After assuming supervisory responsibilities, that supervisor began the supervisor certification process and completed that process within six months.

and one within ten months. The final candidate is expected to complete the certification process in May 2015.³

Nine candidates were promoted between July 1 and December 31, 2014. Of those nine candidates, three have completed the supervisory certification process, including receiving 40 hours of training. Two candidates did so within six months and one within seven months. Of those who have not completed the training, four are still within six months of their promotion date and are on schedule to complete the training in that time; and two are less than 30 days beyond their target completion dates.

Of those 29 workers who have completed the supervisor training since May 2013, 14 (48%) have completed the new supervisor training within six months, and an additional 12 have completed the training in between six and ten months. The TAC has reviewed the circumstances of those new supervisors who have taken more than six months to complete the training. In each of those cases, the TAC concluded that the Department acted reasonably and appropriately and that the delays in time to completion were understandable.⁴ In order to maintain the integrity and rigor of the new supervisor training, the Department has to have the ability to adjust and manage supervisory training completion times in the manner that it does. There will always be a percentage of cases that will exceed six months, and the TAC views the current percentages of those cases to be well within what should reasonably be expected.

The TAC was also asked to specifically comment on both the allocation of training hours to the various training activities and the process by which the candidate's completion of those training hours and activities is documented and certified. The 40 total training hours are allocated as follows: 26 hours of course instruction allotted to a combination of self-paced individual coursework, along with guided discussion of the material led by a Master Trainer to be appropriate; 10 hours allocated to required coaching by the candidate's direct supervisor (or assigned coach); and four hours allotted to preparation for, conducting of, and debriefing with the candidate about the panel assessment. The TAC found this allocation of training hours to the various training activities to be reasonable and appropriate. The TAC has also reviewed the process by which completion of those required elements of the training are accounted for, documented, tracked and certified and found that the process ensures that each candidate has completed the 40 hours of required training before being certified.

V.F Department Review of Provider Training Curriculum

The January 2015 Monitoring Report described the revised and improved curriculum review and approval process that the Department has implemented to ensure that private provider case managers with comparable responsibilities to DCS case managers receive comparable training. The Department has identified the core competencies that it expects the private provider training to cover and each private provider, as part of the Department's Request for Quotation (RFQ)

³ The one supervisor who has not yet completed her supervisory certification process, who was promoted in May 2014, was on extended leave, and experienced a change in leadership upon return. She is now working with her interim Team Coordinator to complete her coaching hours.

⁴ The Office of Learning and Development tracks supervisory certification progress each month. For each of these 12 supervisors, a member of the TAC monitoring staff reviewed each candidate's progress and the factors contributing to the delays.

process, is required to indicate the training they provide for each identified competency. Under the current process, a DCS trainer from the Office of Learning and Development holds a face-to-face meeting with a representative of each agency who is familiar with that agency's training and during that meeting discusses and reviews with the agency representative the training modules identified in the relevant RFQ form to make sure that the core competencies are adequately covered in the training. Using a tool developed by the Office of Learning and Development, the DCS trainer documents the results of that review and discussion.

The TAC was involved in the discussions with DCS training staff as they developed the enhanced curriculum review process. The TAC reviewed the protocol for conducting the face-to-face meeting with the agency and the tool used to capture the information gathered in that meeting. TAC monitoring staff participated in a number of provider agency site visits and reviewed the written site visit findings for each and every current contract provider. For the seven agencies that required some technical assistance to address some deficit in their training curriculum before it could be approved, TAC monitoring staff reviewed the technical assistance plan and the documentation reflecting the completion of that plan and the approval of the curriculum.

The TAC finds that the training curricula of each of the current private contract agencies provide training on the core practice competencies that is comparable to that provided to DCS case managers for private provider staff who have comparable responsibilities to DCS case managers.

V.J Caseload Limits

The following table updates Table 5.1 from the January 2015 Monitoring Report to include *Brian A.* caseloads for October 2014 through January 2015. As discussed in the January 2015 Monitoring Report, the table presents the percentage of case managers carrying at least one *Brian A.* case whose total caseloads, according to the caseload tracking spreadsheets, were within the caseload limits established by the Settlement Agreement, statewide and by region, as of the end of each month for the period from January 2014 through January 2015. Data shown in the table are based on a count of custody children plus any non-custody *cases* for the months of January 2014 through April 2014 and a count of custody children plus non-custody *children* for the months of May 2014 through January 2015.⁵

⁵ TAC monitoring staff have been actively involved in the design and implementation of the regional caseload tracking process and have validated the accuracy of the data (including the child counts for mixed caseloads) through review of the data, spot checks, and telephone interviews. The TAC will continue to report, at least quarterly, *Brian A.* caseloads based on the number of children, unless and until the Department establishes a mixed caseload measure pursuant to Section V.J of the Settlement Agreement. As of January 31, 2015, 34 (7%) of the 517 case managers carrying a *Brian A.* case had mixed caseloads; these caseloads consisted of primarily *Brian A.* children with a small number (one or two) non-custodial children for reasons that are consistent with best practice.

Of Case Managers Carrying at Least One <i>Brian A. Case</i> , Percentage Meeting Caseload Requirements as of the Last Day of Each Month													
Region	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15
Davidson	91%	94%	97%	100%	97%	97%	94%	97%	100%	97%	100%	93%	97%
East	97%	100%	95%	97%	97%	97%	97%	97%	100%	100%	100%	97%	100%
Knox	100%	100%	100%	100%	100%	100%	98%	96%	100%	96%	94%	96%	100%
Mid Cumberland	97%	98%	98%	96%	98%	100%	100%	100%	96%	96%	96%	94%	98%
Northeast	90%	98%	100%	94%	90%	95%	98%	90%	100%	100%	100%	100%	100%
Northwest	100%	98%	95%	100%	68%	77%	94%	100%	100%	100%	100%	100%	100%
Shelby	100%	98%	95%	100%	100%	100%	97%	100%	100%	98%	100%	98%	97%
Smoky Mountain	87%	94%	86%	98%	83%	86%	96%	100%	100%	100%	98%	96%	94%
South Central	100%	97%	100%	100%	100%	100%	100%	100%	100%	100%	94%	100%	97%
Southwest	100%	100%	97%	100%	83%	83%	100%	100%	100%	100%	100%	100%	100%
Tennessee Valley	98%	94%	98%	100%	98%	100%	96%	93%	96%	96%	98%	96%	98%
Upper Cumberland	99%	96%	94%	94%	98%	92%	94%	96%	98%	93%	94%	94%	95%
Statewide	95% n=551	97% n=545	96% n=542	98% n=533	93% n=528	95% n=510	97% n=517	98% n=523	99% n=527	98% n=516	98% n=508	97% n=503	98% n=517

For January 2015, the breakdown of compliance with the *Brian A.* caseload standards by case manager position is as follows:

- Case Manager 1: 92.8% (77/83)
- Case Manager 2: 99.7% (389/390)
- Case Manager 3: 88.6% (39/44)⁶

Section VI.F Ensuring a Full Range of Independent Living Services for Older Youth

The TAC has been asked to be more explicit about its assessment of the adequacy of the resources to make independent living services available to every eligible child. The TAC has also been asked to provide some additional data on the level of participation of older youth in the Youth Villages Transitional Living Program and Extension of Foster Care (EFC) compared to the total population eligible for those services.

The Settlement Agreement requires that: “*DCS shall have a full range of independent living services and shall provide sufficient resources to provide independent living services to all children in the plaintiff class.*”

In the January 2015 Monitoring Report, the TAC provided detailed information on the range of the IL services that DCS makes available to older youth in care. These services come in many forms—provided by resource parents as part of their normal caregiving responsibilities; by congregate care facilities as required under their contracts; through informal supports in the communities in which youth live; through the State’s commitment to extend foster care beyond age 18 and to support youth in post-secondary education and employment programs; through four resource centers in different parts of the state; and through specialized contracts, the most significant being the Transitional Living Program operated by Youth Villages. Tennessee is recognized nationally as a leader in its attention to the older youth population and its evidenced-based work in partnership with Youth Villages to offer transition services to all older youth exiting care.

The biggest challenge to serving older youth transitioning from foster care is engaging the youth in transition planning and services. In most states, the availability of resources to support all

⁶ As of January 31, 2015, there were no CM1s with more than 18 children, no CM2s or non-supervising CM3s with more than 21 children, and no CM3s supervising 1 or 2 with more than 11 children. The following is a description of each non-compliant caseload in the January 2015 data, by region:

- Davidson: one non-supervising CM3 with 21 *Brian A.* children
- East: one CM2 with 21 *Brian A.* children
- Shelby: two CM1s, each with 16 *Brian A.* children
- Smoky: one CM1 with 17 *Brian A.* children; one CM3 supervising 3 with 10 *Brian A.* children; one CM3 supervising 3 with two *Brian A.* children
- South Central: one CM1 with 17 *Brian A.* children
- TN Valley: one CM3 supervising 1 with 11 *Brian A.* children
- Upper Cumberland: one CM1 with 19 *Brian A.* children; one CM1 with 16 *Brian A.* children and two non-custody children; one CM3 supervising 1 with 11 *Brian A.* children

eligible youth who are transitioning to independence is also a challenge, but not so in Tennessee where the resources exist through the combination of Extension of Foster Care and the Transitional Living Program to serve any youth who can be engaged in those services. Because the Youth Villages program is supported through a combination of state and private funding, Youth Villages is able to make services and supports available through their private funding to older youth even when that youth is not otherwise eligible for the federally funded EFC services and supports.

The success of the Department's efforts to better engage young people transitioning from foster care to adulthood is reflected in the increases in the number of young adults receiving Extension of Foster Care services. During the first eight months of fiscal year 2014-15, 594 young adults were served through EFC, compared to 507 young adults served during the first eight months of fiscal year 2013-14. On February 28, 2015, there were 335 young adults receiving EFC services, compared to 261 children on February 28, 2014.

During fiscal year 2013-14, there were 490 class members who turned 18 while in DCS custody. Of those, 344 opted for continued services and supports through Extension of Foster Care and/or the Youth Villages Transitional Living Program.

It is, of course, not realistic to expect that every child who turns 18 while in foster care would opt to continue to receive services and supports. Because the Transitional Living Program and Tennessee's Extension of Foster Care program can only serve those who reside in Tennessee, young people who enlist in the military and are stationed out of state or who enroll in out of state job corps programs or who choose to move out of state at age 18 for other reasons, would be among those who age out without being enrolled in EFC or the Youth Villages program.

There are also children who are on runaway status when they turn 18 and therefore cannot be enrolled. And many children, after being presented with the options to continue to receive services, simply choose not to enroll, even in situations in which that decision to forego continuing supports may not be in their best interests. In recognition of the fact that young people who are on runaway status when they turn 18 or who opt out of extended services when they turn 18 may not be exercising good judgment, Tennessee makes it very easy for young people who do not enroll in EFC or the Youth Villages program at age 18 to reconsider that decision and "opt in" at any time between then and the time they turn 21. The Department has also assigned a staff member responsibility to attempt to follow up with young people who have "opted out" at age 18 to find out how they are doing and see if they might want to reconsider.⁷

The Department is working to better understand the circumstances of those young people who decline the services and supports available through EFC and Youth Villages. As part of this effort, the Office of Independent Living conducted a targeted review of the 64 children who turned 18 years old between December 2, 2014 and January 16, 2015 while in DCS custody

⁷ The Department's Innovative outreach to engage youth who are eligible for IL services and supports is not limited to children aging out of care at 18. The Department conducts outreach to older youth and young adults related to other services as well. For example, the Department recently sent a letter to the 235 children who, since 2012, achieved permanency at or after the age of 16 through adoption or subsidized permanent guardianship to remind them of their eligibility for Education Training Vouchers and other services.

without achieving permanency. Fifty (78%) of those children opted to receive EFC and/or Transitional Living Program services and supports. The Department reviewed the cases of the 14 remaining children and found that five declined to accept services and supports; four were on runaway when they turned 18; three moved out of state; one had transitioned to the Department of Intellectual and Developmental Disabilities (DIDD); and one had resources in excess of \$45,000.⁸

The TAC independently conducted a similar review of the 42 children who turned 18 years old between November 1, 2014 and November 30, 2014 while in DCS custody without achieving permanency. Thirty-two (76%) of those children opted to receive EFC and/or Transitional Living Program services and supports. The TAC monitoring staff reviewed the cases of the 10 remaining children and found that: four declined to accept services and supports; one was on runaway; two moved out of state; one had transitioned to the Department of Intellectual and Developmental Disabilities (DIDD); one was referred to a community provider who would be his payee for SSI, provide case management services, and financial/life skills instruction; and one child, based on a delinquency charge incurred prior to his 18th birthday, was transferred to an adult jail when he turned 18.

The TAC is satisfied that the Department does provide a full range of independent living services, that it has provided sufficient resources to provide those services to all children in the plaintiff class who qualify for them, and that the Department is actively working to engage with and encourage older youth to take advantage of the services and supports available to them.

VI.G Maintaining a Central Office Child Placement and Private Provider Division

The January 2015 Monitoring Report referenced a variety of sources of information available to placement specialists to support the placement process. The TAC was asked to provide some additional detail about the automated information available from TFACTS that contains readily accessible data related to child placement.

The TFACTS Mega Report, which is distributed weekly, contains placement information on each child in custody, including the resource home or congregate care facility in which the child is placed. The Mega Report can be manipulated, using Excel, to produce, among other things, a table showing each congregate care facility serving a DCS child and for each congregate care facility, the number of DCS children in that placement.⁹

The Resource Home Mega Report, which is also distributed weekly, lists all approved resource homes, both DCS and private provider (including homes with an expedited approval). The

⁸ This amount of resources exceeds the EFC income eligibility requirement. While ordinarily young people with substantial financial resources would not end up being served by Youth Villages, Youth Villages, when drawing on its private funding, is not subject to this EFC requirement.

⁹ As discussed in greater detail in Section VI.A.1.f of the January 2015 Monitoring Report, placement in a congregate care facility can be recommended by a regional specialist but cannot be made without review and approval by the Regional Administrator and, the Regional Mental Health Consultant, in most cases.

Resource Home Mega Report includes basic information on each home, including the approved capacity of the home and the number of custodial children placed in the home as of the day of the report.

For additional information on specific resource homes, staff can access the TFACTS Resource Home Files, which are individual electronic files on each resource home. The information accessible from the TFACTS Resource Home File includes:

- basic demographic information about the home and all members of the home,
- the home study with facts about the family, assessment and approval information,
- the status and history of the home (when they were approved, if they have ever been closed or suspended), and
- the number of children for whom they are approved.

The resource home file also includes under the “preferences” tab information relevant to the resource parent’s range of experience serving (and ability and willingness to serve) certain “categories” of children. The experience, ability and willingness of resource homes is captured in one of four designations:

- “demonstrated ability and willingness” to serve,
- “some previous experience or training and willing to” serve,
- “no past experience or training but willing to learn,” and
- “not willing to parent children who experience this condition or display this behavior.”

The “categories” of children include:

- age groups (infant, toddler, middle childhood, teenagers),
- language,
- gender and sexuality,
- medical needs (seven separate medical needs rated, including, for example, special dietary needs, pregnancy, encopresis),
- physical health needs (special accommodation for physical disability, hearing impaired or deaf, visually impaired or blind),
- developmental needs (autism, developmental disability),
- behavioral and emotional needs (11 separate sub-categories including temper tantrums, impulsivity, depression, anxiety, and psychosis), and
- risk behaviors (22 behaviors including physical aggression, suicide risk, substance abuse, delinquent behaviors and runaway).

The preference tab also captures the resource parent’s ability and willingness to serve a child who needs a “stay at home” parent, who has parents in prison, who is part of a sibling group, and/or who requires frequent visits and contact with their birth families.

Finally, the preference tab captures the ability and willingness of the resource parent to serve a child for whom extracurricular activities are very important, and specifically gauges (using a

different four point scale) the resource parents' interest and willingness to support a child's exposure to/interest in a variety of specific activities (including team and individual sports; outdoor recreation including, hiking, biking and camping; and music, both listening and learning an instrument).

VIII.D.3 FOCUS Process for Children without Permanent Families Identified: Required Action Steps

The TAC was asked to provide some further explanation for the way in which it approached its evaluation and analysis of FOCUS case practice for the 28 children in the targeted review sample who maintained that they did not want to be adopted. The TAC was also asked to comment more specifically about the quality of the individual recruitment plans of the 47 other children in the targeted review who were open to adoption.

1. Children Who Maintained They Did Not Want to Be Adopted

In looking at the three areas of activity required by the Settlement Agreement—implementation of an Individual Recruitment Plan (IRP), registry of a child on AdoptUsKids, and utilizing archaeological digs, family searches and interviews to build a strong Child and Family Team—the TAC recognized that for those children who are saying that they do not want to be adopted, the Department would not be expected to implement a plan to get the child adopted over his or her objection, and would not necessarily be expected to register the child on AdoptUsKids. For this reason, the TAC included these 28 children in the analysis of the requirements related to the archaeological dig but limited the analysis of the IRP requirement and the AdoptUsKids requirement to those cases in which the child was open to adoption.

The TAC did, however, review those 28 cases to determine how the Child and Family Team was responding to those children in full guardianship who maintained that they did not want to be adopted. The TAC expected to see at least some evidence that the Child and Family Team had explored with each child the reasons the child did not want to be adopted and continued to provide opportunity for the child to reconsider the decision. The TAC expected that in at least some of those 28 cases, there should be some recruitment efforts, notwithstanding the child's expressed opposition to being adopted, while in others, where a child was particularly adamant in his/her opposition to adoption, such efforts would be disrespectful and inappropriate. Reviewers found what they considered to be reasonable and appropriate approaches to permanency planning, including some recruitment efforts tailored to the individual circumstances of the child that were respectful of the child's wishes, in each of those 28 cases.¹⁰

As would be expected given the deference being paid to the expressed wishes of each of these children, all 28 were older children: two were age 15; nine age 16; thirteen age 17; and four age 18.

¹⁰ The TAC only briefly alluded to the results of that aspect of the review in a footnote in the January 2015 Monitoring Report.

Consistent with good adoption practice, 25 of the children had received some adoption counseling—counseling that at a minimum seeks to address the grief and loss issues that frequently arise when parental rights are terminated and that is intended to help children be open to considering adoption. There were only three youth who had not received adoption counseling:

- a 17-year-old who adamantly refused to consider adoption, was determined to live with his sister and grandfather (whom the Department could not approve as a placement), and opted for Extension of Foster Care upon turning 18;
- a 17-year-old with a history of frequent runaway, who, the Department ultimately discovered, often stayed with a particular woman while on runaway; when the woman learned that the child was in DCS custody (the child had concealed this from the woman), she agreed to go through PATH classes to become a resource parent and the child was placed with her;
- a 16-year-old who is only willing to consider being adopted by the resource parent with whom she is currently living, and that resource parent is not currently willing to adopt the child.

Notwithstanding that all 28 children were asserting that they did not want to be adopted, 16 of them allowed the Department to engage in some recruitment activities on their behalf, including registration on AdoptUsKids and other recruitment websites, creating videos and producing other child specific recruitment materials. All 16 had IRPs that included these kinds of exploratory activities, but in each case, until and unless the young person changed his or her position, there was a limit on the Department's ability to pursue adoption.

There were an additional two youth who were with families in an approved Planned Permanent Living Arrangement (PPLA).

The remaining 10 children from this group of 28 refused to allow the Department to engage in any adoption recruitment activities on their behalf. These included the three young people discussed above (who did not receive adoption counseling) and the following additional seven children:

- An 18-year-old who was frequently on runaway status and had a long history of substance abuse, including addiction to methamphetamine. At one point she had been approved for PPLA, but then ran away. While she was on runaway status, her younger brother was adopted. When she returned, she was placed in residential treatment. The Child and Family Team recruited her younger brother's family to switch providers so that they could be a placement for her when she was released from treatment. The family was willing to adopt her. However, she ran away and aged out while on the run.
- An 18-year-old who had experienced a failed adoption and only wanted to be returned to his birth family. There was a no contact order against the biological mother, who had since moved to Florida. The youth insisted on returning to Florida to live with his family

and a few days before he turned 18 the Department allowed him to fly to Florida to go live with his grandmother.

- A 17-year-old who had experienced a failed adoption and did not want to be adopted. The child was frequently on runaway status and incurred delinquency charges while on the run. Harmony located the child's biological mother in another state and there was some communication between the mother and the youth; however, that communication was terminated at the insistence of the youth. At the time of the review, he was held in detention awaiting disposition having been adjudicated delinquent, and was subsequently placed at Mountain View.
- A 17-year-old who wanted to live with his birth family and for whom ICPC approvals of out-of-state family members were sought, but all were denied. At the time of the review (fall 2014), the youth had been in his resource home since 2012 and the plan was for him to remain with the resource parent until he aged out of care.
- A 16-year-old who was only willing to be placed with birth family. The Department sought ICPC approval of a number of prospective out-of-state relatives, but all were denied.
- A 16-year-old who is determined to return to his biological mother when he turns 18. He was placed at a residential treatment center at the time of the review and the team was focused on getting him stable.
- A 15-year-old who, at the time of the review, was placed in a level 4 facility because of episodes of hallucination, paranoia, and suicidal thoughts. The Child and Family Team members decided to wait until he is stabilized before again approaching him about allowing some recruitment.

2. Individualized Recruitment Plans

As discussed in the January 2015 Monitoring Report, the protocol permitted, but did not require, the members of the FOCUS review team to identify strengths and opportunities for improvement of the individual recruitment planning and plan implementation. Reviewers noted strengths in 40 of the 47 cases;¹¹ reviewers noted opportunities for improvement in 29 of the 47 cases.¹² Those

¹¹ Strengths identified included: the team met regularly; the plan was regularly reassessed; the team tracked and adjusted as things changed in the child's life; the plan was detailed; the plan clearly outlined action steps; there were detailed logs of activities conducted; the action steps identified were specific and measureable; the team was implementing diversified recruitment efforts, ideas, and strategies; there were frequent team meetings and plan reviews; the plans were youth-guided; in cases when adoption was not likely or not the shared plan, the team was still using the IRP to plan for other individualized outcomes (independent living, return to birth family); and clear roles and responsibilities for each team member were identified and outlined.

¹² Opportunities for improvement identified included: teams needed to meet and update the IRPs more frequently; create more organized, detailed, and clear plans that reflect the youths' needs and desires; and clarify everybody's roles and responsibilities.

reviewers who chose to do so captured the strengths and opportunities for improvement in narrative notes. For this reason, there was limited ability to quantify this information.

However, at the end of each regional review, during a “debriefing session,” each reviewer presented the salient facts of the case and the assessment of FOCUS case practice in that case. In addition to the specific questions used to produce quantifiable data, the reviewers were asked to rate the overall quality of case planning and plan implementation in each case. Using the QSR ratings as a point of reference, each reviewer was asked to rate overall case planning and plan implementation as “acceptable” (the equivalent of a 4 or higher QSR score) or “unacceptable” (the equivalent of a 3 or lower QSR score). The reviewers found the overall case planning and plan implementation acceptable in every case reviewed. In each case they found conscientious work being done and in each case reasonable specific actions being taken in an effort to overcome barriers to permanency.

That is not to say that IRPs were being actively implemented in every case reviewed. As discussed in the subsection above, for children who maintained that they did not want to be adopted, the Department was often limited in the recruitment activities that the young person would allow. And there were certainly cases in which the Child and Family Team was focused on stabilizing the child and dealing with immediate crises, and therefore little specific recruitment activities were being carried out. However, in each of these cases, the FOCUS review teams concluded that the Child and Family Team was acting appropriately by focusing on the immediate needs for stabilization, which the team viewed as a pre-requisite for further recruitment. And in one case, no recruitment planning had been possible because the Department was focused on trying to locate the child, who had been on runaway status for 18 months. At the time of the review, the child had just recently been apprehended and the child was placed in a PTC and undergoing a full reassessment.

Case planning for many of the children in full guardianship with no family identified is often extremely challenging and the prospects for permanency often appear bleak. However, as the case reviews have reflected, the Department is succeeding in achieving permanency for a significant number of these children; and in every case reviewed, the team was working reasonably and diligently to implement a plan that was clearly shaped by the individual circumstances of that child and appropriately focused on overcoming the barriers to permanency.

VIII.D.4 Requirement of Individual Tracking and Monitoring and Outcome Data Analysis and Reporting

The TAC was asked to provide some further analysis related to children and youth disrupting placements while in full guardianship.

1. Placement Disruption for Children Who Enter Full Guardianship with a Family Identified or an Anticipated Family Identified

For children who enter full guardianship with a family identified or an anticipated family identified, placement disruption is not a significant issue impeding permanency. This is reflected in the analysis presented in the May 2014 Monitoring Report of two FOCUS entry cohorts.

The vast majority of children entering with either a family identified or anticipated family identified do in fact exit to permanency, and most do so within 12 months of entering full guardianship.

Of the 231 children who appeared on the FOCUS tracking and the “TAC Full Guardianship Report” in the first quarter of 2013, 118 were initially listed as having an adoptive family identified, 64 were initially listed as having an anticipated family identified, and three were initially listed as having an approved PPLA goal.

- Of the 118 children with a family identified, 112 (95%) have exited custody: 111 (94%) to adoption (105 in 12 months or less and six in more than 12 months); and one (1%) to emancipation.
- Of the 64 children who had an anticipated family identified, 58 (91%) have exited custody: 57 (89%) exited to adoption (55 within 12 months and two in more than 12 months); and one (2%) exited to emancipation.

Of the 363 children who appeared on the FOCUS tracking and the “TAC Full Guardianship Report” in the second quarter of 2013, 195 children were listed as having an adoptive family identified and 89 children were listed as having an anticipated family identified.

- Of the 195 children with a family identified, 194 (99%) have exited custody: 191 (97%) exited to adoption (all within 12 months or less); one exited to permanent guardianship; one exited to live with a relative/kin; and one child aged-out.
- Of the 89 children who were listed as having an anticipated family identified, 72 (81%) have exited custody: 71 (80%) have exited to adoption (70 in less than 12 months and one adopted in 13 months); and one (1%) exited to emancipation.

From these two cohorts there were a total of 30 children/youth who remained in full guardianship as of February 6, 2014. Twenty continued to be designated as having a family identified or an anticipated family identified, and one was identified as “approved PPLA.” Examination of the individual circumstances of the 30 children from each of these cohorts who remained in full guardianship found the following:

- Remaining barriers to permanency for the 20 children who continued to be designated as family identified or anticipated family identified were: timelines associated with the ICPC process (eight children); the negotiation of the adoption subsidy (one child); a decision to wait until all children in a sibling group were legally free or all placed in the same resource home so that the resource parent could adopt all the children at the same time (seven children from two sibling groups); and the resource parent and/or child changed their mind about adoption and the team is either working to stabilize the home or

recruiting a new home (four children).

- There were nine children who had been re-designated as “no family identified.” Five of those nine children had been placed in residential programs for purposes of stabilization; one, who remained in the resource home when her brother disrupted and was placed in a residential facility, had been re-designated “no family identified,” although the resource family was still considered a potential adoptive placement for her; two children had been re-designated because the resource parents who had originally indicated an interest in adoption had reconsidered; and in one case the team had recently selected a family and there were plans to start visits between the child and the family.

2. Placement Disruption for Children in Full Guardianship with No Family Identified

Children who enter full guardianship with no family identified or who, as was the case of the nine children discussed above, enter with a family identified or anticipated family identified status and are re-designated as “no family identified” generally experience placement moves. None of the 75 children who were the subject of the targeted review discussed in Section VIII.D.3 were in the same placement at the time of the review as they were when they entered full guardianship.

In some cases, placement moves reflected positive developments toward permanency. For example, of the 75 children who had been designated as “no family identified” at the time the sample was pulled:

- five children had adoptive “families identified” (an intent to adopt had been signed);
- four children had approved PPLA permanency goals; and
- eight children were with “anticipated” adoptive families (an intent to adopt had not yet been signed, but the team expected that the child would be adopted by that family).

In other cases, placement moves were from resource home placements that had disrupted to congregate care settings.

While the targeted review was focused on barriers to permanency for children in full guardianship with no family identified, the factors discussed as barriers to permanency are often the same factors that contribute to placement disruptions. Children who remain in the FOCUS process with “no family identified” for extended periods of time generally present some of the most significant challenges to both finding a potential adoptive home and maintaining the stability of that potential adoptive home. Some of these children have complex medical needs requiring specialized and/or long-term care; some have behavioral or mental health issues that require on-going or periodic mental health treatment and monitoring; a significant number are in congregate care settings for periods of time.

The current FOCUS process ensures that appropriate attention is being paid to factors that contribute to placement disruption for children in full guardianship.

X. Statewide Information System

Section X of the Settlement Agreement provides that:

- A. DCS shall establish and maintain a statewide computerized information system for all children in DCS custody that is accessible in all regional offices and into which workers shall be able to directly enter data. The statewide computerized information system shall ensure data integrity and user accountability. The system shall have the necessary controls to prevent the duplication of data and to reduce the risk of incorrect or invalid data.*
- B. This system shall include uniform data presentation, including but not limited to AFCARS elements from DCS for all children in the plaintiff class. This system shall be audited periodically to ensure the accuracy and validity of the data. This system shall provide an immediately visible “audit trail” to the data base administrators of all information entered, added, deleted or modified, and shall have necessary security to protect data integrity. This system shall be capable of providing system-wide reports.*
- C. An intensive data clean-up process shall ensure the accuracy of all data, including but not limited to data on all individual children in the plaintiff class, in the statewide computerized information system.*

In the May 2014 Monitoring Report and the June 2014 TFACTS Update, the TAC found that TFACTS at that time met most of the Settlement Agreement requirements related to its statewide automated computerized information system and that the Department was taking appropriate steps to meet the remaining requirements in subsequent months. The last major obstacle facing the Department at that time was the limitation of its automated caseload reporting capacity. A redesign of the TFACTS case assignment function was necessary to overcome that obstacle and that redesign was scheduled for release in December 2014.

In advance of the September 19, 2014 Status Conference, the TAC requested that, rather than consider moving portions of Section X into maintenance at that time, the parties wait until after the case assignment redesign had been implemented, and the caseload reporting capacity issue had been addressed, and Section X as a whole could be considered for maintenance.

The TAC is now fully satisfied that the Department’s statewide computerized information system meets all of the Settlement Agreement requirements. The TAC has verified its findings with respect to TFACTS in multiple ways, most significantly through access to and the almost daily use of the TFACTS data system by the TAC monitoring staff. Starting from a place in 2012 when the TAC and other outside assessors found much that was wrong with TFACTS implementation, the state has wisely invested the time and skilled resources to accomplish the necessary changes and now has the internal capacity to sustain a computerized information system that meets its internal management needs and provides the information necessary to monitor the Settlement Agreement and report to the public on the Department’s performance.

At the Plaintiffs' request, the TAC has in the nine subsections below identified each discrete substantive element of Section X, and for each element provided an analysis of the requirements imposed and the TAC's assessment of the Department's performance on each element.

1. *DCS shall establish and maintain a statewide computerized information system for all children in DCS custody that is accessible in all regional offices and into which workers shall be able to directly enter data.*

The Department has implemented TFACTS, which is a "statewide computerized information system" that includes data on "all children in DCS custody," "is accessible in all regional offices," and that allows workers "to directly enter data" into the system and review and access information from it. The TAC has validated the Department's performance on this commitment by having access to TFACTS, using it to review data on individual children, reviewing aggregate data produced from TFACTS on "all children in DCS custody," and by visiting regional offices in person, confirming that it is accessible to workers in each and that workers can directly enter data into the system and that they use the system to record, track and review case activities.

2. *The statewide computerized information system shall ensure data integrity and user accountability.*

"Data integrity" refers to the ability of the system to ensure that when data is entered it is stored and returned correctly when it is subsequently viewed. The TAC has validated that TFACTS meets this requirement. For each monitoring report issued under the Settlement Agreement, the TAC receives, reviews, and independently validates the data produced from TFACTS before it issues the report to the Court and the public. The TAC is also involved in the ongoing, day-to-day data validation efforts of the Department, giving the TAC additional confidence that the system is designed to and is able to ensure data integrity. Moreover, the TAC undertook a review of TFACTS targeted to the specific question of whether data entered into the system was returned correctly. This review of TFACTS, which included among other things a survey of case managers, corroborated the TAC's assessment that the system is able to ensure data integrity.

The provision regarding "user accountability" requires that the system ensure that actions performed in the database can be traced to a specific user of the system. Ordinarily this is done by providing unique user identification names and credentials to log in to the system. TFACTS does this as well, which the TAC has validated through use of the system, review of the system, and interviews with Department staff.

3. *The system shall have the necessary controls to prevent the duplication of data and to reduce the risk of incorrect or invalid data.*

These "necessary controls" include "guardrails" that ensure that certain data elements must be entered, must be entered in a certain format (*i.e.*, a date field must be entered as MM/DD/YYYY rather than a text box), highlighting certain data elements to identify them as important to enter, or automatically providing a range of possible selections to ensure that a selection that is not logically permissible is not made. TFACTS includes examples of all of these types of guardrails.

The TAC has validated the existence of all of these guardrails through interviews with Department staff and hands-on, daily use of TFACTS.

4. *This system shall include uniform data presentation, including but not limited to AFCARS elements from DCS for all children in the plaintiff class.*

As discussed in the May 2014 Monitoring Report and the June 2014 TFACTS Update, the TAC interprets the Settlement Agreement requirement that there be “uniform data presentation” of the federal “AFCARS elements” to require DCS to adopt one of the practices that the General Accountability Office noted that child welfare systems across the nation had employed to improve AFCARS data quality:

To improve data reliability, some states have designed their information systems with special features to encourage caseworkers to enter the information. Four states responding to our survey and 3 states we visited designed their SACWIS with color-coded fields to draw attention to the data elements that caseworker are required to enter. For example, the AFCARS data fields in Oklahoma’s system are coded red until the data are entered, after which the fields change to blue.

Most States Are Developing Statewide Information Systems, but the Reliability of Child Welfare Data Could Be Improved, GAO Report 03-809 (July 2003).

In TFACTS, all AFCARS-required data elements are uniformly labeled in bold red font, as opposed to non-AFCARS elements that are labeled in blue font. In addition, in the event that a user is unable to see color, the AFCARS elements are also all labeled with a “+.” That uniform presentation of the AFCARS elements meets the requirements of the Settlement Agreement. The TAC has validated that this requirement is met by reviewing the TFACTS system itself.¹³

5. *This system shall be audited periodically to ensure the accuracy and validity of the data.*

This provision requires the Department to regularly review the data in TFACTS to ensure it is accurate and valid. As discussed in the April 2013 TFACTS report, the Department regularly sends out a series of data reports to regional offices and requires that those offices review the reports to identify any issues with data accuracy or validity so they can be addressed. In

¹³ Even though it is beyond the requirements of the consent decree, which requires only that AFCARS elements are presented in a uniform color, Plaintiffs’ counsel requested that the TAC include an update on the progress that the Department has made in implementing the modifications in AFCARS reporting required by the Children’s Bureau of the Federal Administration of Children and Families (ACF) and set forth in the AFCARS improvement plan which was approved by the Children’s Bureau in April of 2014.

At the outset, it is important to note that this only relates to what and how data is reported from TFACTS to the ACF. It does not relate to and is distinct from the reporting required pursuant to the Settlement Agreement.

As discussed in the June 2014 TFACTS update, in that plan the Department documented that it had already made the majority of the required changes to AFCARS reporting. The plan called for the Department to address the remaining changes “by early 2015.” Since June 2014, the Department has completed 34 additional modifications to support AFCARS reporting and 36 additional modifications are targeted for the next two months (April and May of 2015). This will leave 18 modifications to address the Children’s Bureau recommendations.

addition, the Department's Central Office team regularly reviews data regarding performance and identifies any issues with data accuracy or validity that must be addressed. The TAC has observed these efforts and, in fact, has been involved in them in the course of the day-to-day monitoring work. As a result, the TAC is satisfied that the Department periodically reviews TFACTS data to ensure it is accurate and valid.

6. *This system shall provide an immediately visible "audit trail" to the data base administrators of all information entered, added, deleted or modified,*

As discussed in the June 2014 report, TFACTS now has an "audit trail" that is immediately visible to the database administrators and that shows all information entered, added, deleted, or modified. The Department's lead database administrator demonstrated this functionality to the TAC, which confirmed that it documents when and by whom all information is "entered, added, deleted or modified."

7. *The system . . . shall have necessary security to protect data integrity.*

As discussed previously, the Department has retained an outside vendor to conduct a security threat assessment on TFACTS. The Department's outside security review efforts have identified 68 security items.¹⁴ Of those, five were accolades (security features that the review found were exemplary); 30 were security issues that have since been fixed (including 12 high priority, five medium priority, and 13 low priority); 20 items originated from the 2013 scan and have been closed as "unable to reproduce" (a standard practice in the industry); eight were found to be working as intended; and four are pending (including two high priority; and two low priority, one of which was the only remaining item from the 2013 scan). Those four remaining findings will be addressed by the end of September 2015.¹⁵

Based on its review of the list of security items and based on discussions about those security items with the Department's OIT staff, the TAC is satisfied that none of the security issues identified present the kind of vulnerability that would threaten the integrity of the child and family specific data that supports casework and is the source for aggregate reporting on class members.

¹⁴ These 68 items are the combined list of findings from both the 2013 external security assessment and the more recent external security threat assessment conducted in August of 2014. All findings from the prior external assessment conducted in 2013 and referenced in the May 2014 Monitoring Report have been addressed, with the exception of one low priority item. Based on the fact that the finding was more of a "best practice" recommendation than one that would actually impact system security in any significant way, a decision was made to postpone action on that low priority item until after the 2014 assessment and then to fold that item into the work plan coming out of that assessment.

¹⁵ The two items listed as "high priority" relate not to a current security threat but to the need to upgrade in order to be able to continue to have ongoing support from the particular product vendor. A simplistic, but helpful analogy would be to those of us who had Microsoft Windows XP as our operating systems for our computers and received notice from Microsoft that they were no longer going to continue supporting Windows XP (and no longer updating our XP security protection), so we needed to upgrade to Windows 7 or Windows 8. The two "high priority" upgrades that the Department is on schedule to have completed by the end of September are, of course, much more sophisticated and much more complex to install; and the need to install them provides a great opportunity to incorporate some other system enhancements as they do the necessary work to accomplish the upgrades.

The TAC is confident that the requirement of “necessary security to protect data integrity” is being met by the processes that the Department has implemented and continues to implement to identify and respond to security threats.

8. *This system shall be capable of providing system-wide reports.*

This provision requires that the Department’s information system must be able to produce “system-wide reports,” which the TAC interprets to include those system-wide reports that an appropriately operated child welfare department would need to responsibly carry out its duties to the children and families it serves. As a general matter, TFACTS can produce system-wide reports regarding the range of areas of the Department’s work with children in the plaintiff class. The evidence of that can be found in the TAC’s comprehensive monitoring reports, which include a significant volume of data that has been and continues to be produced from TFACTS for the Department’s own management needs and for the TAC’s monitoring and reporting needs. The TAC receives these many reports first-hand and validates this data routinely as part of its ongoing monitoring and reporting.

As noted previously, the key system-wide aggregate report that the Department had been unable to produce sufficiently accurately from TFACTS (because of a problem with the case assignment function) was a system-wide caseload report. That deficiency was addressed through a December 2014 TFACTS release of a redesigned case assignment function and a significant data conversion and data cleanup effort that accompanied that release. The Department can now generate information from TFACTS that shows the number of children and families assigned to each worker across the state.¹⁶ That information can be used to assess compliance with all of the caseload standards included in the Settlement Agreement. The Department no longer has to rely on offices aggregating caseload information outside of TFACTS on spreadsheets, which was the method used previously to track caseloads.

The TAC has been intimately involved in the case assignment redesign process and the design of the caseload reporting produced from that redesigned process. In the time since the release of the case assignment redesign on December 13, 2014, the TAC has closely followed (and TAC monitoring staff have participated in) the data cleaning processes and the refinements made since the release in both the case assignment function and the caseload report. The TAC monitoring staff have engaged in a number of additional activities to validate the accuracy of caseload reporting, including:

- comparison of data from the TFACTS caseload report with the regions’ caseload spreadsheets and with other aggregate reporting from TFACTS;
- phone calls to team leaders to confirm the accuracy of the data in the aggregate report;

¹⁶ As reflected in the September 2014 Supplement Related to Caseloads and Caseload Reporting, prior to the implementation of the new case assignment function in December, caseloads were readily viewable in TFACTS (case managers could see their caseloads, supervisors could see the caseloads of those they supervised, etc.). However, the missing element at that time was that, without the needed modification of the case assignment function in TFACTS, the system was unable to provide accurate aggregate caseload count reports. As of December 2014 when the case assignment improvements were fully implemented, the Department can now provide those aggregate reports.

- involvement in discussions (via phone and email) between Central Office, IT staff, and regional staff about the issues identified by the regions as they use the report; and
- comparison of data from the TFACTS caseload report with the case assignment screens within TFACTS.

The TAC has reviewed and validated the new caseload report and the capacity that report gives both the Department and the TAC to produce accurate statewide aggregate caseload data and analysis from that report.¹⁷

The case assignment redesign has dramatically simplified the front end case assignment process and the case reassignment process for DCS staff. The new case assignment process eliminates the multiple “clicks” and screens needed to make case assignments and reassignments (including a time-consuming employee search). It also allows common data on children in sibling groups to be entered once for the entire sibling group, eliminating the need to enter that common data individually for each child. The redundant and overlapping case assignment roles that had caused confusion in the past have been replaced by a limited number of mutually exclusive case assignment roles that reflect the actual functions associated with those roles and are separated from security access administration. Guardrails have been created that eliminate a range of what had been common data entry errors under the old TFACTS case assignment function. When a case is assigned to a particular case manager, the system automatically accesses the staff database and “auto-populates” the case manager’s region, county, supervisor, and the case manager’s position (CM1, CM2, or CM3).

In addition, there have been improvements in the ease of access to up-to-date caseload information for case managers and their supervisors. Under the redesign, when a case manager logs onto TFACTS, the case manager’s caseload is the first screen that comes up and this caseload screen displays each of the individual children for whom that case manager is responsible. There is a quick link from the name of the child to the case recordings screen of the child’s TFACTS file, eliminating the need for multiple clicks to review and enter case recordings.

¹⁷ The TAC recognizes that some degree of on-going cleanup will continue to be necessary for a period of time to address some cases from the conversion which, because of the limits of even the most well-designed conversions, could not be cleanly converted. These cases will continue to appear as open cases in the new caseload reports until they are cleaned up. Because of the overall success of the conversion, these cases constitute a miniscule portion of the current caseload. Until those cases are corrected in TFACTS (which because of the strict security functions required to maintain data integrity have to be done on the “back end” by specially authorized OIT staff in response to a specific approved work ticket and pursuant to a priority determination), some case manager caseloads could, in the aggregate reporting, appear larger than they actually are.

In addition, there continues to be a “learning curve” in the field about how to take advantage of the more robust case assignment function. For example, as part of the report validation process, TAC monitoring staff spoke with a *Brian A.* team leader who, according to the caseload report, was assigned one *Brian A.* child. The team leader indicated that she had wondered why that child was appearing on her workload screen and did not realize that after she assigned the child to one of her case managers she had to be sure to end the original assignment to herself.

These issues are minor, easily recognized and accounted for, and pose no problems for the Department in terms of its day-to-day management needs. Their impact on the accuracy of *Brian A.* reporting, if not recognized and accounted for, would be insignificant and, in any event, would result in an overstatement, rather than an understatement, of actual caseloads. For these reasons, the TAC does not see these issues, which are being appropriately addressed, as significant enough to preclude a maintenance designation.

Supervisors also have easy access to the caseloads of the case managers they supervise, and upper level supervisors have easy access to the caseloads of supervisors and case managers they oversee, from the top to the bottom of the organization. Supervisors no longer have to be manually assigned to cases through a case assignment role because TFACTS implicitly knows which cases they supervise through the employee tables.

The caseload report can be easily filtered to provide caseload information by case manager, by team/supervisor, by county, and by region. Further, the caseload report, in combination with the report detail, allow for both aggregate reporting and “drilling down” to identify the individual children and families.

The Department has provided plaintiffs’ counsel with a demonstration of the case assignment function and the new caseload report and demonstrated how that report provides the information that the Department needs for internal management purposes; and the TAC has explained how the new caseload report supports the TAC’s ongoing monitoring and reporting needs.

Included in the Appendix at the end of this subsection are screen shots illustrating some of the user friendly improvements to the case assignment function, a table displaying some of the information available from the new aggregate caseload report, and a short step-by-step explanation about how that report can be filtered to provide aggregate statewide caseload data.

The TAC was asked to include specific information on how the Department’s Central Office is currently using the new caseload reporting capacity to provide a “red flag” management level check of the built-in caseload controls at the regional/supervisor level as an additional top-down check on caseload management, including ensuring that the general rule against mixed non-custodial/*Brian A.* caseloads is being complied with and that those handling mixed caseloads are not exceeding the *Brian A.* caseload limits on the number of children.

There are three reports that are currently being run from TFACTS that the Central Office is using to provide this “top down” oversight of caseloads:

- The *Caseload Detail Report* provides a list of every single open assignment role in TFACTS by assignment type (one row for each child or case depending on how the case type is counted) and the name of the case manager assigned that role (and the case manager’s supervisor and region).
- The *Caseload Summary Report* is the “first level roll-up” of the Detail Report. This is the report referenced in the Section X Appendix. This report aggregates the individual open assignments by worker—that is, it totals the number of open assignments to each worker by assignment type (again counted by child or case depending on the assignment type.)
- The *Brian A. Caseload Threshold Compliance Report* is a further analysis of the *Caseload Summary Report*. The *Brian A. Caseload Threshold Compliance Report* takes the same information that was used to generate the *Caseload Summary Report*, pulls

some additional information from TFACTS (including the number of people supervised by CM3s and CM4s), and then applies the *Brian A.* caseload limits to each caseload. A column in that report identifies any caseloads that exceed the limits and a second column indicates the specific violation (CM1 with more than 15, CM2 with more than 20, CM3 with more than 10 cases who is supervising 2 CMs).

The Central Office is currently using the *Brian A. Caseload Threshold Compliance Report* to do top down monitoring of regional caseloads and to identify and respond to caseloads that exceed *Brian A.* limits. The report, which is run daily, allows the Deputy Commissioner for Child Programs and her management team to identify by region the caseloads that exceed *Brian A.* limits and to drill down into those specific caseloads. This report currently errs on the side of “red flagging” as non-compliant, caseloads that in fact are compliant.¹⁸

The Deputy Commissioner reviews with the regions those case managers and supervisors that are over the caseload limits, at least once per month during regularly scheduled calls with each regional administrator, and more often if she sees something that concerns her in the *Brian A. Caseload Threshold Compliance Report* or is working on a specific caseload issue with a particular region.

With respect to top down oversight of mixed caseloads, the Deputy Commissioner uses the *Caseload Summary Report* to identify those workers who have at least one *Brian A.* case and at least one non-custodial case.¹⁹ She has added as an agenda item for the monthly conference calls that she has with each region, a review of the region’s mixed caseloads to make sure that those caseloads reflect the limited situations in which a mixed non-custodial/*Brian A.* caseload is appropriate²⁰ and that those mixed caseloads do not exceed the applicable child based caseload limits.²¹

* * *

¹⁸ For example, there is one region that has found it helpful in ensuring even distribution of cases among teams to have a single team leader be responsible for assigning new cases. To facilitate this process, the region has all the new cases assigned initially to the team leader who then reassigns the cases. That team leader will show up on the *Brian A. Caseload Threshold Compliance Report* as having a non-compliant caseload.

¹⁹ This report also errs on the side of overinclusion—flagging caseloads for review as mixed caseload situations that actually are not.

²⁰ Under current DCS policy the only time a case manager should be carrying both a *Brian A.* case and a non-custodial case is when case manager continuity for a transition period is important to the child and family (e.g., a *Brian A.* case manager who is working with a sibling group and one sibling exits custody but continues to receive non-custodial services).

²¹ In addition, the Deputy Commissioner will be periodically using the process described in the Appendix to produce a caseload report that accounts for the number of children represented by the non-custodial cases in any mixed non-custodial/*Brian A.* caseloads. Given that such mixed caseloads currently constitute an appropriately small percentage of the *Brian A.* caseloads and given the monthly reviews of those mixed caseloads with the regions, conducting this kind of accounting quarterly is more than sufficient. Neither the Deputy Commissioner nor the TAC has found mixed caseloads to be a significant contributing factor to caseloads that exceed caseload limits. (Case manager turnover, delays in the hiring process, and FMLA and other medical leave tend to be the major factors.) This was confirmed by the TAC’s most recent review of mixed caseloads—a “point-in-time” review of the number of children on each of the mixed caseloads in January 2015. None of those caseloads exceeded the number of children permissible under the *Brian A.* caseload limits.

The success of the case assignment redesign not only demonstrates that the Department now has staff with considerable technical skills within its Office of Information Technology, but perhaps more importantly reflects significant improvements in addressing the issues of governance, priority setting, and effective communication between OIT and program staff that were identified as challenges in both the TAC's TFACTS Evaluation and the independent assessment of TFACTS completed by Gartner, Inc., in 2013, which was referenced in the TAC's initial TFACTS evaluation.

The case assignment redesign and caseload report development was a complex and challenging project, that included complicated data conversion, that had implications for a wide variety of areas of front end field staff interface and aggregate reporting, and that presented opportunities (which OIT was able to identify and take advantage of) for significant improvements for regional front-line staff well beyond caseload reporting. It required a sustained and well-coordinated effort, with on-going collaboration and communication between OIT and the field. It required the Management Advisory Committee (MAC) to exercise appropriate control over the competing demands on OIT and program staff time to ensure that this prioritized project received the undistracted attention of the assigned OIT team and the required resources and on-going field input and feedback needed to meet the December 2014 release target date. The effective execution of this project stands in stark contrast to the early problems the Department had in implementing TFACTS.

To the extent that there were any lingering concerns about the Department's capacity to maintain a statewide information system that supports quality casework and meets the management and reporting needs of a responsibly operated child welfare system, the success of the case assignment redesign should allay those concerns.²²

TFACTS presently provides the Department with the system-wide reporting that it needs to operate its system responsibly, and the Department has demonstrated that it has the IT expertise to continue to refine and expand its reporting going forward.

²² As discussed in previous monitoring reports, the Department had originally contemplated producing aggregate reporting from TFACTS to be able to report on the extent to which the Department is meeting the requirements of the Settlement Agreement that "*diligent searches for parents and relatives of a child...be conducted and documented according to policy by the DCS case manager.*" However, based on the recent experience conducting the targeted review of FOCUS cases (described in Section VIII.D.3 of the January 2015 Monitoring Report), which included a review of the extent to which the Department had made appropriate efforts to identify and contact relatives of children in full guardianship, both the Department and the TAC recognized that what constitutes an appropriate diligent search is dependent on the unique facts of the individual case and that it was therefore not practical to develop an aggregate TFACTS report to measure compliance with this provision.

Not all cases require a diligent search for relatives; and in cases that do, some may require a broader search for relatives than others. Without reviewing the facts of the individual case, and, at a minimum, the narrative case notes reflecting both the specific efforts made by the case manager and other members of the Child and Family Team to identify relatives and the basis for the team's decision whether or not to pursue contacting any or all of those identified relatives, it is simply not possible to determine whether the diligent search case practice in that case was both appropriate and appropriately documented.

The Department and the TAC realized that it was simply impractical to create "check boxes" in TFACTS to try to capture in a way that could be meaningfully aggregated the combinations and permutations of diligent search related information. Both for the Department's own management needs and the TAC's monitoring and reporting, periodic targeted case reviews, rather than aggregate reporting from TFACTS, is the best method for assessing and reporting the extent to which diligent searches are being conducted appropriately and documented adequately.

9. *An intensive data clean-up process shall ensure the accuracy of all data, including but not limited to data on all individual children in the plaintiff class, in the statewide computerized information system*

The TAC interprets this provision *in pari materia* with the provision discussed above that requires that the system “shall be audited periodically to ensure the accuracy and validity of the data.” That provision requires the Department to regularly review and assess the data to identify any issues regarding data accuracy and validity; this provision, then, requires the Department to conduct an “intensive data clean-up process” when any such issues are identified.

As noted, the Department sends out regular reports to the regional offices and requires that they review the reports and identify any issues regarding the accuracy of the data. Once those issues have been identified, the Department requires all offices to clean that data in the system, which involves regional office staff accessing the system and correcting the data errors and re-running the reports to ensure that the data cleanup has addressed the issue. The Department initiates and completes these cleanups as the need arises. The TAC has observed any number of these efforts during the course of the Settlement Agreement, and, as a result, has confirmed that the Department conducts intensive data cleanup processes as necessary to ensure data accuracy.

APPENDIX TO SUBSECTION X

The screenshot below shows the first screen a supervisor (Laurie Baker, whose name appears at the upper left of the screen) sees when logging into TFACTS. From this screen, the supervisor can see all of the case managers he or she supervises (the list of names immediately below her name), and the supervisor can click on each case manager (for example, Stuart Clements whose name has been clicked on and is highlighted in orange) to view the children assigned to that case manager. From this screen, the supervisor can quickly select one or multiple children (in this screen Carl Grimes is selected) and reassign them to another case manager or end the assignment if the case has closed. If the supervisor wishes to review a case on a case manager’s caseload, he or she can quickly access the case using the “Select” link or the case recordings for the case using the “Recordings” link.

This screenshot also provides an example of the ability of TFACTS to make assignments at the level of the individual child (the previous TFACTS functionality allowed assignments to be made at the case level only). Stuart Clements is assigned as the “On-Going Non-Custodial Worker” to case 97590501, and within that case, he is assigned to two children—Dexter and Sophia Baker.

STG home search incident reporting help & training customer care log off
Logged In: Baker, Laurie | DCS Central Office

Home Intake Case Resource Financial Administration
Workload Desktop Calendar Approvals

Baker, Laurie Viewing for Clements, Stuart... [0] Reassign End

Type	ID	Name	Assignment Role
Ongoing Case	97590501	Baker, Dexter	On-Going Non-Custodial Worker
Ongoing Case	97590501	Baker, Sophia	On-Going Non-Custodial Worker
Ongoing Case	97590500	Downing, Grace	SS Custody Worker
Ongoing Case	97590499	Grimes, Carl	SS Custody Worker

Select Case Status: Open Organization: Mid Cumberland
Recordings Case Status Date: 03/12/2015 Region

10 items per page 1 - 4 of 4 items

HOME HELP & TRAINING PRIVACY & SECURITY cf36_s25_home_desktop_screen STG12 version 1.144.1 150%

The screenshot below further demonstrates the ability to assign a case manager to multiple children within one case. Case manager Stuart Clements is assigned to two children within case 97590499: He is assigned to Carl Grimes as the “SS Custody Worker” (Social Services, or *Brian A.*, Custody Worker) and to Judith Grimes as the “On-Going Non-Custodial Worker.”

STG home search incident reporting help & training customer care log off
Logged In: Baker, Laurie | DCS Central Office

Home Intake Case Resource Financial Administration
Workload Desktop Calendar Approvals

Baker, Laurie Viewing for Clements, Stuart... [0] Reassign End

Type	ID	Name	Assignment Role
Ongoing Case	97590501	Baker, Dexter	SS Custody Worker
Ongoing Case	97590501	Baker, Sophia	On-Going Non-Custodial Worker
Ongoing Case	97590499	Grimes, Carl	SS Custody Worker
Ongoing Case	97590499	Grimes, Judith	On-Going Non-Custodial Worker

10 items per page 1 - 4 of 4 items

HOME HELP & TRAINING PRIVACY & SECURITY cf36_s25_home_desktop_screen STG12 version 1.144.1 150%

The screenshot below is of the Assignment History screen, which shows all current and previous assignments to the case. It also demonstrates the ability, for the relatively small group of users who have been given the necessary security access, to add assignments (add button), delete assignments (delete button), and adjust assignment begin and end dates.

TFACTS | STG | [home](#) | [search](#) | [incident reporting](#) | [help & training](#) | [customer care](#) | [log off](#)
 Logged In: Baker, Laurie [DCS Central Office] | [help](#)

Case > Overview > Case Overview

Case Header
 Case ID: 97590499 | Case Name: Grimes, Carl | Case Status: Open | Organization: Mid Cumberland Region

Assignment History

Employee Name	Supervisor	Supervisor Job	Assignment Role	Begin Date*	End Date	Child/Youth
Baker, Laurie	Hommrich, Bonnie	Deputy Commissioner 2	SS Custody Worker	03/12/2015	03/12/2015	Grimes, Carl
Clements, Stuart	Baker, Laurie	Info Systems Director 1	On-Going Non-Custodial Worker	03/12/2015		Grimes, Judith
Clements, Stuart	Baker, Laurie	Info Systems Director 1	SS Custody Worker	03/12/2015		Grimes, Carl

10 items per page | 1 - 3 of 3 items

Add Delete

Apply Save Cancel

HOME | HELP & TRAINING | PRIVACY & SECURITY | cf11_s01_assignment_history_screen STG12 version 1.144.1

The screenshot below is an example of one of the guardrails in place to ensure data quality when making reassignments through the Assignment History screen. Because the child being reassigned in this example, Carl Grimes, has an open *Brian A.* custody episode, the only assignment roles available for selection are the “SS Custody Worker” and “Contract Case Manager” roles.²³

TFACTS | STG | [home](#) | [search](#) | [incident reporting](#) | [help & training](#) | [customer care](#) | [log off](#)
 Logged In: Baker, Laurie [DCS Central Office] | [help](#)

Case > Overview > Case Overview > Assignment History

Add Assignment

Assign To*: Vangalder, Michael

Assignment Begin Date*: 03/12/2015

Assignment End Date:

Assignment Role*:
 Contract Case Manager
 SS Custody Worker

Child/Youth*:
 Contract Case Manager
 SS Custody Worker

Save Cancel

HOME | HELP & TRAINING | PRIVACY & SECURITY | cf11_s01_assignment_history_screen STG12 version 1.144.1

²³ The “Contract Case Manager” assignment role is used to denote a private provider worker who does custodial case management for DCS through the case management contracts.

Below is an excerpt from the new TFACTS Caseload Summary Report, which provides the total caseload for each case manager assigned to a *Brian A.* child in TFACTS. Because this report is used by the Department to manage caseloads for all programs it manages and not just those for *Brian A.* class members, it counts every active assignment to an employee of a child (for *Brian A.* children and some additional program areas) or a case (for some other program areas) by assignment role (for reasons related to space and legibility, some columns concerning program areas unrelated to *Brian A.* have been removed).

Region of Assignment	Team Coordinator	Team Leader	Worker	Job Title	CPS Investigation	CPS Assessment	SS Custody	On-Going Non-Custodial	Family Crisis Intervention	ICPC	EFCS	Permanency Specialist	Total Client Count	Total Case Count	Total Caseload Count	
Knox	Bailey, Britney	Cooper, Kelly	Boney, Edana Kaye	CSCASEMG2	0	0	11	0	0	0	0	0	11	0	11	
			Clower, Julie	CSCASEMG2	0	0	13	0	0	0	0	0	0	13	0	13
			Monk, Angela	CSCASEMG2	0	0	11	0	0	0	0	0	0	11	0	11
	Beal, Betty	Miller, Misty	Quick, David	CSCASEMG2	0	0	14	0	0	0	0	0	0	14	0	14
			Weaver, Sherrie	CSCASEMG2	0	0	13	0	0	0	0	0	0	13	0	13

The plaintiffs have asked that the TAC explain in a step-by-step manner how the report can be filtered to provide statewide caseload data. For purposes of this explanation, the TAC will provide the step-by-step process for filtering to answer two questions. First, “how many CM2s carrying at least one *Brian A.* case are over the 20 child caseload limit?” The process of answering this first question requires the answering of a second question: “how many CM2s carrying at least one *Brian A.* case have a mixed caseload?”

Note that the table above is an excerpt from the full TFACTS Caseload Summary Report in Excel. There are filters on every column that allow the user to select the rows that contain the desired values. When applying the filter, Excel automatically counts the number of those values being displayed.

The steps to determine the percentage of CM2s carrying at least one *Brian A.* case who are over the 20 child caseload limit are as follows:

1. Filter the “SS Custody” column for all values except “0” (this is done by simply de-selecting the “0” in the filter). The report will now display only the case managers carrying one or more *Brian A.* children.
2. Filter the “Job Title” column for the value “CSCASEMG2.” The report will now display only CM2s carrying at least one *Brian A.* child, and the total number of CMs being displayed will be shown at the bottom of the screen. This number will be the denominator of the compliance percentage.
3. Filter the “Total Caseload Count” column for all values less than or equal to 20 (the same thing as filtering *out* all values greater than 20), and note the total number of case managers displaying at the bottom of the screen.
4. Insert a new column to the right of the “Total Caseload Count” column and enter a TRUE/FALSE function to identify all rows in which the “Total Caseload Count” is different from the “SS Custody” count. Filter for all “FALSE” values—these are the small number of remaining mixed caseloads.
5. Log into TFACTS, pull up the workload screen for each case manager who has a mixed caseload, and note how many of these workers are assigned more than 20 total children when counting by child.
6. Subtract the number of these case managers with mixed caseloads who had more than 20 total children from the number found in Step 3 (the total number of case managers carrying 20 or fewer cases). This is the numerator for the compliance percentage.

XVI.B.1 Parent-Child Visits

The TAC was asked to provide some further clarification of its use of the “other good reason” category in its report of the results of the parent-child visit targeted review. The TAC was also asked to provide additional data and analysis relevant to XVI.B.1(c).

1. The “Other Good Reason” Category

There were some specific questions about the TAC’s reference in the January 2015 Monitoring Report to ICPC cases, as well as a more general request that the TAC provide more information on the “sub-categories” of cases making up the “other good reason” category.

Regarding the specific reference to ICPC cases, the TAC did not mean to imply that parent-child contact and visits are not important in ICPC cases or that ICPC cases should automatically be considered exempt from the requirement for two visits per month. In reviewing the ICPC cases, the TAC considered the specific circumstances of the child and family involved. For example, if a child’s parent lived in Clarksville and the child was placed with grandparents who lived just over the border in Kentucky, the fact that the child was in an ICPC placement would not be a reasonable basis for departing from the frequency of parent-child visits required by the Settlement Agreement. On the other hand, if that same child was placed with grandparents in California, and some alternative arrangements had been made for parent-child contact, the TAC would consider the ICPC placement to be a reasonable basis for visits occurring less frequently than required by the Settlement Agreement.

In the review sample, there were only two children who were placed on ICPC during the review period. Both were placed in Michigan during that time.

One of those children actually did visit twice per month with his parent during the review period, because the relatives with whom the child and his siblings who were also on ICPC were placed would drive the children to Tennessee for visits every other week.

The other child (who, along with his brother, was placed on ICPC with his maternal grandparents) did not have any visits with his mother during the three-month review period (January through March). However, that child’s mother visited her sons in Michigan during the Christmas holiday that immediately preceded the review period and talked with both boys by phone daily during the review period. The boys’ mother was making good progress on the permanency plan and a decision was made to allow the boys to finish the school semester in Michigan and then start a THV with their mother as soon as school ended. In June, the Department assisted the mother with money for gas and hotel stays so that she could travel to Michigan to pick up the boys, and the Department provided in-home services when the children returned to Tennessee with their mother. The TAC included this case in the “other good reason” category.

The TAC made similarly individualized determinations on each of the cases that were included in the “other good reason” category. For example, in order to consider a case as having the other

good reason of “missing/avoidant parent” (the largest sub-category of other good reasons), case documentation and follow-up information had to demonstrate the Department’s efforts to locate and engage the parent. For detailed information about the “other good reasons” category, including a breakdown of the number of cases counted for each reason, refer to the Appendix to the January 2015 Monitoring Report.

2. Additional Data Related to XVI.B.1(c)

Plaintiff’s requested that the TAC pull out and separately analyze the targeted review data relevant to the specific requirement of the Settlement Agreement that for “class members with a goal of reunification who are not visited twice per month, at least 60% shall be visited once a month.” The following figure presents the data from the parent-child visits targeted review using that measure. As reflected in the figure, for each month of the review period, in more than 85% of the cases reviewed, either the children had a visit with their parent or, if they did not have a visit, there was a good reason for that visit not occurring.

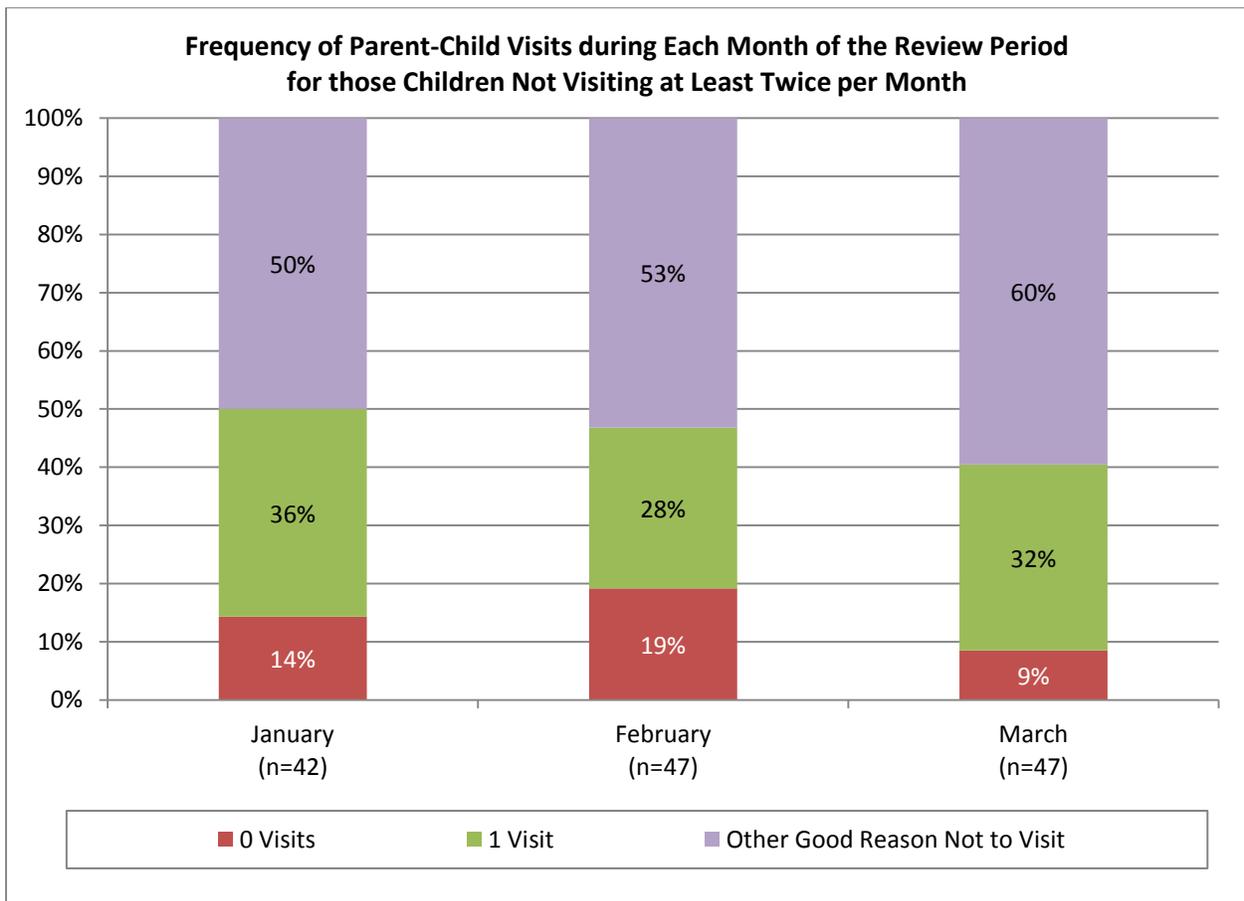


EXHIBIT B

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

_____)	
BRIAN A., et al.)	
)	
Plaintiffs,)	Civ. Act. No. 3:00-0445
)	Judge Todd J. Campbell
v.)	Magistrate Judge Joe B. Brown
)	
BILL HASLAM, et al.)	
)	
Defendants.)	

APRIL 2015 MODIFIED SETTLEMENT AGREEMENT AND EXIT PLAN

TABLE OF CONTENTS

Preamble 3

I. Principles of the April 2015 Modified Settlement Agreement and Exit Plan and Definitions 3

 A. Principles of the April 2015 Modified Settlement Agreement and Exit Plan..... 3

 B. Class Definition 5

 C. Principles of Tennessee’s Child and Family Team Meeting Model..... 5

 D. Definition of Provisions Identified as “MAINTENANCE” 6

 E. Other Definitions 6

II. Structure of the Agency 7

III. Reporting Abuse and Neglect 7

IV. Regional Services..... 7

V. Staff Qualifications, Training, Caseloads, and Supervision..... 8

VI. Placement and Supervision of Children..... 13

VII. Planning for Children: Minimum Standards for All Children and Youth 18

VIII. Freeing a Child for Adoption..... 20

IX. Resource Parent Recruitment, Retention, and Approval 23

X. Statewide Information System..... 25

XI. Quality Assurance 26

XII. Supervision of Private Provider Agencies 28

XIII. Financial Development 29

XIV. Technical Assistance Committee..... 29

XV. Monitoring 30

XVI. Outcome and Performance Measures 30

XVII. Modification 34

XVIII. Enforcement, Termination and Exit..... 34

 A. General Principles Guiding Enforcement 34

 B. Dispute Resolution..... 35

 C. Identification of “MAINTENANCE” Provisions 35

 D. Termination and Exit..... 36

XIX. External Accountability Reporting Structure..... 36

XX. Attorneys Fees and Expenses..... 37

PREAMBLE

- A. This April 2015 Modified Settlement Agreement and Exit Plan (hereinafter “this agreement”) supersedes and replaces the September 2014 Modified Settlement Agreement and Exit Plan. Subsequent to the resolution of Plaintiffs’ Motion for Contempt in 2003, Defendants have made progress toward meeting their legal obligations in this action. Accordingly, the parties have negotiated this binding agreement. Pursuant to Section XVIII.D.2, the parties have agreed to the achievements which will allow, upon the Court’s approval, termination of jurisdiction over this action.
 - B. This court has subject matter jurisdiction and personal jurisdiction over this action and therefore the authority to enter this agreement.
 - C. This court shall have continuing jurisdiction of this action to ensure compliance with the terms of this agreement.
 - D. Any state agency responsible for the care, protection, and/or supervision of plaintiff class members shall be bound by the provisions of this agreement. For as long as this agreement remains in effect, all provisions referring to the “Department,” the “Department of Children’s Services” or “DCS,” upon any subsequent changes to the current governmental organizational structure of the Tennessee Department of Children’s Services concerning the children in the plaintiff class as defined herein, shall apply with full force and effect to the State of Tennessee and to any subsequent agency or agencies with any of the responsibilities that apply to the current DCS as of the date of this agreement.
 - E. This agreement, and any of its provisions, are not, and shall not be construed to be, an admission of any liability on the part of any of the defendants concerning any of the claims and allegations in the complaint in this litigation.
- I. PRINCIPLES OF THE APRIL 2015 MODIFIED SETTLEMENT AGREEMENT AND EXIT PLAN AND DEFINITIONS

- A. Principles of the April 2015 Modified Settlement Agreement and Exit Plan
 - 1. All children should have the best possible opportunity to grow up within a safe, nurturing family, either their biological family or, if that is not possible, within an adoptive family.
 - 2. The state should make reasonable efforts to avoid foster care placement by providing services to preserve the biological family whenever that is reasonably possible, separating the child from the child’s parents only when necessary for the child’s welfare or in the interest of the child’s safety. However, child welfare decision-makers must have the professional capacity to make determinations as to when making efforts to preserve the biological family, or leaving the child with that family, is

neither safe for the child nor likely to lead to an appropriate result for the child.

3. After children enter placement, all non-destructive family ties should be maintained and nurtured. Children should be placed with relatives who are able to provide a safe, nurturing home for them, and should be placed with siblings, and relationships with relatives and siblings should be facilitated and maintained by the child welfare agency.
4. Foster care should be as temporary as possible, aimed at providing a permanent home for the child as quickly as possible. In determining what plans and services will best meet this goal, the child's interests must be paramount.
5. The state has primary responsibility for the care and protection of children who enter the foster care system. Insofar as it relies on private provider agencies to assist in meeting this responsibility, it should only do so according to standards set by and rigorously monitored by the state.
6. All children in need of child welfare services should receive full and equal access to the best available services, regardless of race, religion, ethnicity, or disabilities.
7. Children in foster care should be placed in accordance with their individual needs, as close to home and community as possible, in the least restrictive, most family-like setting possible. The state should make all efforts to avoid the use of non-family settings for children, particularly young children.
8. Children in foster care should have stable placements that meet their needs and the services necessary to address both the trauma of foster care placement and the problems surrounding their removal from their family.
9. Children in out-of-home placement must have timely decision-making and implementation about where and with whom they will spend their childhood.
10. Families of children in foster care should be significant participants in the planning and decision-making concerning their children.
11. All parties in judicial proceedings involving neglect, abuse, unruly and delinquency should be provided a fair hearing and their constitutional and other legal rights should be enforced and recognized.
12. Except where a particular provision of this agreement establishes a specific limit on the resources required to be allocated, Defendants shall

commit all necessary resources (administrative, personnel, financial and otherwise) to implement all provisions herein.

13. All actions required for plaintiff class members shall be documented within their individual case file. DCS shall be able to produce aggregate data requested by the Monitor concerning compliance with the provisions herein.
14. All reports made available pursuant to this agreement shall be public information, provided that if any report contains individually identifiable information, such individually identifiable information shall not be made public.

B. Class Definition

Pursuant to the terms of this agreement, this case shall be certified as a class action and the class certified shall be defined as follows: All foster children who are or will be in the legal custody of DCS. "Foster children" shall mean all children who are or will be in the legal custody of DCS, excluding children who are or will be in the legal custody of DCS upon an allegation or adjudication of a delinquent or criminal act. Children who are or will be in the custody of DCS upon an allegation or adjudication of an unruly or status offense shall be included in the class, and children who are or will be in the custody of DCS upon an allegation of a delinquent or criminal act and which allegation is subsequently dropped or fails to result in an adjudication of a delinquent or criminal act and who remain in the legal custody of DCS, shall be included in the class.

C. Principles of Tennessee's Child and Family Team Meeting Model

Tennessee has adopted a model for engaging children, family members and their own support persons in the process of ensuring the safety, permanency and well-being of class members. Tennessee's Child and Family Team Meeting (CFTM) model shall be guided by the following principles:

1. All children in foster care must have a CFTM that meets regularly throughout a child's time in custody, that utilizes the CFTM process for assessment and planning, that monitors and tracks the implementation of the plan, and that reconvenes as needed but no less often than every three (3) months to adjust the plan and respond to new issues.
2. In addition to the child/youth, his or her family, and the child's case manager, the Child and Family Team should include and engage people who represent both formal and informal supports for the family.
3. Except in emergencies, CFTMs should include pre-meeting preparation with the family and child, including face-to-face meetings as appropriate.

4. Children should not enter custody, should not have a permanency plan established or updated, should not disrupt from a placement, and should not be discharged from care without the convening of a CFTM.
5. Case managers should effectively serve as the primary persons responsible for the Child and Family Team Process.

D. Definition of Provisions Identified as “MAINTENANCE”

1. Specific provisions in this agreement are followed by the term MAINTENANCE. In some sections, a whole paragraph is followed by a skipped space and then the term MAINTENANCE below it.
2. For Sections II – XIII, the term MAINTENANCE shall mean, for the sentence immediately preceding the term, or for the paragraph immediately above the term, that if Defendants maintain or improve the performance with such provision(s) as reported by the technical assistance committee (“TAC”) (defined in Section XIV of this agreement) in the monitoring report that immediately preceded the initial court-approved identification of the sentence or paragraph as MAINTENANCE, such performance shall be considered substantial compliance for purposes of Termination and Exit under Section XVIII.
3. For Section XVI, the term MAINTENANCE shall mean, for the paragraph immediately above the term, that: (a) if Defendants maintain or improve the performance with such provision(s) as reported by the TAC in the monitoring report that immediately preceded the initial court-approved identification of the sentence or paragraph as MAINTENANCE, such performance shall be considered substantial compliance for purposes of Termination and Exit under Section XVIII; or (b) if Defendants’ performance in the monitoring report that immediately preceded the initial court-approved identification of the sentence or paragraph as MAINTENANCE, meets or exceeds that required in Section XVI, and Defendants maintain or improve upon the required level of performance in Section XVI, such performance shall be considered substantial compliance for purposes of Termination and Exit under Section XVIII.

E. Other Definitions

1. A child shall be considered to have entered foster care custody on the date that the child enters DCS’s physical, out-of-home custody, or on the date on which the child enters DCS’s legal custody, whichever is sooner. The duration of a child’s time in DCS custody shall include the entire time period after which a child entered custody until formally discharged from DCS custody.
2. Race and/or ethnicity and/or religion shall not be the basis for a delay or

denial in the placement of a child. Race and/or ethnicity shall otherwise be appropriate considerations in evaluating the best interest of an individual child to be matched with a particular family.

II. STRUCTURE OF THE AGENCY

- A. DCS shall establish child welfare policy and determine statewide standards. DCS shall take all reasonable steps necessary to ensure that statewide policies, standards and practices are implemented and maintained in each region of the state and that each region uses uniform forms, data collection, and reporting. Regions retain the right to develop and use forms and data instruments to address issues of local concern.

MAINTENANCE.

III. REPORTING ABUSE AND NEGLECT

- A. DCS's system for receiving, screening and investigating reports of child abuse and neglect for foster children in state custody shall be adequately staffed and all reports of abuse or neglect of class members shall be investigated in the manner and within the time frame provided by law.
- B. All reports of abuse or neglect of foster children occurring in DCS and private provider placements (whether congregate care or resource home) shall also be referred to and reviewed by the relevant DCS unit or units responsible for quality assurance and placement and provider oversight, with such referral and review completed within ninety days. The quality assurance unit(s) shall be responsible for ensuring that appropriate corrective action is taken with respect to the placement and/or private provider (including, if appropriate, closing of the placement and/or contract termination), and shall determine whether a pattern of abuse or neglect exists within the placement or the private provider's array of placements that contributed to the abuse and neglect. The results of the reviews required in this section shall be incorporated into the performance based contracting provided by DCS.
- C. The quality assurance division shall ensure that a tracking and reporting process is in place to identify any case in which there have been three or more reports of neglect or abuse concerning a particular caregiver for a particular class member and that all such cases are subject to special administrative reviews.

MAINTENANCE.

IV. REGIONAL SERVICES

- A. Each region shall have available a full range of community-based services to support and preserve families of foster children in state custody, and to enable

children to be reunified with their families safely and as quickly as possible.

B. Each region shall have available or shall develop a full range of community-based family services, which shall be available to:

1. Foster families for whom children have established a significant, beneficial emotional bond and which provide the possibility of long-term stability and permanence, but which are in danger of disrupting without intensive home-based crisis intervention services;

MAINTENANCE.

2. Families to whom children in foster care could be returned safely with the availability of intensive family services for a transition period; and

MAINTENANCE.

3. Adoptive families in danger of disrupting without intensive home-based crisis intervention services.

MAINTENANCE.

V. STAFF QUALIFICATIONS, TRAINING, CASELOADS, AND SUPERVISION

A. All persons applying for positions with DCS or a private provider agency which involve any contact with children shall be required to submit to a criminal records check and a DCS abuse and neglect records screening before beginning training or employment. All DCS and private provider staff are subject to the provisions of DCS administrative policy on Employee Background Checks, which provide specific requirements for finger-printing, background checks, employment and disciplinary action. All DCS staff are also subject to the DCS administrative policy on employee disciplinary actions related to allegations or convictions of criminal acts. This section is not applicable to employees convicted of delinquent offenses.

MAINTENANCE.

B. Educational background requirements for DCS case managers responsible for cases of class members and for private provider staff with comparable responsibilities shall be as follows:

1. Case managers I and II shall have a bachelor's degree, with employment preference given to applicants holding a bachelor's degree in social work or a related behavioral science.

MAINTENANCE.

2. Case managers III shall have at least a bachelor's degree, with employment preference given to applicants holding a bachelor's degree in social work or a related behavioral science, and two years experience in providing child welfare services. A master's degree in social work or a related behavioral science may substitute for one year experience in providing child welfare services.

MAINTENANCE.

3. All case manager supervisors (including team leaders and team coordinators) shall have a minimum of a master's degree in social work or a related behavioral field with a child and family focus (excluding criminal justice) and at least three years experience as a child welfare case worker; however, an additional 2 years of providing child welfare services may substitute for a master's degree.

MAINTENANCE.

- C. Requirements for retention, promotion, and assumption of case responsibilities for DCS case managers responsible for cases of class members and for private provider staff with comparable responsibilities shall be as follows:

1. No case manager shall be promoted until completing a job performance evaluation that includes evaluation of performance of the case management requirements of this agreement. Failure to receive a satisfactory job performance evaluation will result in progressive disciplinary action, up to termination if necessary.

MAINTENANCE.

2. No case manager shall assume any responsibility for a case, except as part of a training caseload, until after completing pre-service training and after passing a skills-based competency test.

MAINTENANCE.

3. Every case manager supervisor shall complete basic supervisor training and pass a skills-based competency assessment geared specifically to child welfare supervision. Such training will begin within two weeks of the supervisor assuming supervisory responsibility and be completed within six months.

MAINTENANCE.

- D. Pre-service and in-service training of DCS case managers responsible for cases of

class members and private provider case managers with comparable responsibilities shall be as follows:

1. A minimum of 160 hours of pre-service training, including instructional and supervised field training;

MAINTENANCE.

2. For non-supervising case managers, a minimum of 40 hours of annual in-service training;

MAINTENANCE.

3. For new supervisors, a minimum of 40 hours of in-service training directed at the supervision of child welfare case workers, to begin within two weeks of assuming supervisory responsibility and to be completed within six months; and

MAINTENANCE.

4. For supervisors, a minimum of 24 hours of in-service training each year.

MAINTENANCE.

- E. DCS shall have a full-time qualified director of training and shall maintain sufficient staffing, budget funds, and other resources to provide comprehensive child welfare training to ensure that all persons responsible for children in the plaintiff class will have sufficient training to permit them to comply with the relevant mandates of this agreement, DCS policy, and reasonable professional standards.

MAINTENANCE.

- F. Prior to contracting with any private provider, DCS will review, approve, and monitor the curriculum for caseworker pre-service and in-service training to assure that general content areas are appropriate to the work being performed by the agency. Where casework activities mirror the duties of the DCS case manager, the curriculum will correspond with DCS pre-service and in-service training.

MAINTENANCE.

- G. The state shall provide stipends and other incentives to support graduate work to enable the state to hire and retain case managers with undergraduate and graduate degrees in social work and related fields. The state will periodically assess whether salary increases are necessary to ensure that Tennessee is competitive

with neighboring states in its compensation for case managers and case manager supervisors.

MAINTENANCE.

- H. The Department shall develop and implement a performance evaluation process which includes an annual assessment of the extent to which case managers and case manager supervisors are handling their case responsibilities consistently with the provisions of this agreement, DCS policy, and reasonable professional standards. The performance evaluation process shall ensure the identification of case managers needing additional training and that appropriate action (including reassignment or termination) is taken with respect to case managers who are not performing at acceptable levels.

MAINTENANCE.

- I. Prior to contracting or renewal with any private provider, the Department will ensure that each private provider agency has implemented an appropriate performance evaluation process to ensure the competency of those staff with responsibilities comparable to DCS case managers.

MAINTENANCE.

- J. A single case manager assigned to a case shall have full responsibility for that case, including working with the child and family and to visit with both for the purposes of assessing and meeting their needs; determining and implementing a permanency plan; supervising, supporting and assuring the stability of the child's placement; and assuring a safe, adequate and well-planned exit from foster care. A DCS case manager shall be assigned to every case. If a private provider is engaged in the case, the DCS and private provider case managers shall collaborate to ensure compliance with this agreement.

MAINTENANCE.

Any DCS case manager responsible for the case of at least one class member, and private provider staff with comparable responsibilities, shall not have case responsibility for more than:

- 15 individual children in DCS custody if the case manager is a case manager I;
- 20 individual children in DCS custody if the case manager is a case manager II or III with no supervisory responsibility; and
- 10 individual children in DCS custody if the case manager III supervises one or two lower level case managers.

MAINTENANCE.

If DCS decides to propose the use of workers carrying a mix of custodial and non-custodial cases, a weighted equivalent caseload standard will be determined in consultation with the TAC.

MAINTENANCE.

K. Supervision by DCS case managers responsible for cases of any class member and private provider staff with comparable responsibilities shall be as follows:

- A case manager IV or team coordinator may supervise up to 5 lower level case managers and shall not carry their own caseloads; and
- A case manager III may supervise up to 4 lower level case managers.

MAINTENANCE.

A case manager III can only be given supervisory responsibility in circumstances in which the caps on supervisory caseloads dictate that an additional case manager IV would have less than a full supervisory case load. No case manager III supervising more than 2 lower level case managers can have a caseload.

MAINTENANCE.

L. When a case manager leaves the agency, his or her cases shall be reassigned within one business day. No cases shall be uncovered at any time. Except in documented emergency situations, or when the case manager leaves without prior notice, all transfers of cases between case managers shall take place after a face-to-face meeting, including the departing and the receiving case managers' supervisors, to discuss the case. The departing case manager shall make every effort to introduce the receiving case manager, in person, to the child and the child's parents.

M. Any region with an annual case worker turnover rate that exceeds 10% in which cases are either uncovered or are being reassigned to workers at the caseload cap, shall maintain a pool of trained workers to assume the caseloads of departing workers.

MAINTENANCE.

N. All documentation of contacts or developments in a child's case shall be added to the child's case file within 30 days. The case files of class members shall contain adequate documentation of the services provided, progress, placement changes, and authorizations of approval for placements, treatment and services.

MAINTENANCE.

O. Any other child care workers employed by any child care facility or private

provider shall have a minimum of a high school diploma, with preference given to those applicants with one year of previous child welfare-related experience.

MAINTENANCE.

VI. PLACEMENT AND SUPERVISION OF CHILDREN

A. Placement Standards and Exceptions

1. All children shall be placed according to the following standards:
 - a. All children shall be placed within their own region or within a 75-mile radius of the home from which the child entered custody, unless (a) the child's needs are so exceptional that they cannot be met by a family or facility within the region, (b) the child needs replacement and the child's permanency goal is to be returned to his parents who at that time reside out of the region, or (c) the child is to be placed with a relative out of the region.

MAINTENANCE.

- b. Children shall not remain in any emergency or temporary facility, including but not limited to emergency shelters, for more than 30 days. Children shall not be placed in more than one such facility within any 12 month period. An exception to the multiple placement limit within any 12-month period may be made (a) for an individual placement episode for a maximum of 5 days for runaways and children facing a direct threat to their safety, or who are a threat to the safety of others, where immediate removal is necessary, or (b) for a single additional placement in a primary treatment center (PTC) for up to a maximum of 15 days, if a child's behavior has changed so significantly that placement for the purposes of assessment is critical for the determination of an appropriate placement.

MAINTENANCE.

- c. Siblings who enter placement at or near the same time shall be placed together, unless (a) doing so is harmful to one or more of the siblings, (b) one of the siblings has such exceptional needs that can only be met in a specialized program or facility, or (c) the size of the sibling group makes such placement impractical notwithstanding diligent efforts to place the group together. These efforts will be documented and maintained in the case file.

MAINTENANCE.

- d. No child shall be placed in a resource home if that placement will result in (a) more than three foster children in the home, (b) more than six children, including the resource family's natural and/or adopted children, in the home, or (c) more than 3 children under the age of 3 in the home; unless either (a) such placement is in the best interests of all the foster children in the home, or (b) the child is part of a sibling group and there are no other children in the home.
- e. No child under six years of age shall be placed in a placement other than a resource home unless the child has exceptional needs which cannot be met in a resource home but which can be met by the congregate care facility in which the child is placed.

MAINTENANCE.

- f. No child shall be placed in a residential treatment center or any other group care setting with a capacity in excess of eight children unless (a) the child's needs can be met in that specific facility and (b) that facility is the least restrictive placement that could meet the child's needs.

MAINTENANCE.

- g. No child in DCS physical or legal custody in foster care shall be placed, by DCS or with knowledge of DCS, in a jail, correctional or detention facility unless such child has been charged with a delinquency charge or unless otherwise placed or ordered by the court. DCS shall work with law enforcement and court officials to ensure that DCS is immediately notified of any child in DCS legal custody who has been placed in a jail, correctional or detention facility.

MAINTENANCE.

- h. DCS shall not place any child determined by a DCS assessment to be at high risk for perpetrating violence or sexual assault in any foster care placement with foster children not so determined.

- i. Children for whom the permanency goal is adoption should, whenever possible, be placed with a family in which adoption is a possibility.

MAINTENANCE.

- j. DCS shall only contract for placements or services with licensed contractors or subcontractors.

MAINTENANCE.

- 2. For provisions VI.A.1.a., b., c., d., e., and f. above, if DCS approves a placement that does not meet the applicable standard, the Regional Administrator shall either:
 - a. Indicate that the placement meets one of the permissible exceptions under the standards and, if so, ensure that the facts supporting that exception are documented in the case file; or
 - b. Indicate that the placement does not meet one of the permissible exceptions, document the reasons that the placement was nevertheless approved, and indicate any further action to be taken with respect to that placement.
 - 3. The quality assurance division, using aggregate data and case reviews, shall be responsible for tracking, reporting, and ensuring that appropriate action is taken with respect to placements that do not comply with the placement standards in Section VI.A.1.
- B. All children in DCS custody shall receive an assessment, including a medical evaluation and, if indicated, a psychological evaluation, using a standardized assessment protocol. **MAINTENANCE.** The assessment may take place prior to custody, but no later than 30 days after the child comes into custody. As soon as the assessment is completed, the child's placement shall be reevaluated to ensure that it meets the child's needs.
- C. All class members shall have access to a reasonable and appropriate education, including special education services, the need for which shall be timely identified. Children shall be placed in community schools whenever possible. DCS shall assign a full time educational specialist in each region, and twelve regional lawyers with special expertise in educational issues, to ensure that individual children in DCS custody have access to a reasonable and appropriate education, including special education services, the need for which shall be timely identified.

MAINTENANCE.

- D. Psychotropic medication shall not be used as a method of discipline or control of a child. When possible, parental consent shall be obtained for the use of medically necessary psychotropic medication. If a parent is unavailable to provide consent, the regional health unit nurse shall review and consent to medically necessary psychotropic medication. Regional health unit nurses shall ensure that each of their consents is appropriately recorded, whether a child is placed in a DCS placement or through a private provider. The Medical Director shall oversee and ensure compliance with the Department's policies regarding psychotropic medications.
- E. An appropriately qualified Medical Director shall be responsible for revising, updating, and monitoring the implementation of policies and procedures surrounding all forms and uses of physical restraint and isolation/seclusion of class members, and shall be authorized to impose corrective actions. All uses of physical restraint in any placement, and all uses of isolation/seclusion in group, residential, or institutional placements, shall be reported to and reviewed by the quality assurance division and made available to the licensing unit and the Medical Director for appropriate action.
- F. DCS shall have a full range of independent living services and shall provide sufficient resources to provide independent living services to all children in the plaintiff class who qualify for them.

MAINTENANCE.

- G. DCS will maintain a child placement and private provider division within its Central Office. This division will provide consultation and technical assistance to regional staff on placement issues so that regional placement support units are able to carefully and appropriately match the child's individual needs to a placement facility or foster family. DCS will maintain regional placement units with sufficient staff, automated information and tracking capabilities, and other resources to ensure that all children requiring placement are placed promptly, appropriately, and in accordance with their needs.

MAINTENANCE.

- H. All children in the plaintiff class shall receive visits from the DCS case manager responsible for their case, whether the child is placed through a program directly run by DCS or through a private provider, as follows:
 - 1. For children in DCS foster homes, worker-child visiting shall mean a face-to-face visit between the child's DCS case manager and the child. Visits may take place in the child's placement, at school if the child is of school age, in the case manager's office, or in another appropriate setting. Visits shall be made as frequently as is necessary to assure the child's adjustment to the placement, to ensure the child is receiving appropriate treatment and

services, and to determine whether the child's needs are being met and service goals are being implemented. All visits shall include a private meeting between the case manager and the child out of the presence of the foster parents or other caregiver, except when the child is an infant. There shall be at least 6 face-to-face visits during the first two months after a child's entrance into custody, and at least 3 of these visits shall take place in the child's placement. Following the first two months after a child's entrance into custody, there shall be at least 2 face-to-face visits each month. One of these two face-to-face visits must take place in the caregiver's home.

2. For children in a foster home or facility operated by a private provider:
 - a. Private provider case worker: DCS shall require and ensure that the private provider case worker visits the child as frequently as necessary to ensure the child's adjustment in placement, to ensure the child is receiving appropriate treatment and services, and to determine that the child's needs are being met and service goals are being implemented. Visits may take place in the child's placement, at school if the child is of school age, in the case manager's office, or in another appropriate setting. Worker-child visiting shall mean a face-to-face visit between the child's private agency case worker and the child. All visits shall include a private meeting between the private provider case worker and the child out of the presence of the foster parents or other caregiver, except when the child is an infant. There shall be at least 6 face-to-face visits during the first two months after a child's entrance into custody in a foster home or facility operated by or under a private contract agency, and at least 3 of these visits shall take place in the child's placement. Following the first two months after a child's entrance into custody, there shall be at least 2 face-to-face visits each month. One of these two face-to-face visits must take place in the caregiver's home.
 - b. DCS case manager: The DCS case manager shall visit each child in a foster home or facility operated by a private provider as frequently as necessary to ensure the child's adjustment to the placement, to ensure the child is receiving appropriate treatment and services, and to determine that the child's needs are being met and service goals are being implemented, but at least once each month. Worker-child visiting shall mean a face-to-face visit between the child's DCS case manager and the child in the child's placement and, except when the child is an infant, shall include a private meeting between the DCS case manager and the child outside the presence of the foster parents or other caregiver, the facility staff and the private provider case worker. The private

provider worker and DCS case manager shall meet face-to-face at least once every three months in order to have substantial discussions with each other, the foster parent(s) or other caretaker, and the child, if age appropriate.

VII. PLANNING FOR CHILDREN: MINIMUM STANDARDS FOR ALL CHILDREN AND YOUTH

- A. DCS shall maintain and update policies and procedures that establish a best practices planning process, as set forth in the Principles of this agreement, for all foster children in DCS custody.

MAINTENANCE.

- B. A trained, full-time or back-up facilitator shall participate in every Initial CFTM and Placement Stability CFTM. The following persons shall be Child and Family Team members as appropriate: (1) private provider agency worker; (2) guardian ad litem (GAL); (3) court appointed special advocate (CASA); (4) resource parents; and (5) the child's parents or other relatives or fictive kin. DCS shall provide reasonable advance notice of CFTMs to the GAL and CASA worker. Any child 12 years old or older shall participate in the meeting, unless extraordinary circumstances exist, and are documented in the case record, as to why the child's participation would be contrary to his or her best interests.
- C. The Department shall begin the process of building a team, assessing, and convening a formal meeting prior to children entering state custody, except when an emergency removal is warranted. In the case of an emergency removal, an Initial CFTM shall be convened no later than seven (7) days after a child enters state custody. Efforts to ensure the parents' participation shall include providing transportation and/or child care and/or a brief rescheduling, and shall be documented in the child's case file.
- D. The Initial Permanency Planning CFTM shall occur within thirty (30) calendar days of a child entering custody. If the parents cannot be located or refuse to meet with the worker, the DCS case manager shall document all efforts made to locate the parents and to ensure that the meeting takes place. All services documented in the record as necessary for the achievement of the permanency goal shall be provided within the time period in which they are needed. Within sixty (60) calendar days of a child entering custody, an individualized, completed and signed permanency plan for that child must be presented to the court. Biological parents shall have the meaningful opportunity to review and sign a completed handwritten or typewritten plan at the conclusion of the Initial Permanency Planning CFTM or before the plan is submitted to the court.
- E. The Department shall convene a Placement Stability CFTM prior to any child or youth potentially disrupting from a placement while in state custody, or, in the event of an emergency change in placement, as soon as team members can be

convened, but in no event later than fifteen (15) days before or after the placement change.

- F. The DCS supervisor assigned to the case shall participate in the Initial CFTM, the Initial Permanency Planning CFTM, and the Discharge Planning CFTM. At minimum, the supervisor will participate in one CFTM every six months for each child on their supervisory caseload. For all other CFTMs, the supervisor shall make a decision about his or her participation based on the complexity of the case; the availability of other supports, such as a full-time or skilled facilitator; and the case manager's experience. DCS shall develop a process for supervisors to review, monitor and validate the results of CFTMs to ensure supervisors remain engaged and responsible for quality casework.
- G. No child shall be assigned a permanency goal of Planned Permanent Living Arrangement (PPLA) unless it is consistent with the January 2008 PPLA Protocol.

MAINTENANCE.

- H. Independent living is no longer used, and shall not be used, as a permanency goal, but rather is used as a service array to enable older youth to transition into independent adult life.

MAINTENANCE.

- I. Children with an initial goal of return home may also have another concurrently planned permanency goal. Record keeping and tracking for any child in the class with more than one concurrently planned permanency goal shall be consistent with a goal of return home until return home is no longer an option.

MAINTENANCE.

- J. The child's DCS case manager and his or her supervisor shall have an ongoing responsibility to assure that the child's permanency goal is appropriate or to change it if it is not, to assure that the child's services and placement are appropriate and are meeting the child's specific needs, to assure that the parents and other appropriate family members are receiving the specific services mandated by the permanency plan and that they are progressing toward the specific objectives identified in the plan, and to assure that any private service providers identified in the plan or with whom the child is in placement are delivering appropriate services.
- K. Whenever the Permanency Plan goal needs to be revised a CFTM shall be convened. The child's permanency plan shall be reviewed and updated at CFTMs at least every three months. These meetings must be separate and distinct from any court hearings, foster care review board meetings or other judicial or

administrative reviews of the child's permanency plan.

- L. DCS shall recommend to the Juvenile Court a 90-day trial home visit for all children for whom a decision is made to return home or to be placed in the custody of a relative, before the child or youth is projected to exit state custody. An exception to this general rule shall be allowed, based on specific findings and the signed certification of the case manager, supervisor and regional administrator for the child, that a shorter trial home visit of no less than 30 days is appropriate to ensure the specific safety and well-being issues involved in the child's case.

MAINTENANCE.

- M. A Discharge Planning CFTM shall be convened within thirty (30) days of a child returning home on trial home visit, exiting custody to a newly created permanent family, or aging out of the system. If exiting custody is determined to be inappropriate, DCS shall make the appropriate application to extend the child's placement in the custody of DCS before the expiration of the trial home visit. Participants in the Discharge Planning CFTM will identify all of the services necessary to address the issues that required removal, to assure the child's continued safety, and to support the child or youth and family and the trial home visit. During any trial home visit, the child's case manager shall visit the child in person at least 3 times in the first month, and twice per month for any remainder of the trial home visit period ordered by the court, and each visit shall occur outside the parent or other caretaker's presence. The case manager shall also contact service providers, and shall visit the school of all school age children at least once each month during the trial home visit period, shall interview the child's teacher, and ascertain the child's progress in school and whether the school placement is appropriate.

VIII. FREEING A CHILD FOR ADOPTION

- A. The process of freeing a child for adoption and seeking and securing an adoptive placement shall begin as soon as adoption becomes the child's permanency goal but in no event later than as required by federal law. The adoption process shall begin immediately for all children for whom a diligent search has failed to locate either parent and for whom no appropriate family member is available to assume custody.
- B. DCS has replaced its process for making legal risk placements with policies and procedures for the "dual licensing" of resource families as foster parents and adoptive parents.

MAINTENANCE.

C. DILIGENT SEARCHES AND CASE REVIEW TIMELINE

1. Diligent searches for parents and relatives of a child placed in state custody shall be conducted and documented according to DCS policy by the DCS case manager prior to the child coming into custody if possible but no later than 30 days after the child comes into custody, and thereafter as needed, but at least within three (3) months from when a child enters custody and again within six (6) months from when a child enters custody.
2. When parents have been indicated for severe abuse, a discussion with the DCS attorney shall take place within 45 days regarding whether to immediately seek to terminate parental rights. The decision shall be documented in the child's case record.
3. Within nine (9) months of a child entering state custody, the permanency plans shall be reviewed with the DCS attorney to accomplish the following:
 - a. If the child is to return home or be placed in the custody of a relative, a timetable for unsupervised visits, trial home visits and hearings to be returned to the parent/relative shall be established.
 - b. If the child is not returning home, a timetable for providing documentation and information to the DCS attorney shall be established in order to file a termination of parental rights petition.
 - c. If the decision to file a TPR has been made, and the child is not in a pre-adoptive home, the case manager along with the members of the Child and Family Team shall continue to search for relatives as placement options.
4. If return home or other permanent placement out of custody (relative or guardianship) without TPR is inappropriate at both 12 and 15 months, a TPR petition shall be filed no later than 15 months after the child is placed in DCS custody, unless there are compelling reasons, which shall be documented on the child's case file, for not doing so.

MAINTENANCE.

5. The following series of time frames related to critical activities in the adoption process shall be followed as set forth in DCS policy:
 - a. Within 90 days of the permanency goal changing to adoption, the DCS attorney shall file the petition to terminate parental rights, unless there is a legal impediment, in which case the petition shall be filed as soon as possible once the legal impediment is resolved.

MAINTENANCE.

- b. DCS shall take all reasonable steps to ensure that the date of the trial court order granting full guardianship shall be within eight (8) months of the filing of the TPR.

MAINTENANCE.

- c. DCS shall take all reasonable steps to ensure that the date of the finalization of the adoption or transfer to permanent guardianship shall be within twelve (12) months of full guardianship.

MAINTENANCE.

- d. All children who have been in custody for 15 months or more with no TPR petition filed shall be reviewed by the Commissioner or his or her designee.

MAINTENANCE.

- 6. A resource parent who has been providing appropriate foster care for a child for 12 months shall have a preference as an adoptive parent for that child, should the child become legally available for adoption.

MAINTENANCE.

D. FINDING OUR CHILDREN UNCONDITIONAL SUPPORTS (FOCUS) TEAMS

- 1. The FOCUS Team will ensure that all children or youth entering full guardianship each month will be reviewed to determine whether or not these children or youth have a permanent family identified and that the needed supports and services are in place to ensure timely permanency.

MAINTENANCE.

- 2. If there is a permanent family identified for the child, there will be an assessment regarding any barriers to permanency. If there are identified barriers to permanency, appropriate referrals will be made to the regions or private provider agency or agencies as may be needed and appropriate. Children and youth with an identified permanent family will be reviewed monthly to assess whether the identified permanent family is still a viable permanency option.

MAINTENANCE.

3. For children and youth without permanent families identified, the following steps will be taken to ensure timely permanency:
 - a. The Child and Family Team will ensure the development and implementation of the child or youth's Individualized Recruitment Plan, which will include time frames, roles, and responsibilities;

MAINTENANCE.

- b. The Child and Family Team will ensure that the child or youth is registered on ADOPT US Kids to help match the child or youth with potential families;

MAINTENANCE.

- c. The Child and Family Team will ensure the use of archeological digs, family searches, interviews and other options to build a team of informal and formal supports to assist in finding permanency.

MAINTENANCE.

4. The FOCUS Team will monitor case progress, provide tracking and outcome data to measure the effectiveness of the FOCUS process in moving children and youth toward permanency, and use aggregate and qualitative data to report on trends that promote and prevent timely permanency for children. This will include reporting and analysis on those children and youth disrupting from placements while in full guardianship.

MAINTENANCE.

- E. DCS shall maintain a system of adoption subsidies and post-adoptive services and provide notice of and facilitate access to those services at the earliest possible time to all potential adoptive families and resource families.

MAINTENANCE.

IX. RESOURCE PARENT RECRUITMENT, RETENTION, AND APPROVAL

- A. DCS shall establish and maintain a statewide, regional and local program of resource parent recruitment. Under Tennessee's dual approval process, both foster and adoptive parents are considered to be resource parents. DCS will ensure the availability of a toll-free phone number in all regions of the state to provide information concerning the availability of adoption information, training, the approval process and children available for adoption.

MAINTENANCE.

B. DCS will develop and maintain standards to approve only appropriate resource families. All such approvals will be handled within the regions or by private provider agencies, which shall be adequately staffed and trained.

1. All inquiries from prospective resource parents shall be responded to within 7 days after receipt.

MAINTENANCE.

2. Home studies shall be completed within 90 days of completing the approved training curriculum, unless the applicant defaults or refuses to cooperate.

MAINTENANCE.

3. Identified staff persons will conduct exit interviews with all resource families who voluntarily resign as resource parents, and DCS shall issue annual reports on why resource families leave DCS and what steps are necessary to ensure their retention.

MAINTENANCE.

4. To the extent possible, DCS shall maintain a practice of using existing resource families to recruit and retain new resource families, and shall maintain a statewide and regional support system for resource families.

MAINTENANCE.

5. DCS shall provide adequate and appropriate respite services on a regional basis to resource parents with special needs children.

MAINTENANCE.

C. All resource parent room and board rates (including rates for DCS resource parents, private provider resource parents and certified relatives and kin) will at a minimum meet USDA standard and will be adjusted annually to be no lower than USDA standards for the cost of raising children within this region.

MAINTENANCE.

D. DCS shall provide specialized rates for DCS and private provider resource parents providing services to special needs children. **MAINTENANCE.** DCS shall supply and shall ensure that private providers supply any specialized training necessary for the care of special needs children. DCS also will continue to contract with private providers for medically fragile and therapeutic foster care services. **MAINTENANCE.**

- E. DCS shall schedule resource parent training classes, including individual training as needed, every thirty days in every region at times convenient to prospective resource parents, who shall not receive placement of a child until completing such training. DCS may waive resource parent approval requirements for relatives and kin after completing a home visit and local criminal records check, but relatives and kin must complete all remaining approval requirements within 150 days of placement.

MAINTENANCE.

- F. DCS shall ensure that the pool of resource families is proportionate to the race and ethnicity of the children and families for whom DCS provides placement and services, provided however that individual children shall be placed in resource families without regard to race or ethnicity.

MAINTENANCE.

X. STATEWIDE INFORMATION SYSTEM

- A. DCS shall establish and maintain a statewide computerized information system for all children in DCS custody that is accessible in all regional offices and into which workers shall be able to directly enter data. The statewide computerized information system shall ensure data integrity and user accountability. The system shall have the necessary controls to prevent the duplication of data and to reduce the risk of incorrect or invalid data.

MAINTENANCE.

- B. This system shall include uniform data presentation, including but not limited to AFCARS elements from DCS for all children in the plaintiff class. This system shall be audited periodically to ensure the accuracy and validity of the data. This system shall provide an immediately visible “audit trail” to the data base administrators of all information entered, added, deleted or modified, and shall have necessary security to protect data integrity. This system shall be capable of providing system-wide reports.

MAINTENANCE.

- C. An intensive data clean-up process shall ensure the accuracy of all data, including but not limited to data on all individual children in the plaintiff class, in the statewide computerized information system.

MAINTENANCE.

XI. QUALITY ASSURANCE

- A. DCS shall maintain a statewide quality assurance program, which shall be directed by a quality assurance division. The quality assurance division shall assure that, in addition to external case file reviews and monitoring, there is an internal method to perform special administrative case record reviews. The quality assurance division shall track, coordinate, and integrate all DCS quality assurance activities. The quality assurance division shall provide critical attention to the follow-up needed to improve services and outcomes.

MAINTENANCE.

- B. This division shall provide regular reports and shall also conduct specialized case record reviews on issues relevant to this agreement and other issues affecting the care of children.

MAINTENANCE.

- C. The division shall be adequately staffed and shall receive special training to fulfill its responsibilities.

MAINTENANCE.

- D. At a minimum, the quality assurance division shall, once every 12 months, review a statistically significant number of cases from each region. These case file reviews shall include interviews and an independent assessment of the status of children in the plaintiff class. As part of this annual review, the quality assurance division, central office, and other designated staff shall develop a measure of appropriate and professional decision-making concerning the care, protection, supervision, planning and provision of services and permanency for children in the class. This measure shall be utilized in conjunction with the case file reviews to measure DCS's performance.

MAINTENANCE.

- E. The quality assurance division, utilizing aggregate data and case reviews as appropriate, shall be responsible for tracking, reporting and ensuring that appropriate action is taken with respect to the following categories of cases:
1. Children who have experienced three different placements, excluding a return home, within the preceding 12 months.
 2. All cases in which a child has been in more than two shelters or other emergency or temporary placements within the past 12 months, and in all

cases in which a child has been in a shelter or other emergency or temporary placement for more than 30 days.

MAINTENANCE.

3. Children with a permanency goal of return home that has remained in effect for more than 24 months.

MAINTENANCE.

4. Children who have returned home and reentered care more than twice and have a permanency goal to return to that home.

MAINTENANCE.

5. Children with a sole permanency goal of adoption for more than 12 months for whom a petition to terminate parental rights has not been filed.

MAINTENANCE.

6. Children with a sole permanency goal of adoption for more than one year who have not been placed in an adoptive home.

MAINTENANCE.

7. Children more than 60 days in custody who do not have a permanency plan.

MAINTENANCE.

8. Children for whom the permanency goal has not been updated for more than 12 months.

MAINTENANCE.

9. Children who have been in custody for 15 months or more with no TPR petition filed.

MAINTENANCE.

- F. DCS shall implement the recommendations in the Racial Disparity Report set forth in the implementation plan approved by the Court on August 19, 2004.

MAINTENANCE.

- G. The TAC will continue to report on the status of all foster children in DCS

custody who entered DCS custody prior to October 1, 1998.

MAINTENANCE.

XII. SUPERVISION OF PRIVATE PROVIDER AGENCIES

- A. All private providers which provide placements or services to class members shall only do so pursuant to annual performance-based contracts.

MAINTENANCE.

- B. DCS shall only contract with those private providers that meet the provisions of this agreement that specifically apply to those agencies and that meet state standards governing the operation of child care facilities. These state standards shall reflect reasonable professional standards. DCS shall not contract with any private provider that has not been licensed by the State to provide placements for children in the plaintiff class.

MAINTENANCE.

- C. DCS shall not contract and shall immediately cease contracting with any program or private provider that gives placement preference by race, ethnicity, or religion.

MAINTENANCE.

- D. Any agency or private provider contracting with DCS shall be prohibited from refusing to accept a child referred by DCS as appropriate for the particular placement or program.

MAINTENANCE.

- E. DCS shall maintain sufficient staff to allow for appropriate monitoring and oversight of private providers. All private providers supplying placements for children in the plaintiff class shall be inspected annually by DCS staff with relevant provider monitoring and oversight responsibilities in an unannounced visit and DCS shall determine in a written report whether the private provider complies with state licensing standards. The units responsible for the various aspects of private provider monitoring and oversight, including the licensing unit, shall collaborate with the DCS quality assurance division and the central office division responsible for child placement and private provider contracts to determine agency compliance with the terms of this agreement.
- F. DCS shall not contract with any private provider, for which any owner, member of the board of directors, or member of the board of trustees also holds any other position that may influence the placements of class members. Such positions include, but are not limited to, juvenile court judges, magistrates, or other court

officers. All future contracts or contract renewals shall contain this policy as a binding term of the contract.

MAINTENANCE.

XIII. FINANCIAL DEVELOPMENT

- A. DCS shall develop and implement policies and procedures to maximize funding through Titles IV-B and IV-E of the Adoption Assistance and Child Welfare Act of 1980.

MAINTENANCE.

- B. All funds remitted for children in the plaintiff class to the State of Tennessee by the United States Department of Health and Human Services, as described above, shall be committed exclusively to the provision of services and staff serving class members. It is the intent of the state that dollars committed to DCS for the provision of services and resources to benefit children in the class and children at risk of entering the class shall not be decreased if efforts to maximize federal dollars result in additional federal funding. Nothing in this provision shall reduce the defendants' financial obligations to comply with the terms of this agreement.

MAINTENANCE.

- C. DCS shall maintain an appropriate financial management system capable of ensuring timely and accurate payments to family foster homes, adoptive homes, and private providers.

MAINTENANCE.

XIV. TECHNICAL ASSISTANCE COMMITTEE

- A. A technical assistance committee ("TAC") of no fewer than two and no more than four neutral experts in the child welfare field has been selected to assist the state to implement this agreement. The TAC shall be comprised of Judith Meltzer, Andrew Shookhoff, Paul Vincent and Steven D. Cohen. Should any of the TAC members become unavailable, the remaining TAC members will be authorized, but not required, to select replacements. Appointment of additional TAC members shall require the consent of the parties.
- B. The TAC is to advise DCS on the child welfare policy, management and practice issues delineated in this agreement, as well as other issues which DCS or the TAC agree to consult on, and as set forth in Section XV, act as Monitor.

XV. MONITORING

- A. The TAC shall continue in the role of independent Monitor that will evaluate, monitor and report on performance under the terms of this agreement until this Court's jurisdiction terminates as described in Section XVIII.D. The TAC shall issue reports on performance under this agreement for the twelve-month period from January 1, 2010, through and including December 31, 2010, and for each six-month period thereafter. To inform its reports, the TAC will look first to existing DCS data and reports, and Defendants will provide the TAC all requested information and access to staff within DCS and the Executive Branch as the TAC deems necessary. The TAC is authorized to require DCS to create new reports on the status of implementation of and compliance with this agreement. The TAC shall continue to report on all subject areas that it has previously reported on in this action. The TAC agrees to respect the confidentiality of any documents that are in draft form or are otherwise privileged.
- B. Plaintiffs shall have access from the TAC to all information made available to the TAC, and to all other information necessary to ensure compliance and enforcement of this agreement. If Plaintiffs become aware of information related to possible non-compliance that they wish to investigate, Plaintiffs shall notify the TAC, without any limitation to Plaintiffs' right to access all information necessary to ensure compliance and enforcement of this agreement. Plaintiffs shall not initiate case file reviews unless necessary in connection with a motion for non-compliance or enforcement.
- C. Defendants shall continue to fund the TAC's monitoring and technical assistance functions. The TAC shall exercise final authority over its use and expenditure of monitoring and technical assistance funding.
- D. The TAC, in consultation with the parties, shall determine and describe in each report the specific methodologies, which may include a combination of longitudinal and point-in-time data analysis, it has employed to meet its reporting requirements.

XVI. OUTCOME AND PERFORMANCE MEASURES

A. Child Welfare Outcomes

1. Reunification

At least 80% of children entering care who are reunified with their parents or caregivers at the time of discharge from custody shall be reunified within 12 months of the latest removal date.

Of the remaining children, 75% shall be reunified within 24 months of the latest removal date.

MAINTENANCE.

2. Adoption Finalization

At least 75% of children in full guardianship shall have their adoption finalized or permanent guardianship transferred within 12 months of full guardianship.

MAINTENANCE.

3. Number of placements

At least 90% of children in care shall have had two or fewer placements within the previous 12 months in custody, not including temporary breaks in placement for children who run away or require hospitalization and return to the same placement.

MAINTENANCE.

At least 85% of children in care shall have had two or fewer placements within the previous 24 months in custody, not including temporary breaks in placement for children who run away or require hospitalization and return to the same placement.

MAINTENANCE.

4. Length of time in placement.

At least 75% of the children in placement who entered after October 1, 1998, shall have been in placement for two years or less.

MAINTENANCE.

No more than 17% of the children in placement shall have been in placement for between two and three years.

MAINTENANCE.

No more than 8% of the children in placement shall have been in placement for more than three years.

MAINTENANCE.

5. Reentry into placement

No more than 5% of children who enter care shall reenter within 1 year after a previous discharge.

MAINTENANCE.

6. Achievement measures upon discharge

At least 90% of the children who are discharged from foster care (excluding children on runaway) because they reached the age of 18 shall have at least one of the following apply at the time of discharge: earned a GED; graduated from high school; enrolled in high school, college, alternative approved educational program for special needs children, vocational training; or be employed full time.

B. Performance Indicators / Practice.

1. Parent-child visiting

a. The standard: For children in the plaintiff class with a goal of reunification, parent-child visiting shall mean a face-to-face visit with one or both parents and the child which shall take place for no less than one hour each time (unless the visit is shortened to protect the safety or well-being of the child as documented in the child's case record). The visit shall take place in the child's home if possible or in as homelike a setting as possible, or for longer as otherwise required by the child's permanency plan and reasonable professional standards. This standard does not apply to situations in which there is a court order prohibiting visitation or limiting visitation to less frequently than once every month. The child's case manager may consider the wishes of a child (generally older adolescents) and document in the case file any deviation from usual visitation requirements.

MAINTENANCE.

b. At least 50% of all class members with a goal of reunification shall be visited face-to-face by one or both parents at least twice per month for at least one hour in as home-like a setting as possible, unless there is a court order to the contrary or the case manager has considered and documented the wishes of a child to deviate from this requirement.

MAINTENANCE.

c. For the remaining class members with a goal of reunification who are not visited twice per month, at least 60% shall be visited once a

month in keeping with the standards of the preceding paragraph.

MAINTENANCE.

2. Placing siblings together

At least 85% of all siblings who entered placement during the reporting period shall be placed together, unless doing so is harmful to at least one of the siblings; a sibling has exceptional needs requiring placement in a specialized program or facility; or the size of a sibling group makes such placement impracticable despite diligent efforts to place the group together, in which event the case manager shall document immediate efforts to locate a suitable home in which to reunite the siblings.

MAINTENANCE.

3. Sibling visiting

- a. The standard: For children who are not placed in the same home or facility as their siblings there shall be face to face visits between the child and any of his or her sibling(s) who are in the plaintiff class in the most home-like setting available. The visits shall take place in the parent's home, the foster home in which one of the siblings is living, the home of a relative, or the most home-like setting otherwise available and shall occur as frequently as is necessary and appropriate to facilitate sibling relationships but no less frequently than once each month. The visiting shall take place for no less than one hour each time (unless the visit is shortened to protect the safety or well-being of the child as documented in the child's case record), or more as otherwise required by the child's permanency plan and reasonable professional standards. Reasonable exceptions to the frequency requirement shall include cases in which: (1) there is a court order prohibiting visitation or limiting visitation to less frequently than once every month; (2) visits are not in the best interest of one or more of the siblings and the facts supporting that determination are documented in the case file; (3) the case manager for at least one of the siblings has considered the wishes of the sibling (generally older adolescents) and deviates from this standard based on the child's wishes; or (4) a sibling is placed out of state in compliance with the Interstate Compact on the Placement of Children and there is documentation of reasonable efforts by DCS to maintain sibling contact between in-state and out of state siblings, including consideration of placement near border states and efforts to arrange visits and for contact by telephone or other means. All exceptions, and all reasonable steps to be taken to assure that visits take place and

contact is maintained, shall be documented in the case file.

- b. At least 90% of all children in the class in placement who have siblings with whom they are not living shall visit with those siblings at least once a month during the reporting period at issue.

4. Filing a petition to terminate parental rights

At least 70% of children in the class with a sole permanency goal of adoption during the reporting period shall have a petition to terminate parental rights filed within three months of the goal change to adoption.

MAINTENANCE.

Regardless of whether the Department meets or exceeds the standard in the preceding paragraph, 85% of all children with a sole permanency goal of adoption during the reporting period shall have a petition to terminate parental rights filed within 6 months of when the goal was changed to adoption.

MAINTENANCE.

5. Goal of Planned Permanent Living Arrangement

No more than 5% of children in the plaintiff class shall have a goal of Planned Permanent Living Arrangement.

MAINTENANCE.

6. In-region placements

At least 85% of children in the class shall be placed within the region from which they entered placement or within a 75 mile radius of the home from which the child entered custody.

MAINTENANCE.

XVII. MODIFICATION

This agreement may be modified on the consent of the parties or upon appropriate motion filed with the court.

XVIII. ENFORCEMENT, TERMINATION AND EXIT

A. General Principles Guiding Enforcement

1. All of the provisions in this agreement are separately and independently

enforceable. Plaintiffs agree not to seek judicial relief for isolated, technical, or de minimis violations of this agreement, or for violations relating solely to an individual child.

2. Unless otherwise specifically stated, all provisions of this agreement shall apply to all children in the class, regardless of whether they are in a DCS or private provider placement, and regardless of the type of placement.
3. Nothing in this agreement shall limit the right of the plaintiffs to seek from the court appropriate relief to remedy any violations of this agreement.

B. Dispute Resolution

1. With regard to all provisions in this agreement, the following process shall apply:
 - a. Prior to seeking judicial remedies for non-compliance, Plaintiffs shall notify the Defendants in writing if they believe Defendants are out of compliance with any provisions of this agreement.
 - b. The parties shall engage in a 30-day period of good faith negotiations in an effort to resolve the non-compliance issues and shall use the TAC to facilitate this process.
 - c. Plaintiffs may bypass the dispute resolution provisions of this agreement and seek immediate relief in court if Plaintiffs clearly demonstrate that DCS action or inaction in contravention of this agreement caused or is likely to cause an immediate and substantial risk of serious harm to children in the class.

C. Identification of “MAINTENANCE” Provisions

1. No later than thirty (30) days after the TAC issues each monitoring report pursuant to Section XV.A, the parties and the TAC shall meet and confer in an attempt to negotiate and agree upon which provisions in this agreement shall be identified as MAINTENANCE and which shall not. Such identification shall include keeping provisions previously identified as MAINTENANCE with that identification, removing the identification of MAINTENANCE from provisions that were previously identified as MAINTENANCE, and adding the identification of MAINTENANCE to provisions that were previously not identified as MAINTENANCE. The period of negotiation can be extended for one period of 10 days upon the consent of the parties.

2. If the identification of any provision(s) as MAINTENANCE (or not) remains in dispute, the parties shall refer the decision on such identification to the TAC, which shall issue its determination within thirty (30) days of the referral. The TAC's decision shall be final, binding, and unappealable by the parties.
3. Within ninety (90) days after the TAC issues each monitoring report pursuant to Section XV.A., the parties shall file with the court a proposed joint modification to this agreement that includes any revised identification of provisions as MAINTENANCE.

D. Termination and Exit

1. This agreement shall remain in full force and effect until the court issues an order terminating jurisdiction over this action.
2. Once Defendants have achieved and simultaneously sustained MAINTENANCE status on all provisions in Sections II - XIII and XVI for a period of twelve (12) months, Defendants may request that the court issue an order terminating jurisdiction over all provisions of this agreement, except for Section XIX, by filing a Notice of Compliance and Proposed Order Terminating Jurisdiction with the court. If the Monitor's reports show the required achievement and sustained maintenance status, Plaintiffs may only oppose such Notice and Proposed Order in the extraordinary circumstance in which specific evidence establishes such a serious threat to the sustained functioning of DCS that continued jurisdiction is required in the interests of justice.

XIX. EXTERNAL ACCOUNTABILITY REPORTING STRUCTURE

- A. Defendants, with input from the TAC and Plaintiffs' counsel, shall develop an external accountability reporting center (the "Center"). Beginning in January of 2011, DCS will fund and the Center will build the capacity to report publicly on DCS's maintenance of program, policy and practice improvements under this agreement.
- B. After the court terminates jurisdiction pursuant to Section XVIII.D over all provisions of this agreement except for this section, jurisdiction over this section shall continue for a period of eighteen (18) months.
- C. Upon the court's termination of jurisdiction pursuant to Section XVIII.D, the Center will begin its public reporting which shall include, at a minimum, semi-annual reports on DCS performance under the terms of this agreement. DCS will provide the Center all data necessary to its function.
- D. Defendants shall provide the financial resources required for the reasonable operation of the Center for a period of eighteen (18) months after the court

terminates jurisdiction pursuant to Section XVIII.D of all provisions except this provision. Upon expiration of such eighteen (18) month period, Defendants shall file an unopposed Notice of Compliance with this Section XIX and a Proposed Order terminating jurisdiction over this Section.

XX. ATTORNEYS FEES AND EXPENSES

As prevailing parties in this lawsuit, Plaintiffs are entitled to recover and reserve the right to seek reasonable attorneys fees and expenses up to the date of this agreement and for all subsequent activities in this lawsuit to the extent authorized pursuant to 42 U.S.C. §1988.

DATED: _____, 2015
Nashville, TN

SO ORDERED:

HONORABLE TODD J. CAMPBELL, U.S.D.J.

APPROVED FOR ENTRY:

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EXHIBIT C

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

_____)	
BRIAN A., et al.)	
)	
Plaintiffs,)	Civ. Act. No. 3:00-0445
)	Judge Todd J. Campbell
v.)	Magistrate Judge Joe B. Brown
)	
BILL HASLAM, et al.)	
)	
Defendants.)	

APRIL 2015 MODIFIED SETTLEMENT AGREEMENT AND EXIT PLAN

TABLE OF CONTENTS

Preamble 3

I. Principles of the April 2015 Modified Settlement Agreement and Exit Plan and Definitions 3

 A. Principles of the April 2015 Modified Settlement Agreement and Exit Plan..... 3

 B. Class Definition 5

 C. Principles of Tennessee’s Child and Family Team Meeting Model..... 5

 D. Definition of Provisions Identified as “MAINTENANCE” 6

 E. Other Definitions 6

II. Structure of the Agency 7

III. Reporting Abuse and Neglect 7

IV. Regional Services..... 7

V. Staff Qualifications, Training, Caseloads, and Supervision 8

VI. Placement and Supervision of Children..... 13

VII. Planning for Children: Minimum Standards for all Children and Youth 18

VIII. Freeing a Child for Adoption..... 20

IX. Resource Parent Recruitment, Retention, and Approval 23

X. Statewide Information System..... 25

XI. Quality Assurance 26

XII. Supervision of Private Provider Agencies 28

XIII. Financial Development 29

XIV. Technical Assistance Committee..... 29

XV. Monitoring 30

XVI. Outcome and Performance Measures 30

XVII. Modification 34

XVIII. Enforcement, Termination and Exit..... 34

 A. General Principles Guiding Enforcement 34

 B. Dispute Resolution..... 35

 C. Identification of “MAINTENANCE” Provisions 35

 D. Termination and Exit..... 36

XIX. External Accountability Reporting Structure..... 36

XX. Attorneys Fees and Expenses..... 37

PREAMBLE

- A. This April 2015 Modified Settlement Agreement and Exit Plan (hereinafter “this agreement”) supersedes and replaces the September 2014 Modified Settlement Agreement and Exit Plan. Subsequent to the resolution of Plaintiffs’ Motion for Contempt in 2003, Defendants have made progress toward meeting their legal obligations in this action. Accordingly, the parties have negotiated this binding agreement. Pursuant to Section XVIII.D.2, the parties have agreed to the achievements which will allow, upon the Court’s approval, termination of jurisdiction over this action.
 - B. This court has subject matter jurisdiction and personal jurisdiction over this action and therefore the authority to enter this agreement.
 - C. This court shall have continuing jurisdiction of this action to ensure compliance with the terms of this agreement.
 - D. Any state agency responsible for the care, protection, and/or supervision of plaintiff class members shall be bound by the provisions of this agreement. For as long as this agreement remains in effect, all provisions referring to the “Department,” the “Department of Children’s Services” or “DCS,” upon any subsequent changes to the current governmental organizational structure of the Tennessee Department of Children’s Services concerning the children in the plaintiff class as defined herein, shall apply with full force and effect to the State of Tennessee and to any subsequent agency or agencies with any of the responsibilities that apply to the current DCS as of the date of this agreement.
 - E. This agreement, and any of its provisions, are not, and shall not be construed to be, an admission of any liability on the part of any of the defendants concerning any of the claims and allegations in the complaint in this litigation.
- I. PRINCIPLES OF THE APRIL 2015 MODIFIED SETTLEMENT AGREEMENT AND EXIT PLAN AND DEFINITIONS

- A. Principles of the April 2015 Modified Settlement Agreement and Exit Plan
 - 1. All children should have the best possible opportunity to grow up within a safe, nurturing family, either their biological family or, if that is not possible, within an adoptive family.
 - 2. The state should make reasonable efforts to avoid foster care placement by providing services to preserve the biological family whenever that is reasonably possible, separating the child from the child’s parents only when necessary for the child’s welfare or in the interest of the child’s safety. However, child welfare decision-makers must have the professional capacity to make determinations as to when making efforts to preserve the biological family, or leaving the child with that family, is

neither safe for the child nor likely to lead to an appropriate result for the child.

3. After children enter placement, all non-destructive family ties should be maintained and nurtured. Children should be placed with relatives who are able to provide a safe, nurturing home for them, and should be placed with siblings, and relationships with relatives and siblings should be facilitated and maintained by the child welfare agency.
4. Foster care should be as temporary as possible, aimed at providing a permanent home for the child as quickly as possible. In determining what plans and services will best meet this goal, the child's interests must be paramount.
5. The state has primary responsibility for the care and protection of children who enter the foster care system. Insofar as it relies on private provider agencies to assist in meeting this responsibility, it should only do so according to standards set by and rigorously monitored by the state.
6. All children in need of child welfare services should receive full and equal access to the best available services, regardless of race, religion, ethnicity, or disabilities.
7. Children in foster care should be placed in accordance with their individual needs, as close to home and community as possible, in the least restrictive, most family-like setting possible. The state should make all efforts to avoid the use of non-family settings for children, particularly young children.
8. Children in foster care should have stable placements that meet their needs and the services necessary to address both the trauma of foster care placement and the problems surrounding their removal from their family.
9. Children in out-of-home placement must have timely decision-making and implementation about where and with whom they will spend their childhood.
10. Families of children in foster care should be significant participants in the planning and decision-making concerning their children.
11. All parties in judicial proceedings involving neglect, abuse, unruly and delinquency should be provided a fair hearing and their constitutional and other legal rights should be enforced and recognized.
12. Except where a particular provision of this agreement establishes a specific limit on the resources required to be allocated, Defendants shall

commit all necessary resources (administrative, personnel, financial and otherwise) to implement all provisions herein.

13. All actions required for plaintiff class members shall be documented within their individual case file. DCS shall be able to produce aggregate data requested by the Monitor concerning compliance with the provisions herein.
14. All reports made available pursuant to this agreement shall be public information, provided that if any report contains individually identifiable information, such individually identifiable information shall not be made public.

B. Class Definition

Pursuant to the terms of this agreement, this case shall be certified as a class action and the class certified shall be defined as follows: All foster children who are or will be in the legal custody of DCS. "Foster children" shall mean all children who are or will be in the legal custody of DCS, excluding children who are or will be in the legal custody of DCS upon an allegation or adjudication of a delinquent or criminal act. Children who are or will be in the custody of DCS upon an allegation or adjudication of an unruly or status offense shall be included in the class, and children who are or will be in the custody of DCS upon an allegation of a delinquent or criminal act and which allegation is subsequently dropped or fails to result in an adjudication of a delinquent or criminal act and who remain in the legal custody of DCS, shall be included in the class.

C. Principles of Tennessee's Child and Family Team Meeting Model

Tennessee has adopted a model for engaging children, family members and their own support persons in the process of ensuring the safety, permanency and well-being of class members. Tennessee's Child and Family Team Meeting (CFTM) model shall be guided by the following principles:

1. All children in foster care must have a CFTM that meets regularly throughout a child's time in custody, that utilizes the CFTM process for assessment and planning, that monitors and tracks the implementation of the plan, and that reconvenes as needed but no less often than every three (3) months to adjust the plan and respond to new issues.
2. In addition to the child/youth, his or her family, and the child's case manager, the Child and Family Team should include and engage people who represent both formal and informal supports for the family.
3. Except in emergencies, CFTMs should include pre-meeting preparation with the family and child, including face-to-face meetings as appropriate.

4. Children should not enter custody, should not have a permanency plan established or updated, should not disrupt from a placement, and should not be discharged from care without the convening of a CFTM.
5. Case managers should effectively serve as the primary persons responsible for the Child and Family Team Process.

D. Definition of Provisions Identified as “MAINTENANCE”

1. Specific provisions in this agreement are followed by the term MAINTENANCE. In some sections, a whole paragraph is followed by a skipped space and then the term MAINTENANCE below it.
2. For Sections II – XIII, the term MAINTENANCE shall mean, for the sentence immediately preceding the term, or for the paragraph immediately above the term, that if Defendants maintain or improve the performance with such provision(s) as reported by the technical assistance committee (“TAC”) (defined in Section XIV of this agreement) in the monitoring report that immediately preceded the initial court-approved identification of the sentence or paragraph as MAINTENANCE, such performance shall be considered substantial compliance for purposes of Termination and Exit under Section XVIII.
3. For Section XVI, the term MAINTENANCE shall mean, for the paragraph immediately above the term, that: (a) if Defendants maintain or improve the performance with such provision(s) as reported by the TAC in the monitoring report that immediately preceded the initial court-approved identification of the sentence or paragraph as MAINTENANCE, such performance shall be considered substantial compliance for purposes of Termination and Exit under Section XVIII; or (b) if Defendants’ performance in the monitoring report that immediately preceded the initial court-approved identification of the sentence or paragraph as MAINTENANCE, meets or exceeds that required in Section XVI, and Defendants maintain or improve upon the required level of performance in Section XVI, such performance shall be considered substantial compliance for purposes of Termination and Exit under Section XVIII.

E. Other Definitions

1. A child shall be considered to have entered foster care custody on the date that the child enters DCS’s physical, out-of-home custody, or on the date on which the child enters DCS’s legal custody, whichever is sooner. The duration of a child’s time in DCS custody shall include the entire time period after which a child entered custody until formally discharged from DCS custody.
2. Race and/or ethnicity and/or religion shall not be the basis for a delay or

denial in the placement of a child. Race and/or ethnicity shall otherwise be appropriate considerations in evaluating the best interest of an individual child to be matched with a particular family.

II. STRUCTURE OF THE AGENCY

- A. DCS shall establish child welfare policy and determine statewide standards. DCS shall take all reasonable steps necessary to ensure that statewide policies, standards and practices are implemented and maintained in each region of the state and that each region uses uniform forms, data collection, and reporting. Regions retain the right to develop and use forms and data instruments to address issues of local concern.

MAINTENANCE.

III. REPORTING ABUSE AND NEGLECT

- A. DCS's system for receiving, screening and investigating reports of child abuse and neglect for foster children in state custody shall be adequately staffed and all reports of abuse or neglect of class members shall be investigated in the manner and within the time frame provided by law.
- B. All reports of abuse or neglect of foster children occurring in DCS and private provider placements (whether congregate care or resource home) shall also be referred to and reviewed by the relevant DCS unit or units responsible for quality assurance and placement and provider oversight, with such referral and review completed within ninety days. The quality assurance unit(s) shall be responsible for ensuring that appropriate corrective action is taken with respect to the placement and/or private provider (including, if appropriate, closing of the placement and/or contract termination), and shall determine whether a pattern of abuse or neglect exists within the placement or the private provider's array of placements that contributed to the abuse and neglect. The results of the reviews required in this section shall be incorporated into the performance based contracting provided by DCS.
- C. The quality assurance division shall ensure that a tracking and reporting process is in place to identify any case in which there have been three or more reports of neglect or abuse concerning a particular caregiver for a particular class member and that all such cases are subject to special administrative reviews.

MAINTENANCE.

IV. REGIONAL SERVICES

- A. Each region shall have available a full range of community-based services to support and preserve families of foster children in state custody, and to enable

children to be reunified with their families safely and as quickly as possible.

B. Each region shall have available or shall develop a full range of community-based family services, which shall be available to:

1. Foster families for whom children have established a significant, beneficial emotional bond and which provide the possibility of long-term stability and permanence, but which are in danger of disrupting without intensive home-based crisis intervention services;

MAINTENANCE.

2. Families to whom children in foster care could be returned safely with the availability of intensive family services for a transition period; and

MAINTENANCE.

3. Adoptive families in danger of disrupting without intensive home-based crisis intervention services.

MAINTENANCE.

V. STAFF QUALIFICATIONS, TRAINING, CASELOADS, AND SUPERVISION

A. All persons applying for positions with DCS or a private provider agency which involve any contact with children shall be required to submit to a criminal records check and a DCS abuse and neglect records screening before beginning training or employment. All DCS and private provider staff are subject to the provisions of DCS administrative policy on Employee Background Checks, which provide specific requirements for finger-printing, background checks, employment and disciplinary action. All DCS staff are also subject to the DCS administrative policy on employee disciplinary actions related to allegations or convictions of criminal acts. This section is not applicable to employees convicted of delinquent offenses.

MAINTENANCE.

B. Educational background requirements for DCS case managers responsible for cases of class members and for private provider staff with comparable responsibilities shall be as follows:

1. Case managers I and II shall have a bachelor's degree, with employment preference given to applicants holding a bachelor's degree in social work or a related behavioral science.

MAINTENANCE.

2. Case managers III shall have at least a bachelor's degree, with employment preference given to applicants holding a bachelor's degree in social work or a related behavioral science, and two years experience in providing child welfare services. A master's degree in social work or a related behavioral science may substitute for one year experience in providing child welfare services.

MAINTENANCE.

3. All case manager supervisors (including team leaders and team coordinators) shall have a minimum of a master's degree in social work or a related behavioral field with a child and family focus (excluding criminal justice) and at least three years experience as a child welfare case worker; however, an additional 2 years of providing child welfare services may substitute for a master's degree.

MAINTENANCE.

- C. Requirements for retention, promotion, and assumption of case responsibilities for DCS case managers responsible for cases of class members and for private provider staff with comparable responsibilities shall be as follows:

1. No case manager shall be promoted until completing a job performance evaluation that includes evaluation of performance of the case management requirements of this agreement. Failure to receive a satisfactory job performance evaluation will result in progressive disciplinary action, up to termination if necessary.

MAINTENANCE.

2. No case manager shall assume any responsibility for a case, except as part of a training caseload, until after completing pre-service training and after passing a skills-based competency test.

MAINTENANCE.

3. Every case manager supervisor shall complete basic supervisor training and pass a skills-based competency assessment geared specifically to child welfare supervision. Such training will begin within two weeks of the supervisor assuming supervisory responsibility and be completed within six months.

MAINTENANCE.

- D. Pre-service and in-service training of DCS case managers responsible for cases of

class members and private provider case managers with comparable responsibilities shall be as follows:

1. A minimum of 160 hours of pre-service training, including instructional and supervised field training;

MAINTENANCE.

2. For non-supervising case managers, a minimum of 40 hours of annual in-service training;

MAINTENANCE.

3. For new supervisors, a minimum of 40 hours of in-service training directed at the supervision of child welfare case workers, to begin within two weeks of assuming supervisory responsibility and to be completed within six months; and

MAINTENANCE.

4. For supervisors, a minimum of 24 hours of in-service training each year.

MAINTENANCE.

- E. DCS shall have a full-time qualified director of training and shall maintain sufficient staffing, budget funds, and other resources to provide comprehensive child welfare training to ensure that all persons responsible for children in the plaintiff class will have sufficient training to permit them to comply with the relevant mandates of this agreement, DCS policy, and reasonable professional standards.

MAINTENANCE.

- F. Prior to contracting with any private provider, DCS will review, approve, and monitor the curriculum for caseworker pre-service and in-service training to assure that general content areas are appropriate to the work being performed by the agency. Where casework activities mirror the duties of the DCS case manager, the curriculum will correspond with DCS pre-service and in-service training.

MAINTENANCE.

- G. The state shall provide stipends and other incentives to support graduate work to enable the state to hire and retain case managers with undergraduate and graduate degrees in social work and related fields. The state will periodically assess whether salary increases are necessary to ensure that Tennessee is competitive

with neighboring states in its compensation for case managers and case manager supervisors.

MAINTENANCE.

- H. The Department shall develop and implement a performance evaluation process which includes an annual assessment of the extent to which case managers and case manager supervisors are handling their case responsibilities consistently with the provisions of this agreement, DCS policy, and reasonable professional standards. The performance evaluation process shall ensure the identification of case managers needing additional training and that appropriate action (including reassignment or termination) is taken with respect to case managers who are not performing at acceptable levels.

MAINTENANCE.

- I. Prior to contracting or renewal with any private provider, the Department will ensure that each private provider agency has implemented an appropriate performance evaluation process to ensure the competency of those staff with responsibilities comparable to DCS case managers.

MAINTENANCE.

- J. A single case manager assigned to a case shall have full responsibility for that case, including working with the child and family and to visit with both for the purposes of assessing and meeting their needs; determining and implementing a permanency plan; supervising, supporting and assuring the stability of the child's placement; and assuring a safe, adequate and well-planned exit from foster care. A DCS case manager shall be assigned to every case. If a private provider is engaged in the case, the DCS and private provider case managers shall collaborate to ensure compliance with this agreement.

MAINTENANCE.

Any DCS case manager responsible for the case of at least one class member, and private provider staff with comparable responsibilities, shall not have case responsibility for more than:

- 15 individual children in DCS custody if the case manager is a case manager I;
- 20 individual children in DCS custody if the case manager is a case manager II or III with no supervisory responsibility; and
- 10 individual children in DCS custody if the case manager III supervises one or two lower level case managers.

MAINTENANCE.

If DCS decides to propose the use of workers carrying a mix of custodial and non-custodial cases, a weighted equivalent caseload standard will be determined in consultation with the TAC.

MAINTENANCE.

K. Supervision by DCS case managers responsible for cases of any class member and private provider staff with comparable responsibilities shall be as follows:

- A case manager IV or team coordinator may supervise up to 5 lower level case managers and shall not carry their own caseloads; and
- A case manager III may supervise up to 4 lower level case managers.

MAINTENANCE.

A case manager III can only be given supervisory responsibility in circumstances in which the caps on supervisory caseloads dictate that an additional case manager IV would have less than a full supervisory case load. No case manager III supervising more than 2 lower level case managers can have a caseload.

MAINTENANCE.

L. When a case manager leaves the agency, his or her cases shall be reassigned within one business day. No cases shall be uncovered at any time. Except in documented emergency situations, or when the case manager leaves without prior notice, all transfers of cases between case managers shall take place after a face-to-face meeting, including the departing and the receiving case managers' supervisors, to discuss the case. The departing case manager shall make every effort to introduce the receiving case manager, in person, to the child and the child's parents.

M. Any region with an annual case worker turnover rate that exceeds 10% in which cases are either uncovered or are being reassigned to workers at the caseload cap, shall maintain a pool of trained workers to assume the caseloads of departing workers.

MAINTENANCE.

N. All documentation of contacts or developments in a child's case shall be added to the child's case file within 30 days. The case files of class members shall contain adequate documentation of the services provided, progress, placement changes, and authorizations of approval for placements, treatment and services.

MAINTENANCE.

O. Any other child care workers employed by any child care facility or private

provider shall have a minimum of a high school diploma, with preference given to those applicants with one year of previous child welfare-related experience.

MAINTENANCE.

VI. PLACEMENT AND SUPERVISION OF CHILDREN

A. Placement Standards and Exceptions

1. All children shall be placed according to the following standards:
 - a. All children shall be placed within their own region or within a 75-mile radius of the home from which the child entered custody, unless (a) the child's needs are so exceptional that they cannot be met by a family or facility within the region, (b) the child needs replacement and the child's permanency goal is to be returned to his parents who at that time reside out of the region, or (c) the child is to be placed with a relative out of the region.

MAINTENANCE.

- b. Children shall not remain in any emergency or temporary facility, including but not limited to emergency shelters, for more than 30 days. Children shall not be placed in more than one such facility within any 12 month period. An exception to the multiple placement limit within any 12-month period may be made (a) for an individual placement episode for a maximum of 5 days for runaways and children facing a direct threat to their safety, or who are a threat to the safety of others, where immediate removal is necessary, or (b) for a single additional placement in a primary treatment center (PTC) for up to a maximum of 15 days, if a child's behavior has changed so significantly that placement for the purposes of assessment is critical for the determination of an appropriate placement.

MAINTENANCE.

- c. Siblings who enter placement at or near the same time shall be placed together, unless (a) doing so is harmful to one or more of the siblings, (b) one of the siblings has such exceptional needs that can only be met in a specialized program or facility, or (c) the size of the sibling group makes such placement impractical notwithstanding diligent efforts to place the group together. These efforts will be documented and maintained in the case file.

MAINTENANCE.

- d. No child shall be placed in a resource home if that placement will result in (a) more than three foster children in the home, (b) more than six children, including the resource family's natural and/or adopted children, in the home, or (c) more than 3 children under the age of 3 in the home; unless either (a) such placement is in the best interests of all the foster children in the home, or (b) the child is part of a sibling group and there are no other children in the home.
- e. No child under six years of age shall be placed in a placement other than a resource home unless the child has exceptional needs which cannot be met in a resource home but which can be met by the congregate care facility in which the child is placed.

MAINTENANCE.

- f. No child shall be placed in a residential treatment center or any other group care setting with a capacity in excess of eight children unless (a) the child's needs can be met in that specific facility and (b) that facility is the least restrictive placement that could meet the child's needs.

MAINTENANCE.

- g. No child in DCS physical or legal custody in foster care shall be placed, by DCS or with knowledge of DCS, in a jail, correctional or detention facility unless such child has been charged with a delinquency charge or unless otherwise placed or ordered by the court. DCS shall work with law enforcement and court officials to ensure that DCS is immediately notified of any child in DCS legal custody who has been placed in a jail, correctional or detention facility.

MAINTENANCE.

- h. DCS shall not place any child determined by a DCS assessment to be at high risk for perpetrating violence or sexual assault in any foster care placement with foster children not so determined.

- i. Children for whom the permanency goal is adoption should, whenever possible, be placed with a family in which adoption is a possibility.

MAINTENANCE.

- j. DCS shall only contract for placements or services with licensed contractors or subcontractors.

MAINTENANCE.

- 2. For provisions VI.A.1.a., b., c., d., e., and f. above, if DCS approves a placement that does not meet the applicable standard, the Regional Administrator shall either:
 - a. Indicate that the placement meets one of the permissible exceptions under the standards and, if so, ensure that the facts supporting that exception are documented in the case file; or
 - b. Indicate that the placement does not meet one of the permissible exceptions, document the reasons that the placement was nevertheless approved, and indicate any further action to be taken with respect to that placement.
- 3. The quality assurance division, using aggregate data and case reviews, shall be responsible for tracking, reporting, and ensuring that appropriate action is taken with respect to placements that do not comply with the placement standards in Section VI.A.1.

B. All children in DCS custody shall receive an assessment, including a medical evaluation and, if indicated, a psychological evaluation, using a standardized assessment protocol. **MAINTENANCE.** The assessment may take place prior to custody, but no later than 30 days after the child comes into custody. As soon as the assessment is completed, the child's placement shall be reevaluated to ensure that it meets the child's needs.

C. All class members shall have access to a reasonable and appropriate education, including special education services, the need for which shall be timely identified. Children shall be placed in community schools whenever possible. ~~**MAINTENANCE.**~~ DCS shall assign a full time educational specialist in each region, and twelve regional lawyers with special expertise in educational issues, to ensure that individual children in DCS custody have access to a reasonable and appropriate education, including special education services, the need for which shall be timely identified. ~~**MAINTENANCE.**~~

MAINTENANCE.

- D. Psychotropic medication shall not be used as a method of discipline or control of a child. When possible, parental consent shall be obtained for the use of medically necessary psychotropic medication. If a parent is unavailable to provide consent, the regional health unit nurse shall review and consent to medically necessary psychotropic medication. Regional health unit nurses shall ensure that each of their consents is appropriately recorded, whether a child is placed in a DCS placement or through a private provider. The Medical Director shall oversee and ensure compliance with the Department's policies regarding psychotropic medications.
- E. An appropriately qualified Medical Director shall be responsible for revising, updating, and monitoring the implementation of policies and procedures surrounding all forms and uses of physical restraint and isolation/seclusion of class members, and shall be authorized to impose corrective actions. All uses of physical restraint in any placement, and all uses of isolation/seclusion in group, residential, or institutional placements, shall be reported to and reviewed by the quality assurance division and made available to the licensing unit and the Medical Director for appropriate action.
- F. DCS shall have a full range of independent living services and shall provide sufficient resources to provide independent living services to all children in the plaintiff class who qualify for them.

MAINTENANCE.

- G. DCS will maintain a child placement and private provider division within its Central Office. ~~MAINTENANCE.~~ This division will provide consultation and technical assistance to regional staff on placement issues so that regional placement support units are able to carefully and appropriately match the child's individual needs to a placement facility or foster family. ~~MAINTENANCE.~~ DCS will maintain regional placement units with sufficient staff, automated information and tracking capabilities, and other resources to ensure that all children requiring placement are placed promptly, appropriately, and in accordance with their needs.

MAINTENANCE.

- H. All children in the plaintiff class shall receive visits from the DCS case manager responsible for their case, whether the child is placed through a program directly run by DCS or through a private provider, as follows:
1. For children in DCS foster homes, worker-child visiting shall mean a face-to-face visit between the child's DCS case manager and the child. Visits may take place in the child's placement, at school if the child is of school age, in the case manager's office, or in another appropriate setting. Visits

shall be made as frequently as is necessary to assure the child's adjustment to the placement, to ensure the child is receiving appropriate treatment and services, and to determine whether the child's needs are being met and service goals are being implemented. All visits shall include a private meeting between the case manager and the child out of the presence of the foster parents or other caregiver, except when the child is an infant. There shall be at least 6 face-to-face visits during the first two months after a child's entrance into custody, and at least 3 of these visits shall take place in the child's placement. Following the first two months after a child's entrance into custody, there shall be at least 2 face-to-face visits each month. One of these two face-to-face visits must take place in the caregiver's home.

2. For children in a foster home or facility operated by a private provider:
 - a. Private provider case worker: DCS shall require and ensure that the private provider case worker visits the child as frequently as necessary to ensure the child's adjustment in placement, to ensure the child is receiving appropriate treatment and services, and to determine that the child's needs are being met and service goals are being implemented. Visits may take place in the child's placement, at school if the child is of school age, in the case manager's office, or in another appropriate setting. Worker-child visiting shall mean a face-to-face visit between the child's private agency case worker and the child. All visits shall include a private meeting between the private provider case worker and the child out of the presence of the foster parents or other caregiver, except when the child is an infant. There shall be at least 6 face-to-face visits during the first two months after a child's entrance into custody in a foster home or facility operated by or under a private contract agency, and at least 3 of these visits shall take place in the child's placement. Following the first two months after a child's entrance into custody, there shall be at least 2 face-to-face visits each month. One of these two face-to-face visits must take place in the caregiver's home.
 - b. DCS case manager: The DCS case manager shall visit each child in a foster home or facility operated by a private provider as frequently as necessary to ensure the child's adjustment to the placement, to ensure the child is receiving appropriate treatment and services, and to determine that the child's needs are being met and service goals are being implemented, but at least once each month. Worker-child visiting shall mean a face-to-face visit between the child's DCS case manager and the child in the child's placement and, except when the child is an infant, shall include a private meeting between the DCS case manager and the child

outside the presence of the foster parents or other caregiver, the facility staff and the private provider case worker. The private provider worker and DCS case manager shall meet face-to-face at least once every three months in order to have substantial discussions with each other, the foster parent(s) or other caretaker, and the child, if age appropriate.

VII. PLANNING FOR CHILDREN: MINIMUM STANDARDS FOR ALL CHILDREN AND YOUTH

- A. DCS shall maintain and update policies and procedures that establish a best practices planning process, as set forth in the Principles of this agreement, for all foster children in DCS custody.

MAINTENANCE.

- B. A trained, full-time or back-up facilitator shall participate in every Initial CFTM and Placement Stability CFTM. The following persons shall be Child and Family Team members as appropriate: (1) private provider agency worker; (2) guardian ad litem (GAL); (3) court appointed special advocate (CASA); (4) resource parents; and (5) the child's parents or other relatives or fictive kin. DCS shall provide reasonable advance notice of CFTMs to the GAL and CASA worker. Any child 12 years old or older shall participate in the meeting, unless extraordinary circumstances exist, and are documented in the case record, as to why the child's participation would be contrary to his or her best interests.
- C. The Department shall begin the process of building a team, assessing, and convening a formal meeting prior to children entering state custody, except when an emergency removal is warranted. In the case of an emergency removal, an Initial CFTM shall be convened no later than seven (7) days after a child enters state custody. Efforts to ensure the parents' participation shall include providing transportation and/or child care and/or a brief rescheduling, and shall be documented in the child's case file.
- D. The Initial Permanency Planning CFTM shall occur within thirty (30) calendar days of a child entering custody. If the parents cannot be located or refuse to meet with the worker, the DCS case manager shall document all efforts made to locate the parents and to ensure that the meeting takes place. All services documented in the record as necessary for the achievement of the permanency goal shall be provided within the time period in which they are needed. Within sixty (60) calendar days of a child entering custody, an individualized, completed and signed permanency plan for that child must be presented to the court. Biological parents shall have the meaningful opportunity to review and sign a completed handwritten or typewritten plan at the conclusion of the Initial Permanency Planning CFTM or before the plan is submitted to the court.
- E. The Department shall convene a Placement Stability CFTM prior to any child or

youth potentially disrupting from a placement while in state custody, or, in the event of an emergency change in placement, as soon as team members can be convened, but in no event later than fifteen (15) days before or after the placement change.

- F. The DCS supervisor assigned to the case shall participate in the Initial CFTM, the Initial Permanency Planning CFTM, and the Discharge Planning CFTM. At minimum, the supervisor will participate in one CFTM every six months for each child on their supervisory caseload. For all other CFTMs, the supervisor shall make a decision about his or her participation based on the complexity of the case; the availability of other supports, such as a full-time or skilled facilitator; and the case manager's experience. DCS shall develop a process for supervisors to review, monitor and validate the results of CFTMs to ensure supervisors remain engaged and responsible for quality casework.
- G. No child shall be assigned a permanency goal of Planned Permanent Living Arrangement (PPLA) unless it is consistent with the January 2008 PPLA Protocol.

MAINTENANCE.

- H. Independent living is no longer used, and shall not be used, as a permanency goal, but rather is used as a service array to enable older youth to transition into independent adult life.

MAINTENANCE.

- I. Children with an initial goal of return home may also have another concurrently planned permanency goal. Record keeping and tracking for any child in the class with more than one concurrently planned permanency goal shall be consistent with a goal of return home until return home is no longer an option.

MAINTENANCE.

- J. The child's DCS case manager and his or her supervisor shall have an ongoing responsibility to assure that the child's permanency goal is appropriate or to change it if it is not, to assure that the child's services and placement are appropriate and are meeting the child's specific needs, to assure that the parents and other appropriate family members are receiving the specific services mandated by the permanency plan and that they are progressing toward the specific objectives identified in the plan, and to assure that any private service providers identified in the plan or with whom the child is in placement are delivering appropriate services.
- K. Whenever the Permanency Plan goal needs to be revised a CFTM shall be convened. The child's permanency plan shall be reviewed and updated at CFTMs

at least every three months. These meetings must be separate and distinct from any court hearings, foster care review board meetings or other judicial or administrative reviews of the child's permanency plan.

- L. DCS shall recommend to the Juvenile Court a 90-day trial home visit for all children for whom a decision is made to return home or to be placed in the custody of a relative, before the child or youth is projected to exit state custody. An exception to this general rule shall be allowed, based on specific findings and the signed certification of the case manager, supervisor and regional administrator for the child, that a shorter trial home visit of no less than 30 days is appropriate to ensure the specific safety and well-being issues involved in the child's case.

MAINTENANCE.

- M. A Discharge Planning CFTM shall be convened within thirty (30) days of a child returning home on trial home visit, exiting custody to a newly created permanent family, or aging out of the system. If exiting custody is determined to be inappropriate, DCS shall make the appropriate application to extend the child's placement in the custody of DCS before the expiration of the trial home visit. Participants in the Discharge Planning CFTM will identify all of the services necessary to address the issues that required removal, to assure the child's continued safety, and to support the child or youth and family and the trial home visit. During any trial home visit, the child's case manager shall visit the child in person at least 3 times in the first month, and twice per month for any remainder of the trial home visit period ordered by the court, and each visit shall occur outside the parent or other caretaker's presence. The case manager shall also contact service providers, and shall visit the school of all school age children at least once each month during the trial home visit period, shall interview the child's teacher, and ascertain the child's progress in school and whether the school placement is appropriate.

VIII. FREEING A CHILD FOR ADOPTION

- A. The process of freeing a child for adoption and seeking and securing an adoptive placement shall begin as soon as adoption becomes the child's permanency goal but in no event later than as required by federal law. The adoption process shall begin immediately for all children for whom a diligent search has failed to locate either parent and for whom no appropriate family member is available to assume custody.
- B. DCS has replaced its process for making legal risk placements with policies and procedures for the "dual licensing" of resource families as foster parents and adoptive parents.

MAINTENANCE.

C. DILIGENT SEARCHES AND CASE REVIEW TIMELINE

1. Diligent searches for parents and relatives of a child placed in state custody shall be conducted and documented according to DCS policy by the DCS case manager prior to the child coming into custody if possible but no later than 30 days after the child comes into custody, and thereafter as needed, but at least within three (3) months from when a child enters custody and again within six (6) months from when a child enters custody.
2. When parents have been indicated for severe abuse, a discussion with the DCS attorney shall take place within 45 days regarding whether to immediately seek to terminate parental rights. The decision shall be documented in the child's case record.
3. Within nine (9) months of a child entering state custody, the permanency plans shall be reviewed with the DCS attorney to accomplish the following:
 - a. If the child is to return home or be placed in the custody of a relative, a timetable for unsupervised visits, trial home visits and hearings to be returned to the parent/relative shall be established.
 - b. If the child is not returning home, a timetable for providing documentation and information to the DCS attorney shall be established in order to file a termination of parental rights petition.
 - c. If the decision to file a TPR has been made, and the child is not in a pre-adoptive home, the case manager along with the members of the Child and Family Team shall continue to search for relatives as placement options.
4. If return home or other permanent placement out of custody (relative or guardianship) without TPR is inappropriate at both 12 and 15 months, a TPR petition shall be filed no later than 15 months after the child is placed in DCS custody, unless there are compelling reasons, which shall be documented on the child's case file, for not doing so.

MAINTENANCE.

5. The following series of time frames related to critical activities in the adoption process shall be followed as set forth in DCS policy:
 - a. Within 90 days of the permanency goal changing to adoption, the DCS attorney shall file the petition to terminate parental rights, unless there is a legal impediment, in which case the petition shall be filed as soon as possible once the legal impediment is resolved.

MAINTENANCE.

- b. DCS shall take all reasonable steps to ensure that the date of the trial court order granting full guardianship shall be within eight (8) months of the filing of the TPR.

MAINTENANCE.

- c. DCS shall take all reasonable steps to ensure that the date of the finalization of the adoption or transfer to permanent guardianship shall be within twelve (12) months of full guardianship.

MAINTENANCE.

- d. All children who have been in custody for 15 months or more with no TPR petition filed shall be reviewed by the Commissioner or his or her designee.

MAINTENANCE.

- 6. A resource parent who has been providing appropriate foster care for a child for 12 months shall have a preference as an adoptive parent for that child, should the child become legally available for adoption.

MAINTENANCE.

D. FINDING OUR CHILDREN UNCONDITIONAL SUPPORTS (FOCUS) TEAMS

- 1. The FOCUS Team will ensure that all children or youth entering full guardianship each month will be reviewed to determine whether or not these children or youth have a permanent family identified and that the needed supports and services are in place to ensure timely permanency.

MAINTENANCE.

- 2. If there is a permanent family identified for the child, there will be an assessment regarding any barriers to permanency. If there are identified barriers to permanency, appropriate referrals will be made to the regions or private provider agency or agencies as may be needed and appropriate. Children and youth with an identified permanent family will be reviewed monthly to assess whether the identified permanent family is still a viable permanency option.

MAINTENANCE.

3. For children and youth without permanent families identified, the following steps will be taken to ensure timely permanency:
 - a. The Child and Family Team will ensure the development and implementation of the child or youth's Individualized Recruitment Plan, which will include time frames, roles, and responsibilities;

MAINTENANCE.

- b. The Child and Family Team will ensure that the child or youth is registered on ADOPT US Kids to help match the child or youth with potential families;

MAINTENANCE.

- c. The Child and Family Team will ensure the use of archeological digs, family searches, interviews and other options to build a team of informal and formal supports to assist in finding permanency.

MAINTENANCE.

4. The FOCUS Team will monitor case progress, provide tracking and outcome data to measure the effectiveness of the FOCUS process in moving children and youth toward permanency, and use aggregate and qualitative data to report on trends that promote and prevent timely permanency for children. This will include reporting and analysis on those children and youth disrupting from placements while in full guardianship.

MAINTENANCE.

- E. DCS shall maintain a system of adoption subsidies and post-adoptive services and provide notice of and facilitate access to those services at the earliest possible time to all potential adoptive families and resource families.

MAINTENANCE.

IX. RESOURCE PARENT RECRUITMENT, RETENTION, AND APPROVAL

- A. DCS shall establish and maintain a statewide, regional and local program of resource parent recruitment. Under Tennessee's dual approval process, both foster and adoptive parents are considered to be resource parents. DCS will ensure the availability of a toll-free phone number in all regions of the state to provide information concerning the availability of adoption information, training, the approval process and children available for adoption.

MAINTENANCE

B. DCS will develop and maintain standards to approve only appropriate resource families. All such approvals will be handled within the regions or by private provider agencies, which shall be adequately staffed and trained.

1. All inquiries from prospective resource parents shall be responded to within 7 days after receipt.

MAINTENANCE.

2. Home studies shall be completed within 90 days of completing the approved training curriculum, unless the applicant defaults or refuses to cooperate.

MAINTENANCE.

3. Identified staff persons will conduct exit interviews with all resource families who voluntarily resign as resource parents, and DCS shall issue annual reports on why resource families leave DCS and what steps are necessary to ensure their retention.

MAINTENANCE.

4. To the extent possible, DCS shall maintain a practice of using existing resource families to recruit and retain new resource families, and shall maintain a statewide and regional support system for resource families.

MAINTENANCE.

5. DCS shall provide adequate and appropriate respite services on a regional basis to resource parents with special needs children.

MAINTENANCE.

C. All resource parent room and board rates (including rates for DCS resource parents, private provider resource parents and certified relatives and kin) will at a minimum meet USDA standard and will be adjusted annually to be no lower than USDA standards for the cost of raising children within this region.

MAINTENANCE.

D. DCS shall provide specialized rates for DCS and private provider resource parents providing services to special needs children. **MAINTENANCE.** DCS shall supply and shall ensure that private providers supply any specialized training necessary for the care of special needs children. DCS also will continue to contract with private providers for medically fragile and therapeutic foster care services. **MAINTENANCE.**

- E. DCS shall schedule resource parent training classes, including individual training as needed, every thirty days in every region at times convenient to prospective resource parents, who shall not receive placement of a child until completing such training. DCS may waive resource parent approval requirements for relatives and kin after completing a home visit and local criminal records check, but relatives and kin must complete all remaining approval requirements within 150 days of placement.

MAINTENANCE.

- F. DCS shall ensure that the pool of resource families is proportionate to the race and ethnicity of the children and families for whom DCS provides placement and services, provided however that individual children shall be placed in resource families without regard to race or ethnicity.

MAINTENANCE.

X. STATEWIDE INFORMATION SYSTEM

- A. DCS shall establish and maintain a statewide computerized information system for all children in DCS custody that is accessible in all regional offices and into which workers shall be able to directly enter data. **MAINTENANCE.** The statewide computerized information system shall ensure data integrity and user accountability. The system shall have the necessary controls to prevent the duplication of data and to reduce the risk of incorrect or invalid data.

MAINTENANCE.

- B. This system shall include uniform data presentation, including but not limited to AFCARS elements from DCS for all children in the plaintiff class. This system shall be audited periodically to ensure the accuracy and validity of the data. This system shall provide an immediately visible “audit trail” to the data base administrators of all information entered, added, deleted or modified, and shall have necessary security to protect data integrity. This system shall be capable of providing system-wide reports.

MAINTENANCE.

- C. An intensive data clean-up process shall ensure the accuracy of all data, including but not limited to data on all individual children in the plaintiff class, in the statewide computerized information system.

MAINTENANCE.

XI. QUALITY ASSURANCE

- A. DCS shall maintain a statewide quality assurance program, which shall be directed by a quality assurance division. The quality assurance division shall assure that, in addition to external case file reviews and monitoring, there is an internal method to perform special administrative case record reviews. The quality assurance division shall track, coordinate, and integrate all DCS quality assurance activities. The quality assurance division shall provide critical attention to the follow-up needed to improve services and outcomes.

MAINTENANCE.

- B. This division shall provide regular reports and shall also conduct specialized case record reviews on issues relevant to this agreement and other issues affecting the care of children.

MAINTENANCE.

- C. The division shall be adequately staffed and shall receive special training to fulfill its responsibilities.

MAINTENANCE.

- D. At a minimum, the quality assurance division shall, once every 12 months, review a statistically significant number of cases from each region. These case file reviews shall include interviews and an independent assessment of the status of children in the plaintiff class. As part of this annual review, the quality assurance division, central office, and other designated staff shall develop a measure of appropriate and professional decision-making concerning the care, protection, supervision, planning and provision of services and permanency for children in the class. This measure shall be utilized in conjunction with the case file reviews to measure DCS's performance.

MAINTENANCE.

- E. The quality assurance division, utilizing aggregate data and case reviews as appropriate, shall be responsible for tracking, reporting and ensuring that appropriate action is taken with respect to the following categories of cases:
1. Children who have experienced three different placements, excluding a return home, within the preceding 12 months.
 2. All cases in which a child has been in more than two shelters or other emergency or temporary placements within the past 12 months, and in all cases in which a child has been in a shelter or other emergency or

temporary placement for more than 30 days.

MAINTENANCE.

3. Children with a permanency goal of return home that has remained in effect for more than 24 months.

MAINTENANCE.

4. Children who have returned home and reentered care more than twice and have a permanency goal to return to that home.

MAINTENANCE.

5. Children with a sole permanency goal of adoption for more than 12 months for whom a petition to terminate parental rights has not been filed.

MAINTENANCE.

6. Children with a sole permanency goal of adoption for more than one year who have not been placed in an adoptive home.

MAINTENANCE.

7. Children more than 60 days in custody who do not have a permanency plan.

MAINTENANCE.

8. Children for whom the permanency goal has not been updated for more than 12 months.

MAINTENANCE.

9. Children who have been in custody for 15 months or more with no TPR petition filed.

MAINTENANCE.

- F. DCS shall implement the recommendations in the Racial Disparity Report set forth in the implementation plan approved by the Court on August 19, 2004.

MAINTENANCE.

- G. The TAC will continue to report on the status of all foster children in DCS custody who entered DCS custody prior to October 1, 1998.

MAINTENANCE.

XII. SUPERVISION OF PRIVATE PROVIDER AGENCIES

- A. All private providers which provide placements or services to class members shall only do so pursuant to annual performance-based contracts.

MAINTENANCE.

- B. DCS shall only contract with those private providers that meet the provisions of this agreement that specifically apply to those agencies and that meet state standards governing the operation of child care facilities. These state standards shall reflect reasonable professional standards. DCS shall not contract with any private provider that has not been licensed by the State to provide placements for children in the plaintiff class.

MAINTENANCE.

- C. DCS shall not contract and shall immediately cease contracting with any program or private provider that gives placement preference by race, ethnicity, or religion.

MAINTENANCE.

- D. Any agency or private provider contracting with DCS shall be prohibited from refusing to accept a child referred by DCS as appropriate for the particular placement or program.

MAINTENANCE.

- E. DCS shall maintain sufficient staff to allow for appropriate monitoring and oversight of private providers. All private providers supplying placements for children in the plaintiff class shall be inspected annually by DCS staff with relevant provider monitoring and oversight responsibilities in an unannounced visit and DCS shall determine in a written report whether the private provider complies with state licensing standards. The units responsible for the various aspects of private provider monitoring and oversight, including the licensing unit, shall collaborate with the DCS quality assurance division and the central office division responsible for child placement and private provider contracts to determine agency compliance with the terms of this agreement.

- F. DCS shall not contract with any private provider, for which any owner, member of the board of directors, or member of the board of trustees also holds any other position that may influence the placements of class members. Such positions include, but are not limited to, juvenile court judges, magistrates, or other court

officers. All future contracts or contract renewals shall contain this policy as a binding term of the contract.

MAINTENANCE

XIII. FINANCIAL DEVELOPMENT

- A. DCS shall develop and implement policies and procedures to maximize funding through Titles IV-B and IV-E of the Adoption Assistance and Child Welfare Act of 1980.

MAINTENANCE.

- B. All funds remitted for children in the plaintiff class to the State of Tennessee by the United States Department of Health and Human Services, as described above, shall be committed exclusively to the provision of services and staff serving class members. It is the intent of the state that dollars committed to DCS for the provision of services and resources to benefit children in the class and children at risk of entering the class shall not be decreased if efforts to maximize federal dollars result in additional federal funding. Nothing in this provision shall reduce the defendants' financial obligations to comply with the terms of this agreement.

MAINTENANCE.

- C. DCS shall maintain an appropriate financial management system capable of ensuring timely and accurate payments to family foster homes, adoptive homes, and private providers.

MAINTENANCE.

XIV. TECHNICAL ASSISTANCE COMMITTEE

- A. A technical assistance committee ("TAC") of no fewer than two and no more than four neutral experts in the child welfare field has been selected to assist the state to implement this agreement. The TAC shall be comprised of Judith Meltzer, Andrew Shookhoff, Paul Vincent and Steven D. Cohen. Should any of the TAC members become unavailable, the remaining TAC members will be authorized, but not required, to select replacements. Appointment of additional TAC members shall require the consent of the parties.
- B. The TAC is to advise DCS on the child welfare policy, management and practice issues delineated in this agreement, as well as other issues which DCS or the TAC agree to consult on, and as set forth in Section XV, act as Monitor.

XV. MONITORING

- A. The TAC shall continue in the role of independent Monitor that will evaluate, monitor and report on performance under the terms of this agreement until this Court's jurisdiction terminates as described in Section XVIII.D. The TAC shall issue reports on performance under this agreement for the twelve-month period from January 1, 2010, through and including December 31, 2010, and for each six-month period thereafter. To inform its reports, the TAC will look first to existing DCS data and reports, and Defendants will provide the TAC all requested information and access to staff within DCS and the Executive Branch as the TAC deems necessary. The TAC is authorized to require DCS to create new reports on the status of implementation of and compliance with this agreement. The TAC shall continue to report on all subject areas that it has previously reported on in this action. The TAC agrees to respect the confidentiality of any documents that are in draft form or are otherwise privileged.
- B. Plaintiffs shall have access from the TAC to all information made available to the TAC, and to all other information necessary to ensure compliance and enforcement of this agreement. If Plaintiffs become aware of information related to possible non-compliance that they wish to investigate, Plaintiffs shall notify the TAC, without any limitation to Plaintiffs' right to access all information necessary to ensure compliance and enforcement of this agreement. Plaintiffs shall not initiate case file reviews unless necessary in connection with a motion for non-compliance or enforcement.
- C. Defendants shall continue to fund the TAC's monitoring and technical assistance functions. The TAC shall exercise final authority over its use and expenditure of monitoring and technical assistance funding.
- D. The TAC, in consultation with the parties, shall determine and describe in each report the specific methodologies, which may include a combination of longitudinal and point-in-time data analysis, it has employed to meet its reporting requirements.

XVI. OUTCOME AND PERFORMANCE MEASURES

A. Child Welfare Outcomes

1. Reunification

At least 80% of children entering care who are reunified with their parents or caregivers at the time of discharge from custody shall be reunified within 12 months of the latest removal date.

Of the remaining children, 75% shall be reunified within 24 months of the latest removal date.

MAINTENANCE.

2. Adoption Finalization

At least 75% of children in full guardianship shall have their adoption finalized or permanent guardianship transferred within 12 months of full guardianship.

MAINTENANCE.

3. Number of placements

At least 90% of children in care shall have had two or fewer placements within the previous 12 months in custody, not including temporary breaks in placement for children who run away or require hospitalization and return to the same placement.

MAINTENANCE.

At least 85% of children in care shall have had two or fewer placements within the previous 24 months in custody, not including temporary breaks in placement for children who run away or require hospitalization and return to the same placement.

MAINTENANCE.

4. Length of time in placement.

At least 75% of the children in placement who entered after October 1, 1998, shall have been in placement for two years or less.

MAINTENANCE.

No more than 17% of the children in placement shall have been in placement for between two and three years.

MAINTENANCE.

No more than 8% of the children in placement shall have been in placement for more than three years.

MAINTENANCE.

5. Reentry into placement

No more than 5% of children who enter care shall reenter within 1 year after a previous discharge.

MAINTENANCE.

6. Achievement measures upon discharge

At least 90% of the children who are discharged from foster care (excluding children on runaway) because they reached the age of 18 shall have at least one of the following apply at the time of discharge: earned a GED; graduated from high school; enrolled in high school, college, alternative approved educational program for special needs children, vocational training; or be employed full time.

B. Performance Indicators / Practice.

1. Parent-child visiting

a. The standard: For children in the plaintiff class with a goal of reunification, parent-child visiting shall mean a face-to-face visit with one or both parents and the child which shall take place for no less than one hour each time (unless the visit is shortened to protect the safety or well-being of the child as documented in the child's case record). The visit shall take place in the child's home if possible or in as homelike a setting as possible, or for longer as otherwise required by the child's permanency plan and reasonable professional standards. This standard does not apply to situations in which there is a court order prohibiting visitation or limiting visitation to less frequently than once every month. The child's case manager may consider the wishes of a child (generally older adolescents) and document in the case file any deviation from usual visitation requirements.

MAINTENANCE.

b. At least 50% of all class members with a goal of reunification shall be visited face-to-face by one or both parents at least twice per month for at least one hour in as home-like a setting as possible, unless there is a court order to the contrary or the case manager has considered and documented the wishes of a child to deviate from this requirement.

MAINTENANCE.

c. For the remaining class members with a goal of reunification who are not visited twice per month, at least 60% shall be visited once a

month in keeping with the standards of the preceding paragraph.

MAINTENANCE.

2. Placing siblings together

At least 85% of all siblings who entered placement during the reporting period shall be placed together, unless doing so is harmful to at least one of the siblings; a sibling has exceptional needs requiring placement in a specialized program or facility; or the size of a sibling group makes such placement impracticable despite diligent efforts to place the group together, in which event the case manager shall document immediate efforts to locate a suitable home in which to reunite the siblings.

MAINTENANCE.

3. Sibling visiting

- a. The standard: For children who are not placed in the same home or facility as their siblings there shall be face to face visits between the child and any of his or her sibling(s) who are in the plaintiff class in the most home-like setting available. The visits shall take place in the parent's home, the foster home in which one of the siblings is living, the home of a relative, or the most home-like setting otherwise available and shall occur as frequently as is necessary and appropriate to facilitate sibling relationships but no less frequently than once each month. The visiting shall take place for no less than one hour each time (unless the visit is shortened to protect the safety or well-being of the child as documented in the child's case record), or more as otherwise required by the child's permanency plan and reasonable professional standards. Reasonable exceptions to the frequency requirement shall include cases in which: (1) there is a court order prohibiting visitation or limiting visitation to less frequently than once every month; (2) visits are not in the best interest of one or more of the siblings and the facts supporting that determination are documented in the case file; (3) the case manager for at least one of the siblings has considered the wishes of the sibling (generally older adolescents) and deviates from this standard based on the child's wishes; or (4) a sibling is placed out of state in compliance with the Interstate Compact on the Placement of Children and there is documentation of reasonable efforts by DCS to maintain sibling contact between in-state and out of state siblings, including consideration of placement near border states and efforts to arrange visits and for contact by telephone or other means. All exceptions, and all reasonable steps to be taken to assure that visits take place and

contact is maintained, shall be documented in the case file.

- b. At least 90% of all children in the class in placement who have siblings with whom they are not living shall visit with those siblings at least once a month during the reporting period at issue.

4. Filing a petition to terminate parental rights

At least 70% of children in the class with a sole permanency goal of adoption during the reporting period shall have a petition to terminate parental rights filed within three months of the goal change to adoption.

MAINTENANCE.

Regardless of whether the Department meets or exceeds the standard in the preceding paragraph, 85% of all children with a sole permanency goal of adoption during the reporting period shall have a petition to terminate parental rights filed within 6 months of when the goal was changed to adoption.

MAINTENANCE.

5. Goal of Planned Permanent Living Arrangement

No more than 5% of children in the plaintiff class shall have a goal of Planned Permanent Living Arrangement.

MAINTENANCE.

6. In-region placements

At least 85% of children in the class shall be placed within the region from which they entered placement or within a 75 mile radius of the home from which the child entered custody.

MAINTENANCE.

XVII. MODIFICATION

This agreement may be modified on the consent of the parties or upon appropriate motion filed with the court.

XVIII. ENFORCEMENT, TERMINATION AND EXIT

A. General Principles Guiding Enforcement

1. All of the provisions in this agreement are separately and independently

enforceable. Plaintiffs agree not to seek judicial relief for isolated, technical, or de minimis violations of this agreement, or for violations relating solely to an individual child.

2. Unless otherwise specifically stated, all provisions of this agreement shall apply to all children in the class, regardless of whether they are in a DCS or private provider placement, and regardless of the type of placement.
3. Nothing in this agreement shall limit the right of the plaintiffs to seek from the court appropriate relief to remedy any violations of this agreement.

B. Dispute Resolution

1. With regard to all provisions in this agreement, the following process shall apply:
 - a. Prior to seeking judicial remedies for non-compliance, Plaintiffs shall notify the Defendants in writing if they believe Defendants are out of compliance with any provisions of this agreement.
 - b. The parties shall engage in a 30-day period of good faith negotiations in an effort to resolve the non-compliance issues and shall use the TAC to facilitate this process.
 - c. Plaintiffs may bypass the dispute resolution provisions of this agreement and seek immediate relief in court if Plaintiffs clearly demonstrate that DCS action or inaction in contravention of this agreement caused or is likely to cause an immediate and substantial risk of serious harm to children in the class.

C. Identification of “MAINTENANCE” Provisions

1. No later than thirty (30) days after the TAC issues each monitoring report pursuant to Section XV.A, the parties and the TAC shall meet and confer in an attempt to negotiate and agree upon which provisions in this agreement shall be identified as MAINTENANCE and which shall not. Such identification shall include keeping provisions previously identified as MAINTENANCE with that identification, removing the identification of MAINTENANCE from provisions that were previously identified as MAINTENANCE, and adding the identification of MAINTENANCE to provisions that were previously not identified as MAINTENANCE. The period of negotiation can be extended for one period of 10 days upon the consent of the parties.

2. If the identification of any provision(s) as MAINTENANCE (or not) remains in dispute, the parties shall refer the decision on such identification to the TAC, which shall issue its determination within thirty (30) days of the referral. The TAC's decision shall be final, binding, and unappealable by the parties.
3. Within ninety (90) days after the TAC issues each monitoring report pursuant to Section XV.A., the parties shall file with the court a proposed joint modification to this agreement that includes any revised identification of provisions as MAINTENANCE.

D. Termination and Exit

1. This agreement shall remain in full force and effect until the court issues an order terminating jurisdiction over this action.
2. Once Defendants have achieved and simultaneously sustained MAINTENANCE status on all provisions in Sections II - XIII and XVI for a period of twelve (12) months, Defendants may request that the court issue an order terminating jurisdiction over all provisions of this agreement, except for Section XIX, by filing a Notice of Compliance and Proposed Order Terminating Jurisdiction with the court. If the Monitor's reports show the required achievement and sustained maintenance status, Plaintiffs may only oppose such Notice and Proposed Order in the extraordinary circumstance in which specific evidence establishes such a serious threat to the sustained functioning of DCS that continued jurisdiction is required in the interests of justice.

XIX. EXTERNAL ACCOUNTABILITY REPORTING STRUCTURE

- A. Defendants, with input from the TAC and Plaintiffs' counsel, shall develop an external accountability reporting center (the "Center"). Beginning in January of 2011, DCS will fund and the Center will build the capacity to report publicly on DCS's maintenance of program, policy and practice improvements under this agreement.
- B. After the court terminates jurisdiction pursuant to Section XVIII.D over all provisions of this agreement except for this section, jurisdiction over this section shall continue for a period of eighteen (18) months.
- C. Upon the court's termination of jurisdiction pursuant to Section XVIII.D, the Center will begin its public reporting which shall include, at a minimum, semi-annual reports on DCS performance under the terms of this agreement. DCS will provide the Center all data necessary to its function.
- D. Defendants shall provide the financial resources required for the reasonable operation of the Center for a period of eighteen (18) months after the court

terminates jurisdiction pursuant to Section XVIII.D of all provisions except this provision. Upon expiration of such eighteen (18) month period, Defendants shall file an unopposed Notice of Compliance with this Section XIX and a Proposed Order terminating jurisdiction over this Section.

XX. ATTORNEYS FEES AND EXPENSES

As prevailing parties in this lawsuit, Plaintiffs are entitled to recover and reserve the right to seek reasonable attorneys fees and expenses up to the date of this agreement and for all subsequent activities in this lawsuit to the extent authorized pursuant to 42 U.S.C. §1988.

DATED: _____, 2015
Nashville, TN

SO ORDERED:

HONORABLE TODD J. CAMPBELL, U.S.D.J.

APPROVED FOR ENTRY:

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