

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

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

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

Plaintiffs respectfully provide this Submission addressing the time period covered by the Fourth Triannual Interim Status Report (the "Fourth Status Report") filed by the Department of Children & Family Services ("DCFS" or the "Department"). This Submission provides Plaintiffs' view of the Department's ongoing reform efforts under the current Implementation Plan and, more generally, under the B.H. Consent Decree.

Introduction

As with the last Triannual Report filed in October 2017, neither the Expert Panel nor Plaintiffs have joined in the Department's Status Report. This is a continuing indicator that the Department's current implementation efforts are not going well. The Department again received an extension of time to submit its Triannual Report, but did not provide Plaintiffs or the Experts with any drafts in advance to allow review, comments, and verification of accuracy. The Department told Plaintiffs and the Experts that it would provide the first of the piecemeal drafts to them on Friday, March 2. When nothing had been sent by the morning of March 6, Plaintiffs asked the Department for an update on the status of its drafts. The Department stated that it would send

the first piece that evening and the remainder the following morning, on March 7. Plaintiffs and the Experts notified the Department that one day was not sufficient time to react to a draft report from the Department and the Department confirmed that it would include that fact in its report. The Department did not circulate any drafts prior to filing its report on March 8, the day it was due to the Court. This did not allow time for any meaningful review, comment, and verification by Plaintiffs or the Experts.

Given the Department's failure to share any drafts in advance, the Experts were not able to offer any meaningful input. That theme continues to persist throughout the Department's overall provision of information to the Experts. The Department provides delayed or incomplete information or ignores completely the Experts' repeated requests for responses. The Experts have received a small fraction of the information or updated plans they have requested over the last several months. The Expert Panel's overall assessment is that things are so broken, they do not (and will not) have meaningful consultation to offer on the current projects and B.H. Implementation Plan ("Implementation Plan" or the "Plan") until the parties have clarity (by agreement or court order) that a different path forward is required, and the Department must concede that. Plaintiffs share the Experts' views. We feel that implementation of the Plan is at a crossroads and something drastic must change.

The Department's continued inability to prepare an appropriate draft report for Plaintiffs' and the Experts' prior review and potential joinder prior to the filing deadline to the Court is emblematic of a deeper and more fundamental problem that the Department cannot continue to ignore and leave unaddressed. While the Department has expressed that it wishes to simplify the report to focus on the outputs and outcomes generated, that effort is impeded by the Department's

failure to regularly manage and analyze the initiatives in a thoughtful and cohesive way despite regular internal calls, meetings, and reporting.

To Plaintiffs' grave concern, despite the months that have passed since the last Triannual Report, the Department's leadership appears determined not to change its course back to full support of the Implementation Plan and its initiatives. In many cases, the Department does not communicate information to the Experts and Plaintiffs that is critical to measuring the progress of the initiatives under the Implementation Plan and making course corrections where necessary. While the Department more recently expressed support for the Core Practice Model, which it had already committed to in the Implementation Plan, it has yet to provide the final proposed calendar for its core ingredient—Child and Family Team training and coaching. That effort must not be disrupted as it is critical to the collective efficacy of the Core Practice Model immersion process. It is also critical to maintaining and building buy-in and seeing improvement in the field. The Department also has not confirmed the approval of its proposed schedule by Paul Vincent's Child Welfare Group ("CWG"). The CWG Core Practice Model was hand-picked by the Department and CWG is currently working with the Department on training and coaching.

While the Implementation Plan anticipated that the parties would periodically review the progress made toward reform and negotiate appropriate revisions once actionable evidence became available, the Department has prevented that process. After several months, by failing to respond to Plaintiffs' and the Experts' requests for information, the Department effectively refuses to discuss or present alternatives to failing initiatives, instead letting them wane while the need for service development to help of hundreds of youth in care goes unmet. This impedes—and essentially makes impossible—the achievement of the goals of the Implementation Plan. The Department still has not produced any formal or written proposals for changing the Implementation

Plan to address the fact that the Predictive Analytics and Pay for Success initiatives have been dropped. While Plaintiffs do not object to their being dropped because they were not working, the Department said it would do something in place of those initiatives to address the needs identified by the Experts which prompted the Plan. Plaintiffs have not received commitments in that regard and nothing has not been put in front of the Court for approval. Additionally, the Department has provided no written proposals regarding Therapeutic Foster Care (“TFC”) or the Choices Care Management Entity (“CME”) to analyze why they failed and what will be done to advance their goals of placement and service development. The Department has also shown no signs of progress in respect to using implementation science and the use of NIRN to assist with implementation efforts, despite continuing requests from the Experts in that regard.

The Department’s pattern of behavior over the last several months shows no sign of change. It also impedes the development of solutions to roadblocks by failing to address the Experts’ repeated questions and requests for information. The new administration in the Department has been provided an opportunity to “get on board” with the Court-enforceable Implementation Plan and it has refused. It is time for Court intervention.

Plaintiffs’ Assessment of DCFS’ Reform Efforts Under the Decree

I. Inadequate Collaboration Regarding Transition of Youth to Managed Care.

A critical issue requiring immediate attention is the proposed transition of DCFS youth to managed care. Another month has passed with no direct communication from the Department about the proposed transition of youth in DCFS care to managed care. In February, Plaintiffs informed the Court that in response to Plaintiffs’ requests to receive information about the managed care transition, Acting Director Beverly “B.J.” Walker (“AD Walker”) told Plaintiffs’ counsel that they could attend public meetings and find information online. At a public meeting,

Emily Monk, the DCFS project manager for the managed care transition, listed a B.H. working group as one of several working groups. However, the Department has not invited counsel for Plaintiffs and the Expert Panel to participate in the working group. When Plaintiffs brought up the B.H. working group at a monthly meeting, the Department and AD Walker claimed they had no knowledge of a B.H. working group. At the February Court status, counsel for DCFS stated that Marci White would be on at least one working group. Neither she nor Plaintiffs have received any update on that.

The Department has also failed to follow the Court's instruction regarding its communications about managed care. At the last Court status in February, the Court stated that Plaintiffs should not have to guess why they are not being told information or why information is not being shared regarding the managed care contract. The Court directed the Department to let Plaintiffs know if it feels they are not entitled to certain information so that Plaintiffs can respond and engage in a discussion. However, the Department's "radio silence" on this issue has continued.

Plaintiffs are deeply concerned about the potential impact of managed care on DCFS youth and their continuity of care. Plaintiffs' concern is significantly amplified by the fact that we have heard that for unknown and unexplained reasons, the contract between the selected MCO, IlliniCare, and the Department of Healthcare and Family Services ("HFS") covering youth in care may not be signed on the date anticipated (which was to occur *this month*). While Plaintiffs certainly do not want the contract signed in a rush, Plaintiffs remain in the dark as to the reasons for the delay that apparently will occur. No one from the Department has provided any substantive information regarding the negotiations or anticipated problems with the program roll out to Plaintiffs or the Experts. Plaintiffs have not seen any drafts or been involved in any discussions with the Department or HFS relating to the managed care contract. Plaintiffs do not want to pick

the providers or set the rates. We want to make sure that the process provides continuity of care to youth, that adequate service providers are lined up, and that the service providers can actually operate under this system. Plaintiffs' exclusion from discussions about the critical coordination and planning necessary to ensure services for youth are not diminished or interrupted is both inexplicable and inexcusable. In its FY2019 Budget Briefing, the Department stated that it is "anticipating the renewal of contracts with existing providers to ensure continuity of care even as providers also become contract providers to the new managed care entity, IlliniCare."¹ However, Plaintiffs have no understanding of what planning and activities the Department is engaged in to ensure such continuity of care, like what short and long term alternative plans are in place in the event provider contracts are *not* renewed². Plaintiffs have no assurance that projections regarding the need for particular placements, services, and resources are realistic or that a sufficient complement of providers will be available and willing or able to participate in serving kids' needs throughout the State. Additionally, Plaintiffs are very concerned about how lines of authority will work in respect to decision-making for services that will be provided through the MCO and how the Department intends to pick up its responsibility for providing services that are *not* covered through the MCO.

Plaintiffs also have significant concerns about what is being done to ensure that the MCO properly handles issues like pre-clearance for prescription of psychotropic drugs and difficulties in retaining kids in psychiatric hospitalization beyond medical necessity. Plaintiffs have heard that

¹ Illinois Department of Children & Family Services, *FY 2018 Budget Briefing*, at 22, available at https://www.illinois.gov/dcf/aboutus/newsandreports/Documents/FY19_BudgetBriefing.pdf.

² For example, at one of the public meetings in February, a residential provider informed the Department that their local hospital will not contract with IlliniCare so their kids would need any alternative. DCFS did not have an immediate response for how it planned to deal with that kind of situation, which should be at the forefront of the Department's planning for purposes of continuity of care and fulfilling voids in service area availability.

the working groups responsible for drafting the contract do not include a psychiatrist. Plaintiffs believe that a psychiatrist must participate in the working group and provide knowledge and expertise regarding psychotropic medication and other areas critical to children's behavioral and psychological needs. When Plaintiffs addressed their concern with the Department at their February 5, 2018 monthly meeting, the Department confirmed that there is no psychiatrist in the working groups but said that there is a psychologist with expertise in trauma. In Plaintiffs' view, while that individual's involvement may also be critical to planning, it is not equivalent to the involvement of a psychiatrist by way of expertise. Plaintiffs and the Experts still do not know which other individuals are serving in the working groups or what discussions they have engaged in to ensure minimal disruption of services and continuity of care for youth once the MCO is in place.

Relatedly, Plaintiffs and the Expert Panel are waiting to receive the Department's evaluation of the Choices CME pilot which is critically important to informing the managed care proposal. The CME was designed to provide care coordination services to children with severe and complex behavioral health concerns. It involves care coordination and administration and oversight of a provider network comprised of community-based providers willing to offer services to children and families enrolled in the program. In Plaintiffs' view, this pilot has failed, an outcome which does not bode well for managed care.³ The Department offered to follow up with

³ In their last Triannual Report, the Department anticipated that the managed care program would supersede the CME:

It is anticipated that a Medicaid managed care program will be implemented for the children in DCFS' care beginning as of Fiscal Year 2019; the Choices program will be superseded by that managed care program . . . DCFS and pilot staff continue to plan for ongoing service provision to youth upon the conclusion of the pilot period. Managed care will provide for the needs of the child to the extent there is Medicaid coverage."

lessons learned from the Choices pilot in preparation for the transition to managed care, but has not done so. In its last Triannual Report, the Department stated:

As the transition to Medicaid managed care progresses, the Project Manager plans to convene internal meetings *as well as meetings with the Expert Panel, Plaintiffs' counsel and other DCFS division representatives*. General topics for discussion at those meetings will include decision-making for services to meet the unique needs of child welfare involved families, communication between the MCO and the child welfare staff and the manner in which conflicts will be resolved . . . *The lessons learned from the Choices pilot include the fact that the child welfare staff and MCO need to both know and acknowledge who will do what for a family and that the decisions need to be driven by the family. Other lessons learned include the need for consolidation of activities, guidelines for payment of services, and collaboration.* These areas will also be included in the topics of ongoing discussions as the MCO process continues to roll out.

Dkt. 564 at 23 (emphasis added). No meetings or discussions with the Experts or Plaintiffs' counsel about the transition to managed care or lessons learned from the CME have taken place. The overarching "lessons learned" articulated above by the Department without explanation of *how* the Department will adjust its plans in preparation for the transition to the MCO suggests that no such adjustment is happening. Additionally, the Department has said that it is not renewing the Choices contract. The Department reported recently that the evaluator has been having issues interpreting and working with the Department's data. However, the Department has not formally told Plaintiffs and the Expert Panel that Choices has run its course. Moreover, the Department has not presented an alternative to address the CME goals.

In sum, it is unclear what date the Department has in mind for contract execution or rollout. This change is absolutely critical to the safety and wellbeing of our clients. At the very least, Plaintiffs believe they are entitled to be kept informed about the process. Plaintiffs remain open and willing to discussing the managed care transition with the Department. However, there is no

Dkt. 564 at 19.

reason to believe the Department's unwillingness to share information pursuant to the Implementation Plan and the Consent Decree—or to provide a basis for not sharing—will change. The Department cannot continue to ignore instruction from the Court and leave Plaintiffs and the Experts with no way of evaluating whether it is in fact prepared for managed care.

II. Issues Regarding Residential Monitoring.

The Therapeutic Residential Performance Management Initiative (“TRPMI”) pilot continues to struggle and the Department's inaction is deeply troubling. The TRPMI initiative addresses assessment of the services provided to youth by residential facilities and provides guidance to agencies who are struggling to provide those services at an acceptable level. The youth at residential facilities are among the most difficult to serve. In addition, service shortages impact that population most severely, and attempts to address situations where youth in those settings either need to step down or are in a facility that cannot safely handle their high-end needs are difficult and time-intensive. Frankly, it is one of the most difficult initiatives to run.

Inadequate staffing and resources provided by the Department continue to be a problem in the pilot. The Department has filled the Team Coordinator position in the Southern Region. However, the Department has not filled the Team Coordinator position in the Northern Region. That position has been vacant for several months. The Department blames the delay on labor negotiations and has provided no timeframe for when this issue will be resolved or any plan to make sure the pilot is adequately staffed to be carried out *in the interim* with fidelity to the model. The Experts have told the Department that another alternative is needed in order to implement the pilot fully in the Northern Region and asked the Department to provide an alternative plan for addressing this staffing need in a more timely manner. The Department has not provided an alternative plan. The Department is flouting its agreement and responsibility to provide appropriate

and sufficient resources to the initiatives it committed to undertake in the Implementation Plan. That failure makes impossible a true testing of evidence-based practices that the Department committed to undertake in the Plan. The point of testing evidence-based practices was to be able to draw generalizable conclusions about what is working and what is not. The Department is preventing that from happening.

Several additional months have passed since the TRPMI team (which includes Dr. Alan Morris and Deann Muehlbauer, MPH, both of UIC) sent a detailed communication to the Department identifying significant, systemic issues that were serving as barriers to the TRPMI program implementation. The Department's response continues to be deafening silence and inaction despite the Experts' repeated requests for the Department's formal response to these discharge barriers for youth in TRPMI. The Experts asked for the Department's reactions, proposals, and plans to address the discharge barriers and asked whether the Department would implement specific strategies to begin addressing some of the barriers outlined. The Department has failed to formally respond, instead apparently using its silence and delay as a substitute for a frank statement of disagreement. In Plaintiffs' view, this is a reflection of the Department leadership's continuing pattern of ignoring concerns expressed by the Experts and Plaintiffs and making clear that they do not believe in, agree with, or support certain core principles underlying the Implementation Plan or the initiatives that the Department chose and committed to undertake.

III. Issues Relating to Insufficient Progress Toward Resource Development

The Department has yet to assess or develop the number of appropriate service resources it needs for youth with high-end needs. Subsequently, the problems with youth remaining in psychiatric hospitalization beyond medical necessity, other youth being unable to find

accommodation in residential treatment when needed, and still other youth remaining stuck in residential treatment centers past the point where step down should have occurred all persist.

Therapeutic Foster Care (“TFC”).

One of the Department’s key initiatives to develop more community-based therapeutic foster homes that could serve as “step down” placements for youth “stuck” and ready for discharge from residential placements and/or psychiatric hospitalization continues to fail. The Department cannot continue to claim that it is too soon to make a judgment on the TFC initiative’s success. Plaintiffs have repeatedly expressed their concern about the Department’s inability to modify or replace TFC in its current form. This is not an initiative the Department will be able to roll out statewide, which was the whole point of the pilot program. It is clear that this initiative is not developing needed services and resources for the high-end youth it targeted. And there is nothing that is being done, as far as Plaintiffs can tell, to put something in its place.

Several months ago, the Expert Panel recommended to the Department and Plaintiffs that the Department strongly consider re-tooling or modifying specialized foster care—for which the Department budgets over \$100 million—as a way to better achieve the desired goals underlying the TFC pilot to create more capacity to serve youth with high-end needs. The Department actually explored doing that several years ago and previously had developed a plan for such changes. During the February 5, 2018 monthly meeting, the Expert Panel again asked the Department about its consideration of specialized foster care. The Department said that DCFS Senior Deputy Director of Clinical & Child Services Michael C. Jones was reviewing the documents previously produced on re-tooling specialized foster care and that the Department did not have a position on it yet, despite the fact that multiple individuals involved in the review several years ago are still connected to or working for the Department. The Department stated that it would follow up with

Mr. Jones (with no specific timeframe) and would follow up with Plaintiffs and the Experts. However, the Department stated that any plans to revise the specialized foster care program *would not* be proposed as part of revisions to the Implementation Plan since that program was not part of the original Implementation Plan. We and the Experts strongly disagree. As with other promises from the Department to follow up, the Expert Panel and Plaintiffs have heard nothing.

The Department has also stated that it is considering discontinuation of some aspects of its TFC pilots and may explore piloting a new model. The Department has not committed either way, nor has it come up with a different alternative for developing services, placements, and resources for these youth. Plaintiffs believe that the Department has a higher obligation under the Implementation Plan to address these issues. The parties are already well past the point in time when there should have been substantive work done on a new project and its method for rollout. Plaintiffs and the Experts are concerned that the Department is not engaged in the work required for wider system reform and focuses on specific program proposals to create contracts for more beds *without* thinking about it as part of overall system design.

There also appears to be a fundamental disagreement between Plaintiffs and the Experts on one hand and the Department on the other in respect to the replacement of failing initiatives like TFC. From Plaintiffs' and the Experts' perspective, the Expert Report identifies areas of need and sets out goals for the Department. The Implementation Plan includes initiatives the Department agreed and committed to in order to achieve those goals. Part of the Department's commitment was that if the initiatives did not work, it would try something else. A next effort at addressing the goals of TFC to fill the dearth of resources available to kids with significant needs—whether it is a re-tooling of specialized foster care or something else—should be included in the

Implementation Plan. As far as Plaintiffs and the Experts are concerned, that is part of the Department's effort in achieving the goals identified by the Expert Report and the Plan.

Plaintiffs see no indication that the Department has made any progress in developing necessary step-down resources through TFC or otherwise. For example, at the last Court status, the Department reported that 43 youth were placed outside of the state.⁴ Nor has the Department generated data (to our knowledge) that measures the need for such resources, which is even more concerning in the face of planning required for the proposed managed care transition. Again, Plaintiffs hope that the Department will reexamine its approach to these issues and choose to work cooperatively in partnership with the Experts in order to shift the direction of the Department's current efforts.

IV. Issues Relating to the Core Practice Model and Immersion Sites.

While AD Walker has expressed her strong commitment to the use of the Core Practice Model, the Department's delayed actions and incomplete plans do not fully reflect that commitment. The Department has not provided Plaintiffs and the Expert Panel with a final proposed extended schedule for Child and Family Team training, which is at the center of the Core Practice Model the Department committed to adopting across the state. Additionally, it is unclear whether the Department's revised schedule follows the CWG's recommendations. Plaintiffs are concerned that the Department is not regularly checking in with CWG and following its guidance, which Plaintiffs view as critical to the Department maintaining fidelity to the model. The Experts

⁴ At the February 8, 2018 Court status, the Department asked Plaintiffs to provide a write-up showing the bases for Plaintiffs' concerns regarding youth being placed at out-of-state facilities run by Acadia Healthcare Corporation. B.H. Status Hearing Transcript 7:13-25, 8:1-24, February 8, 2018. On February 22, 2018, Plaintiffs provided a memorandum describing these concerns and articles about investigations into the relevant facilities to the Department. The Department has not responded to that memorandum.

have expressed concern as to whether sufficient resources and time are being committed to coaching workers to become facilitators of Child and Family Teams and whether the Child and Family Teams are actually taking place. These are measures of whether the rubber is meeting the road in respect to implementing the Core Practice Model. Despite requests to be provided with the Department's new proposed schedule for coaching and training and notice of when that schedule has been approved by CWG, Plaintiffs simply have not been informed.

In December, CWG provided several recommendations for completing the work already underway in the immersion sites. The Experts have repeatedly asked the Department to formally respond to whether it agrees with or accepts those recommendations and to provide its alternative proposal(s) for addressing the needs identified in CWG's recommendations. Again, the Department has provided no formal response.

The Department has proposed a modification to the rollout of the Core Practice Model to expand coaching and training by provider agency instead of by county. While Plaintiffs remain open to discussing this idea as long as it is consistent with CWG's guidance on timing and pace, the Department has not yet presented anything in writing describing a plan for what the change would entail and it how would affect the anticipated rollout schedule. Some of the concerns raised by Plaintiffs and the Experts are whether such a rollout would be consistent with the Core Practice Model approach to casework since youth—especially those with high-end needs—might move between agencies within the same county. Plaintiffs and the Experts also raised concerns about how development of the service array might require different funding structures if done by agency rather than geographically. Plaintiffs requested that the Department check with Paul Vincent and CWG regarding the possible change and also provide Plaintiffs with a written proposal and additional documentation regarding the proposed switch. The Department has not confirmed that

it conferred with Paul Vincent or that he has approved the proposed rollout, nor have they provided a written proposal.

Of critical import, the Department must also adequately preview this substantive change to the immersion site process to the federal Department of Health and Human Services Administration for Children and Families Administration on Children Youth and Families Children's Bureau in order to extend its Title IV-E Waiver for out-of-home care funds to develop and build an intensive array of services in the immersion sites. The Department relies in large part on the waiver funds to support and evaluate the immersion site process of more intensive child welfare services for foster youth in the immersion sites. In its budget briefing, the Department noted that it estimates the waiver will produce an additional federal benefit of approximately \$26 million in FY19, *assuming its application is approved for extension* beyond June 30, 2018.⁵ Plaintiffs understand that the waiver extension application is due March 30, 2018. This due date was raised in a monthly meeting with the Department after the Experts raised questions about the status of the IV-E Waiver. At the February 5, 2018 monthly meeting, the Department expressed concern that it would not be able to provide Plaintiffs and the Experts with the level of detail required to approve the change to the Core Practice Model rollout prior to the waiver application deadline. Plaintiffs and the Experts understand and appreciate the time-sensitivity of the waiver application. They told the Department that in the interim, broad statements of commitment with regard to maintaining fidelity to the CWG model and following CWG guidance would be acceptable with the expectation that those promises would be honored by the Department.

⁵ Illinois Department of Children & Family Services, *FY 2018 Budget Briefing*, at 3, available at https://www.illinois.gov/dcfs/aboutus/newsandreports/Documents/FY19_BudgetBriefing.pdf (emphasis added).

However, the Department has not provided Plaintiffs and the Experts with anything in writing that makes those broad commitments.

At the February 5, 2018 monthly meeting, the Department also presented a proposal for a change to the Implementation Plan regarding the Quality Service Review (“QSR”) process, which is part of the Core Practice Model. While Plaintiffs appreciate the Department raising issues for discussion, the Department did not add this as an agenda item prior to the meeting, which would have assisted in preparation for discussion. Additionally, while the decision to make the change was presented from Plaintiffs’ perspective as a fait accompli, the Department did not present any written material to accompany its proposal nor had they discussed with CWG the proposal or related issues like how the QSR change might affect the Core Practice Model rollout, child and family teaming, or the effectiveness of service planning. Plaintiffs do not raise this issue to criticize the Department’s desire to consider alternative proposals to the initiatives in the plan. However, Plaintiffs believe it is a reflection of the compounded problem of 1) the Department’s rush to scale back initiatives in the Implementation Plan without the careful deliberation, thought, and analysis required (including consideration of the rationales for choosing them at the outset); and 2) the Department’s refusal to provide information to the Experts that would enable the Experts to provide the much-needed feedback and guidance in decision-making that prompted their appointment.

V. Mindshare and Information Technology Issues.

The Department originally elected to retain Mindshare to assist in developing various “dashboards” for initiatives in the Implementation Plan. The dashboards were a vehicle for drawing information from multiple databases containing information about youth in care and making that data more readily accessible. The intent was to allow the Department to evaluate the

efficacy of the initiatives it was road-testing under the Implementation Plan, to assess quality of service provision, and to improve its ability to identify the needs of youth in care so that rational planning for program development could occur.

While Plaintiffs received the update that the Mindshare contract has been renewed, we do not know the scope of their work while the Department is developing its proposed replacement for the Mindshare platform using POWERBI and MS-SQL server engines “in house.” The Department has not presented a plan for ensuring the data needed for ongoing review and evaluation of the projects is available until the Department’s alternative platform is up and running. After months of requests from Plaintiffs and the Experts about the status of the Mindshare dashboards contemplated by the Implementation Plan, the Department has not provided information about the dashboards it plans to discontinue or which it plans to modify. Without this information, Plaintiffs and—more importantly—the Experts cannot provide input or guidance about potential consequences of those proposed modifications or course corrections that should be implemented. Again, the Department’s obstruction by silence pervades. A change regarding which dashboards the Department will produce would require a modification of the Implementation Plan, which the Department has not proposed. The Mindshare dashboards are critical to the evaluation of the initiatives in the Plan. Any transition of platforms needs to be done in a planned and thoughtful manner so that there is no lapse of information and IT development. No such transition planning or explanation in respect to the dashboards has been presented to Plaintiffs or the Experts.

VI. Communication and Cooperation.

Despite a lengthy meeting between the parties on February 5, 2018 addressing some of the communication breakdowns between the parties and Experts, the Department continues to either completely disregard information requests from Plaintiffs and the Expert Panel or employs delay

tactics in providing information,⁶ as described throughout this submission. Other times, the information that the Department provides is incomplete or inaccurate. This leaves the Experts without the critical information they need to fulfill their Court-appointed roles in determining whether the Department is progressing in respect to the goals of the Implementation Plan and engaging in the critical analysis necessary to move things forward in a cohesive manner. The Department's repeated lack of response suggests that the Department is not engaged in such an analysis or refuses to cooperate under the terms of the Implementation Plan.

The Department often shuts out Plaintiffs and the Expert Panel from what the Department claims are "internal" discussions, including when Plaintiffs and the Expert Panel request to work with the Department to review drafts and proposals before the Department makes a final decision regarding possible modifications to an initiative or pilot. Plaintiffs and the Experts have no objection to the Department conducting "internal" discussions. But after such discussions take place, there is no reason for the Department to refuse to provide information that the Plaintiffs or the Experts have requested. For example, AD Walker convenes a weekly call on whom she refers to as "stuck kids." Based on Plaintiffs' understanding, these youth are often if not always within the category of youth who are in residential treatment centers or who are psychiatrically hospitalized in need of a "step down" placement—some of the very youth the Expert Report and Implementation Plan identify as being in severe need of an expanded service array. When Marci White asked to participate on the calls, the Department declined. She then asked if she could receive a list of the youth who were the subject of the calls so she could independently track their

⁶ At the November 2017 status hearing before the Court discussing the Third Triannual Report, the parties reported that the Department had agreed to work with Plaintiffs to identify an individual point person to manage and respond to Plaintiffs' requests for data and updates. The Department has not confirmed the identification of such an individual. B.H. Status Hearing Transcript 16:11-22, November 9, 2017.

progress. After several months, the Department has yet to provide Ms. White with that list. The Department has also refused to provide the Experts with proposals for program plans it is considering that are aimed at serving youth with high-end needs so the Experts could review things like estimated costs, sources of funds, implementation timelines, and number of youth to be served. The Department has said it does not plan to send those until it has decided which programs to contract with. Again, the Experts are prevented from raising concerns before a decision is made. In Plaintiffs' view, the Experts are empowered under their appointment by the Court to information they have requested and should be able to give meaningful comment before relevant decisions are finalized. If the Department disagreed with the Experts' recommendations about its proposed course of action, in Plaintiffs' view, the Implementation Plan would require the parties and Experts to meet and confer before taking other steps for relief, if needed. Plaintiffs are deeply concerned that we are meeting with a serious disagreement between the parties about the Plaintiffs' role and the Experts' role in respect to the Implementation Plan and the Plaintiffs' entitlements to be kept informed of things more generally under the B.H. Decree. At the very least, communication is broken.

In light of the broken status of the process, Plaintiffs believe that Court intervention is required. The Department's failure to provide information in a timely way has become a critical impasse and the lack of speed in accepting or rejecting recommendations or coming up with an alternative approach is at a tipping point. Plaintiffs have made an initial proposal to the Department for a process by which the Experts would be able to make more formal requests asking the Department to commit to responding within a two-week timeframe for certain requests. If the Department does not respond within that timeframe, the process would require the Department to report to the Court the reason it could not meet the deadline. With regard to the Experts'

recommendations, the process would require that if the Department receives a recommendation from the Experts under the Court order, the Department must either follow the recommendation or report to the Court within a specific timeframe the reason(s) it does not believe that course of action is necessary. The Experts would be in charge of when they make such requests and recommendations, which would be reserved for appropriate situations. Plaintiffs and the Experts need to know that when the Experts think something is critically important, there is a mechanism for the Experts and the Court to get a prompt response or to be informed of why an answer is not forthcoming.

While this process should not be necessary with an existing Court-ordered Implementation Plan, that Plan now requires amendment. Plaintiffs can no longer attempt cooperation while the Department continues its practice of delayed response (or no response at all), and the Experts are entitled to prompt receipt of information they request. Plaintiffs will ask the Department to confer regarding the above-referenced amendment to the Communication Plan, and Plaintiffs ask the Court to direct that the Department participate in such negotiations.

Additional Pending Motions Under B.H.

a. Plaintiffs' Motion to Enforce the Decree

At the last status hearing, the Court instructed the Parties to meet, confer, and negotiate to see if they could come to an agreement on the issue of investigator caseloads. On February 26, 2018, a meeting on caseloads was held between Plaintiffs' and DCFS counsel, as well as individuals from DCFS Operations Department and Office of Employee Services. At that meeting, the Department presented and described new caseload reporting tools it intended to roll out to the field. The Parties agreed to meet again when the next monthly caseload reports are produced to discuss the Department's progress and the utility of the reporting tools to assist in managing

caseloads within the B.H. requirements. In the next meetings, Plaintiffs also expect to discuss whether the Department is hiring and retaining enough workers, what is happening at the field level, and why assignments are routinely being made in violation of the B.H. Decree even when there appears to be adequate workforce in a particular office.

At the February 26, 2018 meeting, Plaintiffs also notified the Department that immediate support for caseworkers is required in a number of sites across the state⁷ while the Department proceeds with its ongoing recruitment and hiring efforts. While Plaintiffs appreciate that some progress is being made, the overloading of caseworkers in multiple sites across the state that have been over the caseload limits for months is not acceptable and puts the safety of youth at risk. As Plaintiffs told the Department, they will press for emergency relief with the Court if the extreme understaffing in these locations is not addressed in a timely manner. The Department has not provided a response or update about whether or not it will address the extreme understaffing at the locations Plaintiffs identified on February 26. Plaintiffs are hopeful that continued discussions with the Department on this front at least will be productive and, accordingly suggest that this Motion remain pending for the time being.

b. Plaintiffs' Motion to Compel

On February 7, 2018, Plaintiffs filed their motion to compel the Department's full response to Plaintiffs' request for information relating to issues arising under the Decree and specifically relating to intact family services provided by the Department. The Court directed the Department to respond to Plaintiffs' motion on March 14, 2018. In the interim, the Department has not

⁷ In particular, Plaintiffs pointed to Waukegan and Rockford, where caseworkers received up to 21 and 33 cases, respectively, in the month of January. Plaintiffs also noted similar concerns in Emerald and Harvey, though those two locations do not rise to quite the same level as Waukegan and Rockford.

informed Plaintiffs of any intent to alter its position on the subject matter of Plaintiffs' request and Plaintiffs plan to respond to the Department according to the briefing schedule.

Conclusion

The Department's own failure to share critical information or work collaboratively with the Experts and Plaintiffs has thwarted its progress under the Implementation Plan. Plaintiffs hope that with negotiation and amendment to the Communication Plan, there will be a significant shift in the direction of the Department's progress in developing the service array and supports for the many youth in care with high-end needs. Plaintiffs stand ready to provide additional detail at the parties' next appearance before the Court.

Dated: March 8, 2018

Respectfully submitted,

By: /s/ Claire E.W. Stewart

Heidi Dalenberg
Riley Safer Holmes & Cancila LLP
70 W. Madison, Suite 2900
Three First National Plaza
Chicago, IL 60602

Benjamin S. Wolf
Claire E.W. Stewart
Roger Baldwin Foundation of the ACLU, Inc.
150 N. Michigan Ave., Suite 600
Chicago, IL 60601

Charles H.R. Peters
J. Michael Showalter
Thomas A. Rammer II
Schiff Hardin LLP
233 S. Wacker Drive
7100 Willis Tower
Chicago, IL 60606

Attorneys for Plaintiff class

CERTIFICATE OF SERVICE

I, Claire E.W. Stewart, one of the attorneys for the Plaintiff class in the above-captioned litigation, hereby certify that on March 8, 2018, I electronically filed the foregoing **Plaintiffs' Submission Addressing the Fourth Triannual Interim Status Report on the B.H. Implementation Plan and Notice of Filing** with the Clerk of the Court using the CM/ECF system, which will cause an electronic copy to be served on all counsel of record. In addition, I served copies of the foregoing **Plaintiffs' Submission Addressing the Fourth Triannual Interim Status Report on the B.H. Implementation Plan and Notice of Filing** on the following individuals, who are Court-appointed experts in this matter, via email as set forth below:

Marci White, MSW
mwhitedcr@gmail.com

Mark Testa
School of Social Work
University of North Carolina at Chapel Hill
325 Pittsboro St., CB#3550
Chapel Hill, NC 27516
mtesta@unc.edu

/s/ Claire E.W. Stewart _____