

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

Jonathan R., minor, by Next	)	
Friend Sarah DIXON, <i>et al.</i>	)	
Plaintiffs,	)	
	)	
v.	)	No. 3:19-cv-00710-TEJ
	)	
Jim JUSTICE, in his official capacity as the	)	
Governor of West Virginia, <i>et al.</i>	)	
Defendants.	)	

**SETTLEMENT AGREEMENT**

**STATEMENT OF INTENT**

1. The United States District Court for the Southern District of West Virginia (the “Court”) has subject matter jurisdiction over the claims set forth in the Complaint<sup>1</sup> filed in the above-captioned action (the “Action”), personal jurisdiction over parties to the Action, and the authority to approve and enter this agreement (the “Agreement”) as a fair, reasonable and adequate settlement of the Action.

2. The Court shall have continuing jurisdiction to enforce the terms of this Agreement, and any documents incorporated herein, until such time as the parties agree to terminate the Agreement or the Court terminates the Agreement.

3. As set forth above, it is the intent of the parties to this Agreement that the Court retain jurisdiction over this Agreement and that this Agreement shall be enforceable by the Court as provided herein. It is also the intent of the parties that, notwithstanding the preceding sentence, the parties shall apply their best efforts to effectuate the purposes of this Agreement

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<sup>1</sup> Unless otherwise stated herein, all defined terms shall have the meaning as ascribed to them in Plaintiffs’ Complaint. ECF No. 1.

and make every reasonable effort to resolve disputes prior to seeking Court intervention. Plaintiffs agree not to seek relief for isolated or minor violations, or for violations relating solely to an individual child.

I. **Certification of the Action as a Class Action**

4. For the purposes of this Settlement Agreement, the Court certifies the following class:

*All children from whom DHHR has or will have legal responsibility and who are or will be in the legal and physical custody of DHHR.*

5. The Court also certifies the following subclass:

*Children who have or will have physical, intellectual, cognitive, or mental health disabilities (the "ADA Subclass").*

6. For the purposes of safety from harm, the Court also certifies the following subclass:

*All Children who are or will be in kinship placements, or who were in kinship placements ("the "Kinship Subclass").*

II. **Caseloads, Hiring, Retention and Training**

7. Defendants will come into compliance with the below provision on a phased-in basis, with continuing quarterly reductions in caseloads until full compliance is reached, provided that within six (6) months of the date of the Court's approval of this Agreement, 60% of workers shall have caseloads not in excess of 15 cases; within nine (9) of months of the date of this Agreement, 75% of workers shall have caseloads not in excess of 15 cases; and within twelve (12) months of the date of this Agreement; 90% of workers shall have caseloads not in excess of 15 cases.

8. All children who are in DHHR's physical and legal custody shall be counted separately as one case.

*Caseloads for DHHR caseworkers for children in foster care will be from 12-15 individual children at any one time.*

9. All children in families who are not in the physical and legal custody of DHHR shall be counted as one unit, with multiple siblings in the same home counting as one case.

*Caseloads for DHHR caseworkers who are conducting investigations for children residing at home will be 12 families at any one time.*

*Caseloads for DHHR caseworkers for children to whom in-home services are being provided will be 12 families at any one time.*

10. Defendants will come into compliance with the below provisions on a phased-in basis, with continuing quarterly reductions in caseloads until full compliance is reached, provided that within six (6) months of Court's approval of this Agreement, 60% of supervisors shall have caseloads not in excess of 5 cases; within nine (9) of months of the date of this Agreement, 75% of supervisors shall have caseloads not in excess of 5 cases; and within twelve (12) months of the date of this Agreement, 90% of supervisors shall have caseloads not in excess of 5 cases.

*Supervisors of caseworkers shall supervise no more than five caseworkers.*

11. Defendants shall create a process of recruitment of caseworkers, the creation of a career ladder, specific provisions in particular parts of the State with the greatest need, increases in salaries to be competitive with those of bordering states, a completely revised training program and a commitment to a phased-in time period for implementation of these provisions no later than one year after the approval of this Agreement.

12. Defendants shall develop a detailed training program for workers and supervisors no later than one year after the approval of this Agreement.

13. No later than six (6) months after the approval of this Agreement, 75% of all caseworkers shall have at least a bachelor's degree, with a preference for a degree in social work or a related field; no later than twelve (12) months after the approval of this Agreement, 100% of all caseworkers shall have at least a bachelor's degree, with a preference for a degree in social work or a related field.

14. No later than six (6) months after the approval of this Agreement, 50% of all newly hired workers shall not assume any responsibility for a case until the caseworker has completed a four-week training course and passed a competency test. No later than twelve (12) months after the approval of this Agreement, 100% of all newly hired workers shall not assume any responsibility for a case until the caseworker has completed a four-week training course and passed a competency test.

15. No later than twelve (12) months after the approval of this Agreement, all caseworkers hired by DHHR shall undergo an additional two-week training period to shadow a more experienced and trained caseworker.

16. No later than twelve (12) months after the approval of this Agreement, new caseworkers will receive a graduated caseload, starting with no more than half of a full caseload. In addition to the new employee training, all caseworkers and supervisors must receive annual training of at least two weeks.

III. **Placement Stability and Safety**

17. Defendants shall take all reasonable steps to avoid the disruption of an appropriate placement and to ensure placement stability for children.

18. Starting six (6) months after the approval of this Agreement, no child shall be moved from their existing placement to another placement unless DHHR documents in the child's case file on the Families and Children Tracking System ("FACTS"), West Virginia People's Access to Help ("WV PATH"), or any subsequent computer system facts supporting the removal decision.

19. Starting six (6) months after the approval of this Agreement, no child shall be placed in more than one emergency or temporary facility during any one episode of foster care.

20. Starting six (6) months after the approval of this Agreement, no child shall be placed in an emergency or temporary facility for more than 30 days during any one episode in foster care.

21. All reports of abuse or neglect in a foster placement, whether certified or non-certified and including kinship placements, shall be assigned for investigation to the Institutional Investigation Unit, or any successor unit to investigate such complaints. These reports shall be investigated and shall be subject to standards adopted with regard to corrective action plans or any other remedial actions, including a recommendation that the placement be closed, if appropriate.

22. All data regarding the rate of referral, substantiation and corrective action shall be maintained by the Institutional Investigative Unit ("IIU") or its successor unit.

23. The IIU or its successor unit shall complete all investigations of maltreatment within sixty (60) days, including for children in Kinship care. Investigations into reports of physical harm to the child shall be initiated within twenty-four (24) hours, including a private interview with the child, as long as the child is verbal, without the alleged perpetrator present.

Investigations into all other reports of maltreatment shall be initiated within forty-eight (48) hours.

24. Within two years, the maltreatment in care rate shall be reduced to be consistent with federal standards.

**IV. Permanency Practices/Visitation**

25. Caseworkers shall have in-person contacts with children separate from the child's caretaker at least as frequently as once a month in the child's placement and shall document in the child's record the child's well-being and safety based on the contact at least as frequently as once a month. Within six (6) months of the approval of this Agreement, Defendants shall be 75% compliant with this agreement and within twelve (12) months of the approval of this Agreement, Defendants shall be 95% compliant with this provision.

26. Beginning six (6) months after the approval of this Agreement, all children shall have a multi-disciplinary treatment ("MDT") team meeting at least four times a year, and all children shall receive all necessary services documented in their record, for as long as they are in foster care.

27. Within six (6) months of the approval of this Agreement, for all children who have been in foster care for more than two years, DHHR shall identify all barriers to the child's achieving permanence and develop specific steps to remove the barriers during their quarterly MDT team meeting.

28. Within six (6) months of the approval of this Agreement, for 50% of children, the permanency plan for the child shall be either reunification, placement with a relative, adoption, or legal guardianship. Within twelve (12) months of the approval of the Agreement, for 90% of

children, the permanency plan for children shall be either reunification, placement with a relative, adoption, or legal guardianship.

29. Within six (6) months from the approval of the Agreement, Defendants will comply with federal law mandating that all children who have been in foster care for 15 out of the last 22 months have their plan changed from reunification to adoption, unless compelling reasons, documented in the child's record, exist for why doing so is not in the child's best interests or a statutory exception applies. *See* 42 U.S.C. § 675(5)(E). Defendants will regularly review the cases of children with "compelling reasons" to determine whether such reasons continue to exist. Defendant shall document such reviews in the child's record. If no compelling reason exists, a child's case shall be referred to the prosecuting attorney of the appropriate county with jurisdiction to initiate proceedings to terminate the parents' parental rights. DHHR must seek a termination of parental rights against both parents when the non-custodial parent has abandoned the child. This provision applies as long as 42 U.S.C. § 675(5)(E) remains in effect. If the law is changed at any point, the parties shall negotiate a substitution of this provision.

30. Within six (6) months of the approval of this Agreement, all children who are legally free for adoption shall be referred to available resources for adoptive matching no later than one month after they have been legally freed, unless the child is 14 years old or older. For a child 14 years or older, the child shall be consulted with regard to whether the child agrees with this referral, and the child's view shall be taken into account in making the referral. Also, within six (6) months, all children who are legally freed and under 14 years old shall be placed with an adoptive family no later than three months after they are legally freed.

31. The federal standards for permanency shall be complied with, with a period of phased-in increases until permanency rates are consistent with federal standards. Starting within

twelve (12) months of the approval of the Agreement, 50% of permanency rates shall be consistent with federal standards, within two years of the approval of agreement, 75% of permanency rates shall be consistent with federal standards, and within three (3) years of the approval of the agreement, 90% of permanency rates shall be consistent with federal standards.

**V. Physical and Mental Health Assessments and Services**

32. Within twelve (12) months of the approval of the Agreement, 50% of all children shall receive a full and adequate written evaluation of the child's needs within 30 days of entering foster care, which shall be entered into FACTS, WV PATH, or any subsequent computerized information system. Within two (2) years of the approval of the Agreement, 75% of all children shall receive a full and adequate written evaluation of the child's needs within 30 days of entering foster care, which shall be entered into FACTS, WV PATH, or any subsequent computerized information system. Within three (3) years of the approval of the Agreement, 90% of all children shall receive a full and adequate written evaluation of the child's needs within 30 days of entering foster care, which shall be entered into FACTS, WV PATH, or any subsequent computerized information system.

33. Within twelve (12) months of the approval of this Agreement, 50% of all services identified for the child and/or biological parents, in the child's records shall be provided for as long as the child's permanency goal is reunification. Within two (2) years of the approval of this Agreement, 75% of all services identified in the child's record for the child and/or biological parents shall be provided for as long as the child's permanency goal is reunification. Within three (3) years of the approval of this Agreement, 90% of all services identified for the child and/or biological parents in the child's records shall be provided for as long as the child's permanency goal is reunification. If the child's goal is not reunification all services for the child identified in



the child's record shall be provided to her, so long as the child remains in DHHR custody. Any waiting periods for access to these services shall not exceed one month.

34. Starting three (3) months after the approval of this Agreement, all children entering foster care shall receive an initial medical screening within 72 hours of entering foster care. Within 15 days of placement, DHHR shall provide the foster parent or facility staff with the complete foster child information form or other records containing available medical, dental, education and psychological information about the child.

35. Starting three (3) months after the approval of this Agreement, all children entering foster care shall receive an EPSDT or other comprehensive medical exam within 30 days of entering foster care. Children shall receive ongoing medical care throughout the time they are in foster care.

36. DHHR shall conduct a mental health screening of each child within seven days of the child coming into care, defined as when DHHR receives legal and physical custody of the child. For children aged four years and older, the mental health screening will assess both psychological functioning and any developmental delays. For children under the age of four years, the mental health screening will predominately assess developmental delays. Within six (6) months of the approval of this Agreement, Defendants shall be 50% compliant with this provision and within twelve (12) months of the approval of this Agreement, Defendants shall be 90% compliant with this provision.

37. DHHR shall refer any child in need of services for a psychological evaluation within 72 hours of completing the mental health screening. The psychological evaluation shall occur within four weeks of referral. DHHR shall refer the child for any necessary services within 72 hours of receiving a copy of the psychological evaluation and its recommendations. DHHR

will refer children to services closest to the homes in which they are placed. Within six (6) months of the approval of this Agreement, Defendants shall be 50% compliant with this provision and within twelve (12) months of the approval of this Agreement, Defendants shall be 90% compliant with this provision.

38. No child may be placed in a congregate care facility until the mental health screening and psychological evaluation has been completed unless the MDT recommends placement of the child in congregate care. DHHR shall ensure statewide access to appropriate services and treatment to prevent crises and promote stability in the foster family home, kinship care home, or congregate care placement. For any child placed in the legal and physical custody of DHHR, if appropriate services are not available within 60 miles of the child's placement, an MDT meeting shall be held to discuss whether the child should be moved to a different placement closer to appropriate services. Within six (6) months of the approval of this Agreement, Defendants shall be 50% compliant with this provision and within twelve (12) months of the approval of this Agreement, Defendants shall be 90% compliant with this provision.

39. DHHR shall provide funding for both traditional therapy, trauma-informed therapy, and behavioral therapy. The caseworker will work in conjunction with the service provider to develop and/or update a child's treatment plan and make any necessary referrals. The caseworker will maintain a copy of each of the child's treatment plan(s) in FACTS, WV PATH, or any subsequent computer system.

VI. **In-State Congregate Care**

40. Starting one year after the approval of the Settlement Agreement, no child under 10 years of age shall be placed in a congregate care setting unless the child has exceptional needs

that cannot be met in a licensed foster home, even with the provision of sufficient supplementary services.

41. Starting one year after the approval of this Agreement, Children in placement in congregate facilities in-state shall not remain in such a setting for more than one year.

**VII. Placement in Out-of-State Congregate Care Placements**

42. Starting one (1) year after the approval of this Agreement, no child shall be placed in an out-of-state congregate care facility unless and until DHHR has first reviewed the child's needs and the program at the facility and ensured that the program will be appropriate for the child and that review is documented in the record. DHHR may into account when reviewing whether the program will be appropriate, whether placement is no more than fifty (50) miles from the child's home. Planning for the child's return from the out-of-state facility shall begin as soon as the child is placed in the facility. No child shall remain in any out-of-state facility for more than one year.

43. Starting two (2) years after the approval of this Agreement, no more than 20 children shall be placed in out-of-state facilities of any kind. In addition, all reports of maltreatment at an out-of-state facility in which a West Virginia child is placed, including the resolution of such reports, shall be communicated to the child's caseworker and the caseworker's supervisor, regardless of whether the report of maltreatment involves a West Virginia child, and shall be promptly investigated by West Virginia officials. If the report is substantiated for a West Virginia child, the child shall immediately be removed from the facility and, if possible, returned to an appropriate placement in West Virginia.

44. Defendants shall immediately begin the development of support services and in-state placements for those children who might be considered for out-of-state placements.

**VIII. Child Safety in Kinship Placements**

45. Upon the approval of this Agreement, no child shall be placed in a kinship home unless it has been determined by DHHR that the home is safe and appropriate following an adequate investigation documented in the child's records and in accordance with safe and appropriate requirements. A complete evaluation of the potential kinship home shall be completed no later than 30 days after the child has been placed in the home. All efforts shall be made by DHHR to ensure that all applications for kinship certification are timely pursued and completed.

**IX. Timely Investigations and Family Functioning Assessments**

46. Caseworkers must respond to reports of alleged abuse or neglect and make face-to-face contact with the child within 24 hours if an imminent danger is suspected (unless the child is with a protective caregiver), within 72 hours if the allegations involve suspected danger to the physical well-being of the child or serious physical abuse, and within 7 days for all other reports. Within six (6) months from the approval of this Agreement, Defendants shall be in 90% compliance with this provision.

47. Both the response time and reason for that response time shall be documented in FACTS, WV PATH, or any subsequent system. Defendants shall document the date the caseworker made face-to-face contact with the child. Within six (6) months from the approval of this Agreement, Defendants shall be in 90% compliance with this provision.

48. DHHR caseworkers shall complete all Initial Assessments within 30 days of receiving a report of abuse or neglect. Within six (6) months from the approval of this Agreement, Defendants shall be in 90% compliance with this provision.

**X. Involvement of the Inspector General and Foster Care Ombudsman**

49. The Inspector General and Foster Care Ombudsman will further facilitate Defendants' implementation of this Agreement. Defendants will send to the Inspector General, the Foster Care Ombudsman and Plaintiffs all data as requested in Appendix A on a quarterly basis, which the parties agree is required to assess Defendants' compliance with the Agreement.

50. All reasonable requests for additional data and information from either the Inspector General, the Foster Care Ombudsman, or Plaintiffs will be provided and the Inspector General, the Foster Care Ombudsman, or Plaintiffs may conduct quality assurance reviews to assure the reliability of the data or to determine compliance with any of the provisions in this Agreement.

XI. **Dispute Resolution**

51. In the event that Plaintiffs believe that Defendants are not in substantial compliance with an enforceable provision of this Agreement:

- a. Plaintiffs shall notify Defendants in writing of the compliance issue prior to seeking any judicial relief.
- b. Within 10 calendar days of such notification, the State may respond in writing to Plaintiffs regarding the compliance issue raised and what actions, if any, it proposes to take with regard to the alleged issue of non-compliance.
- c. Within 30 calendar days of the original notification, the parties shall meet, unless extended by agreement of the parties. The purpose of the meeting will be for the parties to engage in good-faith negotiations to determine what, if any, actions are necessary to address the issues raised in the dispute. The parties shall engage in negotiations for a period not to exceed 30 calendar days, unless extended by mutual agreement of the parties.

- d. At the conclusion of the dispute resolution, if the parties have not come to a resolution, the parties may seek assistance of a magistrate judge to be assigned by the Court to resolve any issues regarding non-compliance.

52. In the event that the above dispute resolution is unsuccessful and Defendants remain not in substantial compliance with any part of this Agreement, Plaintiffs may seek relief from the Court.

53. In reviewing whether to grant relief, the Court may consider whether Defendants' noncompliance meets the following standard: [TO BE NEGOTIATED BY THE PARTIES].

54. If Defendants' non-compliance meets the above standard, the Court may grant appropriate relief required to ensure Defendants' compliance with the Agreement.

## **XII. Termination and Exit**

55. Defendants may seek a ruling from the Court terminating the Court's jurisdiction over this Agreement based on Defendants demonstrating that they have achieved compliance with this Agreement for a continuous period of at least 24 months.

## **XIII. Attorneys' Fees**

56. The parties will seek to reach agreement on the amount of attorneys' fees and costs to which Plaintiffs are entitled. Plaintiffs will also be entitled to reasonable attorneys' fees and costs prospectively for work related to monitoring and ensuring Defendants' compliance with the Agreement. If the parties are unable to reach resolution, Plaintiffs will submit the matter to the Court for resolution.