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WHATCOM COUNTY  
WASHINGTON

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COLUMBIA LEGAL  
SERVICES

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SEATTLE OFFICE

STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF WHATCOM

J.B., et al.

Plaintiffs,

vs.

STATE OF WASHINGTON, et al.

Defendants.

CLASS ACTION

No. 98-2-01570-1

ORDER ON PLAINTIFFS' MOTION TO  
ENFORCE REVISED SETTLEMENT  
AGREEMENT, and  
DEFENDANTS' MOTIONS TO MODIFY  
OUTCOMES, STRIKE PANEL'S  
DECLARATION, SHORTEN TIME and  
TO FILE OVERLENGTH BRIEF

(JUDGE CHARLES R. SNYDER)

This matter came before the Court upon the Plaintiffs' Motion to Enforce the Revised Settlement and Exit Agreement, and the Defendants' Motions to Modify Outcomes, Strike Panel's Declaration, Shorten Time, and File Overlength Brief.

Plaintiffs filed their Motion to Enforce, memorandum and supporting exhibits on May 2, 2014. In this Motion, Plaintiffs alleged that Defendants failed to achieve a full 18 months of consecutive compliance with Outcomes 1, 2, 8, 9, 10, 11, 18, 20 and 21 by December 31, 2013.

1 The Parties filed a Joint Record on May 2, 2014. Defendants filed a Response brief, a  
2 Motion to Modify Outcomes, and a Motion to Strike Panel's Declaration, and supporting  
3 exhibits on June 9, 2014. Plaintiffs filed a Reply to the Department's Response to their Motion to  
4 Enforce on July 7, 2014, and Replies to the Department's Motions to Modify Outcomes, and to  
5 Strike Panel's Declaration on July 14, 2014, with supporting exhibits. The Department filed a  
6 Surreply to the Plaintiffs' Reply, with exhibits, on July 14, 2014, and the Department also filed a  
7 Reply to Plaintiffs' Response to the Department's Motion to Modify, with exhibits, on July 16,  
8 2014, along with Motions to Shorten Time and for Overlength Brief. Plaintiffs filed a Response  
9 to the Department's Surreply and motions on July 17, 2014, with exhibits.

10 Oral argument took place on July 21, 2014 before the Honorable Charles Snyder.  
11 Plaintiffs were represented by Mary A. Van Cleve and Casey Trupin of Columbia Legal  
12 Services, and William Grimm of the National Center for Youth Law (who was not present). The  
13 State of Washington was represented by the Attorney General's Office through Assistant  
14 Attorneys General Carrie Hoon Wayno and John K. McIlhenny. Also present were: Children's  
15 Administration Assistant Secretary Jennifer Strus, Deputy Assistant Secretary Randy Hart,  
16 Program Manager Diane Inman and Program Coordinator Jessica Pierce.

17 Having heard oral argument of counsel, and fully considered all of the pleadings, the  
18 Court makes the following:

19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

- 20 1. The lawsuit underlying these motions was brought by Plaintiffs against the Department of  
21 Social and Health Services, State of Washington (Defendants), alleging that the  
22  
23

1 Department had violated the substantive due process rights of foster children in its  
2 custody.

3 2. The essence of the lawsuit was about inappropriate and insufficient levels of care and  
4 services being offered and provided to children in foster care.

5 3. The intent of the 2004 Settlement Agreement and the Revised Settlement and Exit  
6 Agreement was to develop metrics that show whether foster children are receiving  
7 appropriate and sufficient services.

8 4. Over the course of the lawsuit, the Department has done remarkable work in many ways,  
9 and in many areas has made great progress, and the children of our state are well served  
10 by that.

11 5. When the Court approved the Revised Settlement and Exit Agreement pursuant to Court  
12 Order dated January 25, 2012, it became a final judgment of this Court.

13 6. The Revised Settlement and Exit Agreement states that the case of *Braam v. State of*  
14 *Washington*,

15 shall be fully dismissed with prejudice on March 31, 2014, unless prior to  
16 that date (1) the parties have entered into a signed agreement to extend  
17 and/or modify this Agreement; (2) the Court has already terminated this  
18 Agreement pursuant to Section V.3; or (3) Plaintiffs have commenced  
19 judicial enforcement proceedings.

20 7. The Plaintiffs commenced judicial enforcement proceedings by filing with this Court, on  
21 December 5, 2013, a Notice of Intent to Enforce Settlement Agreement, pursuant to the  
22 enforcement terms of the Revised Settlement and Exit Agreement (an Amended Notice  
23 was subsequently filed on December 19, 2013).

1 8. The Parties, on more than one occasion, agreed to and bargained for very specific  
2 outcome measurements. The Outcome measures in the Revised Settlement and Exit  
3 Agreement are clear, bargained for, agreed to voluntarily by the Parties, and were  
4 approved by the Court. The Parties knowingly agreed to outcome measures that they  
5 believed could be accomplished, that were reasonable and rational, and that were  
6 outcome measurements they found acceptable.

7 9. The Revised Settlement and Exit Agreement acknowledges that, although the State had  
8 made significant progress and improvements to Washington's child welfare system since  
9 2004, it had not met a number of "key" outcomes. In the Revised Agreement, the number  
10 of outcomes was reduced from 33 to 21. The Revised Settlement and Exit Agreement  
11 requires the Defendants to meet or exceed the "full compliance measure" for each  
12 outcome for 18 consecutive months before that outcome will no longer be monitored or  
13 enforceable.

14 10. The Revised Settlement and Exit Agreement gives the Department some relief from  
15 absolute compliance, which they bargained for. The Department has an obligation to  
16 achieve the full compliance measures for 18 consecutive months.

17 11. The purpose of the Outcome measurements is not only that durable remedies are  
18 implemented, but also that they are carried out on an ongoing, consistent basis.

19 12. The Outcome measurements in the Revised Settlement and Exit Agreement demonstrate  
20 whether the changes that need to be done are being done.

21 13. Civil Rule 60(b)(6) is applicable to evaluating Plaintiffs' and Defendants' motions with  
22 respect to addressing circumstances where it is not equitable to enforce the exact terms of  
23

1 the Revised Settlement and Exit Agreement going forward. Legal principles are the basis  
2 on which the Court makes its determination whether going forward is equitable or not.

3 14. Modifications to the Outcomes should be made only with great caution, and upon a  
4 showing that the underlying law or facts have changed, as set forth by the U.S. Supreme  
5 Court in *Rufo v. Inmates of Suffolk Cnty Jail*, 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed2d  
6 867 (1992).

7 15. Despite not reaching 18 consecutive months of compliance, the Defendants are in full  
8 compliance with Outcome 18, for which they have met or exceeded the full compliance  
9 measure for 18 of the past 24 months. Defendants made a showing of a change in fact  
10 that supports a modification of the Outcome, due to complications in setting up  
11 appointments for medically fragile children that were out of their control, and that, from  
12 that date forward, Defendants' performance has been above the outcome measurement.  
13 Outcome 18 is no longer subject to the jurisdiction of the Court.

14 16. The Defendants are not in full compliance with Outcomes 1, 2, 8, 9, 10, 11, 20 and 21.  
15 Equity requires them to be in compliance.

16 17. As to Outcome 1, this measure requires 90% of the children to receive a health and safety  
17 visit each and every month. A measure that does not require a visit in each and every  
18 calendar month does not meet the requirements of the full compliance measure.

19 "Consistent with the reporting measure required by the federal government" means that  
20 Defendants' performance must not fall below the current federal measure. The  
21 Defendants are not in compliance with Outcome 1, because they have not provided visits  
22 to 90% of the children in each and every month for 18 consecutive months.  
23

1 18. As to Outcomes 2, 8, 9, and 10, Plaintiffs met the burden of showing that Defendants are  
2 not in compliance with the Revised Settlement and Exit Agreement. Enforcement of the  
3 Revised Settlement and Exit Agreement is warranted. Defendants will achieve full  
4 compliance once they have achieved 18 consecutive months of compliance with the full  
5 compliance measures, as required by the Revised Settlement and Exit Agreement.

6 19. As to Outcomes 11, 20 and 21, Defendants failed to make a showing as to a change in  
7 law or fact to support their motion for modification of these outcomes. They failed to  
8 show that there are facts that prohibit them or inhibit them or make it not possible for  
9 them to meet the full compliance measures, or that the full compliance measures cannot  
10 be met because of a change in law. Enforcement of the Revised Settlement and Exit  
11 Agreement is warranted. Defendants will achieve full compliance once they have  
12 achieved 18 consecutive months of compliance with the full compliance measures, as  
13 required by the Revised Settlement and Exit Agreement.

14 20. This Court has current and continuing jurisdiction over the Defendants' performance  
15 under the Revised Settlement and Exit Agreement until there is achievement of eighteen  
16 consecutive months of compliance on each of the Outcomes 1, 2, 8, 9, 10, 11, 20 and 21.

17 21. The Defendants filed a motion to strike the Panel's Declaration (Plaintiffs' Exhibit 14).  
18 The Panel members are experts and their job was to evaluate the Defendants'  
19 performance. The opinion of the Panel is valuable to the Court in the same way a  
20 guardian ad litem's testimony about what is in a child's best interest is valuable to a  
21 court. The declaration of the former panel members is helpful to the Court, but not  
22 determinative of the Court's decision on the legal or factual matters before the Court.  
23

1 22. Plaintiffs did not object to the Defendants' motions to shorten time and for overlength  
2 brief.

3 23. The provisions of the Revised Settlement and Exit Agreement do not need to be changed.

4 24. The mechanism for attorneys' fees in Section X of the Revised Settlement and Exit  
5 Agreement should continue. It has allowed Plaintiffs' counsel to be able to monitor the  
6 case, to come before this Court when needed, and to make sure that the Revised  
7 Settlement and Exit Agreement is being followed.

8 Now therefore, based on the foregoing, the Court hereby

9 **ORDERS THAT:**

- 10 1. Plaintiffs' Motion to Enforce Outcome 18 is denied.
- 11 2. Defendants' Motion to Modify Outcomes 11, 20 and 21 is denied.
- 12 3. The Defendants' Motion to strike the declaration of former panel members is denied.
- 13 4. The Defendants' motions to shorten time and file an overlength brief are granted.
- 14 5. Plaintiffs' Motion to Enforce the Revised Settlement and Exit Agreement as to Outcomes
- 15 1, 2, 8, 9, 10, 11, 20 and 21 is granted. The Court has continuing jurisdiction and
- 16 oversight over the Defendants' performance under the Revised Settlement and Exit
- 17 Agreement until 18 consecutive months of full compliance is achieved for each of the
- 18 Outcomes 1, 2, 8, 9, 10, 11, 20 and 21.
- 19 6. The provisions of the Revised Settlement and Exit Agreement do not need to be changed,
- 20 and will continue to be enforced, subject to the following:
- 21 a. By November 14, 2014, the Defendants will submit a compliance plan to the Court
- 22 and to Plaintiffs, describing their strategies for achieving eighteen months of full
- 23

1 compliance with Outcomes 1, 2, 8, 9, 10, 11, 20 and 21. Plaintiffs will have 30 days  
2 to comment, and, if necessary, either party may ask the Court for a review hearing.

3 b. The Court will hold a review hearing no later than 14 months from the date of the  
4 entry of this Order.

5 c. With the exception of the identification of strategies, Defendants will continue to  
6 submit to Plaintiffs semi-annual performance data to the same extent it provided such  
7 reports and data under §§ VI, VIII.6 and IX.1 of the Revised Settlement and Exit  
8 Agreement.

9 d. The mechanism for awarding attorneys' fees contained in Section X of the Revised  
10 Settlement and Exit Agreement will be continued from January 1, 2014 until the case  
11 is dismissed with prejudice or until further order of the Court.

12 7. The Court reaffirms that, as a matter of law, in any enforcement proceeding alleging a  
13 constitutional violation of the rights of the Plaintiff Class, the applicable "Professional  
14 Standards" are the standards of practice related to the care and treatment of children in  
15 the custody of DSHS that were developed in March 2007 by the Oversight Panel pursuant  
16 to the terms of the 2004 Settlement Agreement.

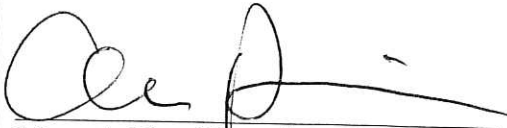
17  
18 DONE IN OPEN COURT this 7 day of November, 2014.

19  
20 **CHARLES R. SNYDER**

21 \_\_\_\_\_  
22 Hon. Charles R. Snyder, Judge  
23 Whatcom County Superior Court



1 PRESENTED BY:

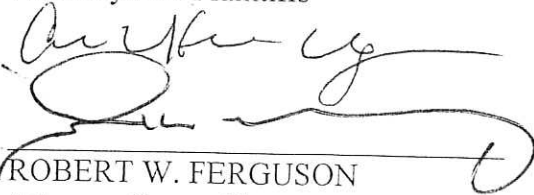
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