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The Honorable Charles R. Snyder

**STATE OF WASHINGTON  
WHATCOM COUNTY SUPERIOR COURT**

JESSICA BRAAM, et al.,  
Plaintiffs,  
v.  
STATE OF WASHINGTON, et al.,  
Defendants.

NO. 98-2-01570-1  
ORDER ON CHILDRENS'  
REVISED MOTION TO ENFORCE  
SETTLEMENT AGREEMENT

This matter came before the Court upon the Motion of Plaintiffs to Enforce a Settlement Agreement. Plaintiffs filed their Motion on or about January 17, 2008. The Motion was continued a number of times until a hearing was held on June 30, 2008. Plaintiffs' counsel was Casey Trupin and Erin Shea of Columbia Legal Services, Timothy C. Farris, Attorney at Law, and William Grimm of the National Center for Youth Law. The State of Washington was represented by the Attorney General's Office through Assistant Attorneys General Steve Hassett, Sheila Huber, and William Clark.

The Court heard oral argument and considered the following pleadings submitted by the parties:

- 1 1. Plaintiffs' Revised Motion to Enforce Settlement Agreement of May 16, 2008, and  
2 attachments;
- 3 2. State's Response to Plaintiffs' Motion to Enforce Settlement Agreement of June 6,  
4 2008, and attachments; and
- 5 3. Plaintiffs' Reply Brief in Support of Motion to Enforce Settlement Agreement of  
6 June 23, 2008, and attachments.  
7

8  
9 Having considered the pleadings and arguments of counsel, the Court **MAKES THE**  
10 **FOLLOWING FINDINGS OF FACT** that pertain to the determination of this Motion:

- 11 1. The Plaintiffs brought this lawsuit against the Department of Social and Health  
12 Services (the Department), State of Washington, alleging that the Department had  
13 violated the substantive due process rights of foster children in its custody.  
14
- 15 2. The Parties entered into a Settlement Agreement on July 31, 2004.
- 16 3. In the Settlement Agreement, the Department agreed to make specific, measurable  
17 and enforceable commitments to improve the state's foster care system.
- 18 4. The Settlement Agreement requires the Department to implement reform in six  
19 specific areas relating to conditions and services for children in foster care and  
20 establishes a panel of experts (the Braam Panel) with the authority to set Action  
21 Steps, Benchmarks, and Outcomes to identify specific, required results to advance  
22 the child welfare system in this State towards the stated goals of the Settlement  
23 Agreement. The Braam Panel also has authority to develop Professional Standards  
24 as set forth in the Settlement Agreement.  
25  
26

- 1 5. The Braam Panel has incorporated the Action Steps, Benchmarks, and Outcomes  
2 into an Implementation Plan. The Department is required to follow the  
3 Implementation Plan adopted by the Braam Panel.  
4
- 5 6. Under the terms of the Settlement Agreement, the Braam Panel is granted the  
6 authority and responsibility to monitor the Department's compliance with the  
7 Action Steps, Benchmarks, and Outcomes of the Implementation Plan and to report  
8 on the Department's progress and make specific findings on compliance in semi-  
9 annual public reports. Under the terms of the Settlement Agreement, Section  
10 V.A.3, "there shall be a rebuttable presumption that the Panel's factual findings are  
11 correct."  
12
- 13 7. The Parties presented the Settlement Agreement to the Court for approval, and the  
14 Court approved the Settlement in an Order Approving the Settlement Agreement  
15 dated November 9, 2004. The Order provides that the Court "retains jurisdiction  
16 for enforcement purposes." This Court has broad authority to enforce its own  
17 orders and the Settlement Agreement, according to its enforcement provisions. The  
18 intent of the Settlement Agreement was to allow the Court to enforce, and if  
19 necessary, monitor compliance with, any portion of the Settlement Agreement over  
20 which the parties to the action have control.  
21
- 22 8. Plaintiffs filed a Motion to Enforce the Settlement Agreement as to four specific  
23 areas identified below in Finding of Fact 9. Plaintiffs' Motion to Enforce is  
24 premised on findings made by the Braam Panel that the Department is not in  
25 compliance with the Settlement Agreement in that it has not provided acceptable  
26

1 compliance plans in three of the areas and has failed to implement an approved  
2 compliance plan in the fourth area.

3 9. The Department is out of compliance with the Settlement Agreement or the terms  
4 of the Braam Panel's Implementation Plan of February 2006, and thus, enforcement  
5 of the Settlement Agreement is warranted pursuant to Section V.B.1 of the  
6 Agreement in the following areas:

- 7
- 8 a. Monthly Visits: The Department has failed to comply with the Action Step  
9 for monthly visits, Section IV.4.C.1 of the Settlement Agreement, which  
10 requires the Department to increase monthly contact between the social  
11 worker and family, child and caregivers. The Department has submitted  
12 four compliance plans to the Panel, all of which have been rejected. In  
13 addition, the Department has failed to meet the monthly visit Benchmark for  
14 Fiscal Year (FY) 2006 annual, as measured by the 2007 Foster Parent and  
15 Relative Caregiver Survey, and has failed to provide an acceptable  
16 compliance plan for the relevant Outcome (Benchmark measurement);
- 17
- 18 b. Caseload Ratio: The Department has failed to comply with the Action Step  
19 for caseload ratios, Section IV.1.C.9 of the Settlement Agreement, which  
20 required the Department to develop a plan by June 30, 2005, for Panel  
21 review and approval to reduce caseloads to COA (Council on Accreditation)  
22 standards. The Department has submitted four compliance plans for the  
23 caseload Action Step to the Panel, all of which have been rejected;
- 24
- 25
- 26

1 c. Sibling Visits and Contacts: The Department has failed to comply with the  
2 Action Step for sibling contacts, Section IV.5.C.1 of the Settlement  
3 Agreement, which requires the Department to increase the quality and  
4 frequency of visits between children and their siblings. The Panel has  
5 previously accepted the Department's compliance plan on this Action Step,  
6 but the Panel found in its fourth Monitoring Report of October 2007 that the  
7 Department had failed to implement the approved compliance plan for this  
8 Action Step within six months, as required; and

9  
10 d. Child Health and Education Tracking (CHET) Screens: The Department  
11 has failed to comply with the Outcome for CHET screens, Section IV.2.A.1  
12 of the Settlement Agreement, which establishes the goal that children in the  
13 custody of the Department shall have an initial physical and mental health  
14 screening within 30 days of entry into care. In its February 2006  
15 Implementation Plan, the Braam Panel established annual Benchmarks to  
16 measure the provision and completion of CHET screens to children in the  
17 class within 30 days of their entry into foster care. The Department has  
18 failed to meet the FY 2006 annual Benchmark measurement for CHET  
19 screens, and the Department has failed to provide an acceptable compliance  
20 plan for the relevant Outcome (Benchmark measurement).  
21  
22

23 10. The Department is not in compliance with the Action Steps and Outcomes  
24 (Benchmark measurements) referenced above in paragraph 9.  
25  
26

1 11. The court makes no findings of non-compliance by the Department pursuant to  
2 Sections V.B.2 or V.B.3 of the Settlement Agreement.

3 12. The Department has made progress and has done many things required by the  
4 Settlement Agreement, and has actively sought funds and worked with the  
5 Governor and the Legislature to get funding and increase caseworker staffing  
6 levels.  
7

8 13. Prior to the filing of the Enforcement Motion, the Department acknowledged non-  
9 compliance with the Action Steps and Benchmarks referenced above in paragraph 9  
10 and identified a lack of funding or resources as one reason for its non-compliance in  
11 compliance plans or other communications. Subsequent to the filing of the  
12 enforcement motion by Plaintiffs, the Legislature provided additional funds in the  
13 2008 supplemental operating budget for accelerated hiring of caseworkers and the  
14 Department notified the Braam Panel and Plaintiffs that, effective September 1,  
15 2008, it will implement policy requiring monthly caseworker visits to all children in  
16 the class. Additional funds were provided for contracts for sibling visits and to hire  
17 twelve additional CHET screeners for the Department.  
18

19 14. The Settlement Agreement, at Section III.5.f, requires the Department to “maintain  
20 and provide the Panel with sufficient information to accurately track the  
21 Department’s compliance with the Outcomes, Benchmarks, and Action Steps” in  
22 the Settlement Agreement. The Department has fallen well short of its obligation to  
23 maintain and provide sufficient data and information necessary for the Braam Panel  
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1 to carry out its duties and is not in compliance with Section III.5.f of the Settlement  
2 Agreement.

3 15. Court enforcement of the relevant sections of the Settlement Agreement and  
4 Implementation Plan are necessary at this time.  
5

6  
7 Based upon the foregoing, the Court hereby **ORDERS**:

- 8 1. Plaintiffs' Motion to Enforce the Settlement Agreement is granted, pursuant to  
9 Section V.B.1 of the Settlement Agreement.  
10  
11 2. The Department is required to demonstrate measurable compliance with the terms  
12 of the Settlement Agreement and/or Implementation Plan in the four areas before  
13 the Court, identified above in paragraph 9.  
14  
15 3. By July 30, 2008, the Department shall provide and the Panel shall either approve  
16 or reject compliance plans in the following areas:  
17 a. Monthly Visits: Action Step and Outcome (Benchmark measurement);  
18 b. Caseloads: Action Step; and  
19 c. CHET Screens: Outcome (Benchmark measurement).  
20  
21 4. Compliance plans in the areas of monthly visits, caseload ratios, and CHET screens  
22 must provide in specific detail how the Department intends to provide data to the  
23 Braam Panel to monitor compliance with the Settlement Agreement and what data  
24 it will provide. This data may come through a number of sources, including but not  
25 limited to: Famlink; CAMIS; or manual tallies.  
26

- 1 5. All compliance plans referenced above in paragraph 3 must contain clear deadlines  
2 for achievement of compliance with the Action Step and/or Benchmark.
- 3 6. If the Panel rejects any of the Department's proposed compliance plans in the three  
4 areas referenced above in paragraph 3, it shall indicate the provisions in such plans  
5 that should be modified, deleted, or added. Upon the Panel's rejection of any  
6 proposed plan, the Department, within 60 days of the Panel's notice of rejection,  
7 shall submit a revised compliance plan that is acceptable to the Panel.
- 8 7. After a compliance plan is approved by the Panel in any of the above referenced  
9 three areas, the Department will have 90 days from the date the plan is accepted by  
10 the Panel to demonstrate substantial improvement towards compliance with the  
11 relevant Action Step and/or Benchmark, using data determined to be reliable by the  
12 Panel.
- 13 8. The Department has 90 days from June 30, 2008, to demonstrate substantial  
14 improvement towards compliance with the previously approved sibling visit  
15 compliance plan, using data determined to be reliable by the Panel.
- 16 9. Starting September 1, 2008, the Department will provide monthly caseworker visits  
17 to children in the class as indicated in its submissions to the Panel and the Court and  
18 in accordance with the Implementation Plan requirements.
- 19 10. Within nine months of the Panel's acceptance of a compliance plan, as required in  
20 areas referenced above in paragraph 3, and by March 31, 2009, where an acceptable  
21 compliance plan already exists (sibling visits and contacts), the Department must  
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1 meet the Benchmark measurement in that area with documented actual, measurable  
2 performance.

3 11. The Department must, as is required by the Settlement Agreement, identify and  
4 continue to seek funding in the next biennial budget and any future budgets for any  
5 additional funding needed to meet these requirements. If funding will be needed to  
6 achieve compliance, the relevant compliance plan must clearly state the need and  
7 contain a plan to request that funding. The Court is not ordering the Department to  
8 secure funding at this point, but instead ordering it to request the funding that is  
9 necessary to comply.  
10

11 12. Either party may note a hearing if the Panel has not accepted a compliance plan or  
12 to address issues relating to the Department's progress toward compliance with the  
13 terms of this order within the time frames set forth above. The Department may  
14 note a hearing to seek modification of the provisions of this Order, including its  
15 deadlines, upon a sufficient showing of need. Plaintiffs may note a hearing to seek  
16 further enforcement of this order if they believe, according to the deadlines set forth  
17 above, that compliance plans as required by this order have not been submitted or  
18 accepted by the Panel or the Department has not demonstrated substantial  
19 improvement towards compliance.  
20  
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22 13. All issues relating to attorneys' fees to be sought under Section IX.3 of the  
23 Settlement Agreement shall be deferred to a future date.  
24

25 DONE IN OPEN COURT this 24 day of Sept, 2008.  
26

CHARLES R. SNYDER

HON. CHARLES R. SNYDER, JUDGE  
WHATCOM COUNTY SUPERIOR COURT

PRESENTED BY:




CASEY TRUPIN, WSBA No. 29287  
TIMOTHY C. FARRIS, WSBA No. 7264  
ERIN K. SHEA, WSBA No. 39418  
BILL GRIMM  
Of Attorneys for Plaintiffs

Approved as to form and for entry;  
Notice of presentation waived:

For the Defendants:

ROBERT M. MCKENNA  
Attorney General



STEPHEN H HASSETT, WSBA No. 15780  
Assistant Attorney General  
SHEILA M HUBER, WSBA No. 8244  
Assistant Attorney General  
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Assistant Attorney General