

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

JEANINE B., by her next friend	:	
Robert Blondis, et al.,	:	CLASS ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
SCOTT WALKER, et al.	:	CIVIL ACTION
	:	NO. 93-C-0547
	:	
Defendants.	:	

**SECOND MODIFIED SETTLEMENT AGREEMENT**

WHEREAS, Plaintiffs brought this lawsuit by class action complaint filed June 1, 1993, seeking declaratory and injunctive relief against the Governor and other defendant officials of the State of Wisconsin and of Milwaukee County, based on alleged system-wide deficiencies in the Milwaukee child welfare system; and

WHEREAS, in response to the lawsuit, the State Defendants implemented a State takeover of the child welfare system in Milwaukee County, effective January 1, 1998, for the purpose of improving the safety and well-being of the plaintiff class of children; and

WHEREAS, Plaintiffs filed a Supplemental Complaint on June 2, 1999, and an Amended Supplemental Complaint on December 1, 2000, alleging continuing deficiencies of the child welfare system in Milwaukee; and

WHEREAS, the State Defendants have achieved needed reforms significantly improving the safety and well-being of the plaintiff class of children in the custody of the Bureau of Milwaukee Child Welfare (BMCW); and

WHEREAS, the State Defendants recognize that this lawsuit has helped achieve those reforms;

NOW THEREFORE, in consideration of the undertakings set forth herein and intending to be legally bound thereby, it is stipulated and agreed to by the Plaintiffs and the Defendants, represented by their undersigned counsel, that all of Plaintiffs' claims for relief which were or could have been asserted in this action shall be fully resolved on the following terms as set forth in this Settlement Agreement.

**I. ENSURING PERMANENCE, SAFETY AND CHILD WELL-BEING**

A. Child welfare outcomes for plaintiff class children and performance measures of child welfare practice improvements will be phased in over three one-year periods beginning January 1, 2003, January 1, 2004 and January 1, 2005, respectively. Those periods are respectively referred to hereinafter as Period 1, Period 2 and Period 3. If defendants are not in compliance with a requirement of this Agreement at the end of Period 3 as acknowledged by defendants or determined by the arbitrator, the Period 3 requirement remains in effect until defendants comply, governed by provisions of this Agreement relating to that requirement unless the parties mutually agree to termination or modification.

B. Permanence

1. The parties will negotiate in good faith as soon as practicable with the Milwaukee County District Attorney to ensure adequate legal representation for the prosecution of termination of parental rights (TPRs) petitions, consistent with ASFA requirements.

2. At least the following percentages of children in BMCW custody reaching 15 of the last 22 months in out-of-home care during the period shall have had a TPR petition filed on their behalf, or an available Adoption and Safe Families Act (ASFA) exception documented in their case, by the end of their fifteenth month in care. In accordance with the court's decision of June 19, 2001, plaintiffs are prohibited from challenging or asking the arbitrator or federal district court to alter defendants' discretionary determination that one or more of ASFA's exceptions apply, where defendants have documented an available exception. Placement with a relative in a particular case and documentation that TPR is not being pursued because of that placement satisfies the ASFA relative placement exception requirement.

Period 1	65%
Period 2	75%
Period 3	90%

3. At least the following percentages of children in BMCW custody for more than 15 of the last 22 months in out-of-home care without a TPR previously filed or an available exception previously documented shall have had a TPR petition filed on their behalf, or an available Adoption and Safe Families Act (ASFA) exception documented in their case by the end of the period. In accordance with the court's decision of June 19, 2001, plaintiffs are prohibited from challenging or asking the arbitrator or federal district court to alter defendants' discretionary determination that one or more of ASFA's exceptions apply, where defendants have documented an available

exception. Placement with a relative in a particular case and documentation that TPR is not being pursued because of that placement satisfies the ASFA relative placement exception requirement.

Period 1	75%
Period 2	85%
Period 3	90%

4. If the State does not obtain a federal Title IV-E waiver allowing subsidized guardianship before January 1, 2003, then no more than the following percentages of children in BMCW out-of-home care within the period shall be in care for more than 24 months. The percentage shall be calculated against a baseline of 5533 children in BMCW out-of-home care.

Period 1	40%
Period 2	35%
Period 3	25%

5. If the State successfully obtains a federal Title IV-E waiver allowing subsidized guardianship before January 1, 2003, then no more than the following percentages of children in BMCW out-of-home care within the period shall be in care for more than 24 months. The percentage shall be calculated against a baseline of 5533 children in BMCW out-of-home care.

Period 1	40%
Period 2	30%
Period 3	20%

6. At least the following percentages of children who are reunified with parents or caretakers at the time of discharge from BMCW out-of-home care within the period shall be reunified within 12 months of entry into care.

Period 1	to be monitored only
Period 2	65%
Period 3	71%

7. At least the following percentage of children for whom an adoption is finalized within the period shall exit BMCW out-of-home care within 24 months of entry into care.

Period 1	20%
Period 2	25%
Period 3	30%

C. Safety

1. No more than the following percentages of children in BMCW custody shall be the victims of substantiated abuse or neglect allegations within the period by a foster parent or staff of a facility required to be licensed.

Period 1	.70%
Period 2	.65%
Period 3	.60%

2. At least the following percentages of reports within the period alleging abuse or neglect of a child in BMCW custody shall be referred to the independent investigation agency for independent investigation within three business days.

Period 1	80%
Period 2	85%
Period 3	90%

3. At least the following percentages of reports referred for independent investigation within the period shall be assigned to an independent investigator by the independent investigation agency within three business days of the independent investigation agency's receipt of the referral from BMCW.

Period 1	80%
Period 2	85%
Period 3	90%

4. The determination required by section 48.981(3)(c)4. of the Wisconsin Statutes must be made within 60 days of receipt of the referral by the independent investigation agency in at least the following percentages of independent investigations referred by BMCW.

Period 1	80%
Period 2	85%
Period 3	90%

D. Child Well-Being

1. BMCW shall ensure that ongoing case managers shall have caseloads not to exceed an average for each BMCW case management Site of 11 families per case-carrying manager. Compliance with this requirement at any given point in time shall be measured by averaging each Site's current monthly caseload average with the corresponding Site averages for the preceding 2 months.
2. The above provision shall be phased in incrementally and shall be fully effective by Jan. 1, 2004, but not enforceable until April 1, 2004. During the phase-in period, commencing January 1, 2003, no Site shall have average caseloads of over 13 families per case-carrying ongoing case manager.
3. By January 1, 2003, and thereafter for the duration of this agreement, BMCW will include a contract holdback provision in its BMCW Site case management contracts for each BMCW case management site that will impose a sufficient holdback on each site that does not meet 90 % compliance with monthly face-to-face visits of children in BMCW custody by their case manager.
4. BMCW will enforce the monthly face-to-face visits holdback provisions in case of noncompliance for the months beginning with July, 2003.
5. The use of shelter placements shall be phased out entirely.
6. By December 31, 2003, and thereafter, no child shall be placed in a shelter.
7. By December 31, 2003, BMCW shall develop special diagnostic/assessment centers for children over 12 years of age who need further assessment in order to determine the appropriate placement. Placement in such centers shall not exceed 30 days, or 60 days if the placement is extended in accordance with applicable state law.

8. The Division of Children and Family Services shall make its best efforts to seek legislative approval of foster parent reimbursement rates consistent with USDA standards.
9. At least the following percentages of children in BMCW custody within the period shall have had three or fewer placements during the previous 36 calendar months of their current episode in BMCW custody. The number of placements will exclude time-limited respite care placements and returns to the same caretaker after an intervening placement during the same out-of-care episode. Those children in BMCW custody through the Wraparound Milwaukee program shall be excluded from this calculation. Initial assessment center placements also will be excluded from this calculation.

Period 1	80%
Period 2	82%
Period 3	90%

## II. NAMED PLAINTIFFS

BMCW will supply Plaintiffs' counsel with quarterly updates of the named plaintiffs' case records until an adoption is finalized, a permanent guardianship order is entered or the child is no longer in BMCW custody. The parties will engage in monthly good faith discussions concerning the appropriateness of the care and treatment of the named plaintiffs until an adoption is finalized, a permanent guardianship order is entered or the child is no longer in BMCW custody, except that defendants agree to the post-adoption services described below. In the event that the parties dispute appropriateness of the services and treatment plans to be provided prior to adoption for the named plaintiffs, the parties will refer the dispute to the arbitrator for a resolution that is binding on the parties. Notwithstanding V.C., before the parties can move the court for termination of the Agreement, the parties must agree, or the arbitrator must determine, that as to any of the named plaintiffs who has not had an adoption finalized or a permanent guardianship order entered, and who is still in BMCW custody, the defendants have substantially complied with the corresponding section below.

- A. **Danny C. and Frank M.** BMCW shall continue to pursue the adoption of Danny C. and Frank M. by their current foster parents, and shall provide individual post-adoption counseling for both boys as long as it is recommended by their therapist and consented to by their foster/adoptive parents.
- B. **Corey H.** BMCW shall continue to pursue the adoption of Corey H. by identifying and approving a qualified adoptive family with whom he can be placed as soon as practicable. All necessary services identified by BMCW will be

provided to continue to support an adoptive placement. Additionally, BMCW shall ensure that he remains eligible for Title XIX medical coverage post-adoption through an adoption subsidy agreement.

- C. **Julie R.** BMCW shall continue to pursue the adoption of Julie R. by her current foster parent, shall continue to make efforts to keep Julie R. placed in a home with her sisters, shall continue to provide mentoring services to her and shall continue to coordinate special education services for her. Additionally, BMCW shall assure that she remains eligible for Title XIX medical coverage post-adoption through an adoption subsidy agreement.
- D. **Diana H.** BMCW shall continue to pursue the adoption of Diana H. by her current foster parents, and shall assure that she remains eligible for Title XIX medical coverage post-adoption through an adoption subsidy agreement.

### III. MONITORING

- A. The BMCW Program Evaluation Managers (PEMs) will conduct a comprehensive review (such as conducted for the second quarter 2000) at least once each period, which, upon completion, shall promptly be made publicly available.
- B. Monitoring of and reporting on all the elements specified in Article I of this Agreement shall be conducted by the BMCW PEMs on a semi-annual basis and, upon completion, shall promptly be made publicly available. At the conclusion of Period 3, monitoring will continue only with regard to Article I requirements that remain unmet and in effect pursuant to I.A.
- C. In addition to reporting on the elements specified in Article I of this Agreement, the PEMS shall also monitor and report on the following elements in their semi-annual monitoring reports. The conducting of reviews and the production of reports on these elements by the PEMS shall constitute compliance with this subsection, and these elements and related findings are not enforceable under this Agreement. The requirement to conduct reviews and produce reports under this section terminates on December 31, 2005.
  - 1. BMCW provision of an initial family assessment for all children within 90 days of their first placement;
  - 2. BMCW provision of an initial medical examination for all children within 5 business days of their first placement, except for children discharged from hospital to placement;

3. BMCW provision of a complete placement information packet regarding a child's health and educational background for a random sample of at least 50 children being placed with a new caretaker;
4. BMCW referral of children in BMCW custody to health care services and utilization of health care services, including regular pediatric medical and dental examinations;
5. BMCW compliance with the federal standard for an initial case plan/permanency plan for all children within 60 days of entering BMCW custody;
6. State compliance with the federal requirement for a judicial or administrative permanency plan review every 6 months, and at least one judicial permanency plan review annually;
7. The percentage of children re-entering BMCW out-of-home care within the period who have re-entered care within 12 months of a prior BMCW out-of-home care episode; and
8. Ongoing case manager turnover rates per BMCW case management Site, identifying the number of ongoing case managers carrying cases at the beginning of the reporting period, the number of ongoing case managers carrying cases who leave for any reason during the reporting period, and the number of ongoing case managers carrying cases added during the period.
9. The monthly caseload averages of children per ongoing case manager carrying cases, for each BMCW case management Site, including the maximum and minimum number of children at the end of the month per manager.

#### **IV. ENFORCEMENT**

- A. If Plaintiffs determine based upon their good faith review of available evidence, that Defendants are out of compliance with any provision of this Agreement, Plaintiffs will notify Defendants in writing accompanied by supporting documentation.
- B. The parties shall engage in a good faith negotiation to reach agreement within 45 days of the receipt by the Defendants of any alleged noncompliance and any necessary corrective actions, including a time period for implementation of such corrective actions, and shall make all reasonable efforts to reach agreement. This



45 day time period can be extended by mutual agreement, or in the absence of agreement, can be extended for one 30 day period by either party.

- C. If no agreement on the issue of noncompliance or necessary corrective action is reached within the timeframe set in IV.B., the dispute will be submitted to an arbitrator agreed upon by the parties for a determination of compliance or non-compliance and appropriate corrective action.
- D. A determination of the arbitrator is binding on the parties. A party wishing to enforce or challenge an arbitrator determination may do so by filing a motion with the court within 30 days for non-compliance, contempt, remedial actions, or modification or rejection of the arbitrator's findings. The parties shall not object to, or seek modification of, the arbitrator's determinations or findings except on grounds that they are clearly erroneous as a matter of fact or law.
- E. If the implementation of corrective actions fails and noncompliance continues, the parties shall re-engage in good faith negotiations under paragraphs A. and B.
- F. Plaintiffs shall not seek any enforcement action, including submission of a dispute to the arbitrator, for the first six months after the signing of this Agreement or July 1, 2003, whichever is later, except that good faith negotiations under A. and B. may commence six months after the signing of this Agreement.
- G. The court shall retain ultimate jurisdiction to enforce this Agreement.
- H. All of the provisions of this Agreement are separately and independently enforceable, except where the Agreement provides that an element or provision is not enforceable.

## **V. TERMINATION AND EXIT**

- A. Defendants shall be determined in compliance with any Article I requirement of this Agreement for any period in which a semi-annual PEM report during the period indicates compliance. Defendants may at any time after July 1, 2004 seek an arbitrator determination that they have met the requirements of any specific provision of Article I of this Agreement and are no longer subject to enforcement of that provision, including a determination that they have met the requirements of a Period 3 percentage standard during the most recent two consecutive six-month intervals. Where plaintiffs acknowledge or the arbitrator determines that defendants have met the requirements of a specific Article I provision during the most recent two consecutive six-month intervals, monitoring of that provision shall continue until this Agreement is terminated, but that provision shall no longer be enforceable under this Agreement.

- B. The arbitrator's determinations under V.A. shall be binding on the parties. A party wishing to enforce or challenge an arbitrator determination may do so by filing a motion with the Court. The parties shall not object to the arbitrator's determinations or findings except on grounds that they are clearly erroneous as a matter of fact or law.
- C. When the arbitrator determines that defendants have complied with all provisions of Article I of this Agreement, the parties shall jointly move the court for termination of the Agreement. This Agreement shall remain in full force and effect until the Court terminates jurisdiction.

## VI. MISCELLANEOUS

- A. The terms of this Agreement apply to children who are or will be in BMCW custody.
- B. Definitions:
  - 1. Out-of-home care shall be defined consistent with the federal ASFA definition of foster care.
  - 2. BMCW custody shall mean physical and/or legal custody.
  - 3. Independent investigations are all investigations of abuse and neglect of children in BMCW custody required by state law to be referred to an independent agency.
  - 4. Ongoing case managers means those persons currently employed by BMCW, and BMCW's vendor agencies, who provide case management services to children in BMCW custody.
  - 5. Shelters shall mean non-foster home placements designed for emergency short-term placements.
- C. Reports and other documentation produced by the PEMS or WISACWIS are presumed regular and correct.
- D. Time shall be computed under sections 990.001(4) and 801.15(1)(a) of the Wisconsin Statutes.
- E. Forthwith upon the Court's approval of the Settlement Agreement, the State of Wisconsin will cause to be transmitted to plaintiffs' attorneys the sum of Nine Hundred and Fifty Thousand Dollars (\$950,000) in full and final settlement of any and all claims plaintiffs may have for attorneys' fees and costs, including any costs

incurred by plaintiffs for the services of expert witnesses, arising from this litigation through the date the Court approves the Settlement Agreement.

FOR PLAINTIFFS:

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4/11/12  
DATE

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4/11/12  
DATE

SO ORDERED:

  
\_\_\_\_\_  
Honorable Rudolph T. Randa  
United States District Judge

May 31, 2012  
DATE