



Defending America's
Abused and Neglected Kids

February 1, 2017

BY EMAIL & FIRST CLASS MAIL

Joette Katz, Commissioner
Department of Children and Families
505 Hudson Street
Hartford, CT 06106

Ann H. Rubin, Esq.
Carmody & Torrance LLP
50 Leavenworth Street
Waterbury, CT 06721

Re: Juan F. v. Malloy

Dear Joette and Ann:

Pursuant to Section III.B of the Revised Monitoring Order in this action (Dkt. 501), Plaintiffs formally assert and hereby provide notice to Defendants of actual and likely non-compliance with multiple provisions of the governing Revised Exit Plan (as modified July 2006, Dkt. 523, annexed hereto as Exhibit A).¹ Plaintiffs reserve the right to seek immediate relief from the Court under section III.C of the Revised Monitor Order while this assertion is pending, if circumstances warrant.

¹ While Plaintiffs dispute that Connecticut General Statute Section 3-125a is applicable to the Proposed 2016 Revised Exit Plan, and the Court has not ruled on that issue (Dkt. 710-1, annexed hereto as Exhibit B), the 2016 Proposed Revised Exit Plan specifically states that, upon its rejection by the General Assembly, which occurred on February 1, 2017, the terms of the 2006 Revised Exit Plan “shall remain effective and fully enforceable under its terms.” Dkt. 520 at p. 1.

As set forth in the DCF Court Monitor's Quarterly Reports filed with the Court, including the most recent Status Report of August 2016 (Dkt. 708-3), Defendants are in *undisputed* non-compliance with the following Outcome Measures and requirements:

- Outcome Measure 1: Commencement of the Investigation/FAR
- Outcome Measure 2: Completion of the Investigation/FAR
- Outcome Measure 3: Treatment Planning
- Outcome Measure 15: Children's Needs Met
- Outcome Measure 17: Worker-Child Visitation (In-Home)
- Outcome Measure 18: Caseload Standards
- Resources: The Defendants shall provide funding and other resources necessary to fully implement the Exit Plan.²

Not only have Defendants conceded their noncompliance with the operative Exit Plan, but they have also agreed with Plaintiffs as to an appropriate remedy to address the issues that continue to plague DCF. That remedy is set forth in the Proposed 2016 Revised Exit Plan and is as follows: (1) adoption of a modified caseload standard that requires both maximum limits on any social worker's caseload in each delineated category *and* an average caseload utilization within each category of worker of 75% of the maximum limit; (2) dedication of specifically delineated service resources to fill undisputed gaps and shortages in community-based services for the class; and (3) no further reductions in the DCF budget, using Public Act 16-2 as a baseline. (*See* Dkt. 710-1 at p. 3 and App. C and D; *see id.* at p. 6.). Additional remedies may include: (4) providing a comprehensive services needs assessment under the direction and subject to the approval of the DCF Court monitor, and a court-ordered schedule to fill service gaps confirmed by that assessment; (5) adopting mandated schedules for full implementation of the caseload remedy and the increased community-based service remedy; (6) utilization of a mandated rapid response reporting system for (a) immediate notification to the DCF Court Monitor of any actual or proposed reductions in DCF programs, staffing (including hiring freezes or slowdown in the filling of vacancies and turnover) and services; (b) rapid reporting to the Court by the DCF Court Monitor of the actual or likely impact of any such reductions on compliance; and (c) an expedited process for court enforcement and imposition of remedies to address any actual or likely noncompliance; and (7) creating a schedule for sanctions, including imposition of civil fines and other penalties for Defendants' continued noncompliance with the 2006 Revised Exit Plan and implementation of remedies going forward. Plaintiffs reserve the right to seek other remedies as may be necessary or appropriate.

Undisputed Noncompliance

Under the controlling decision of the Second Circuit Court of Appeals, compliance in this case is defined as 100% compliance with the obligations set forth in the governing Court orders in this action. *Juan F. v. Weicker*, 37 F.3d 874, 879 (2d Cir. 1994). According to its express terms, the 2006 Revised Exit Plan "delineates the specific outcome measures whose achievement are a prerequisite for termination [of] the Court's jurisdiction over this action." Dkt. 523; *See* revised

² This resource obligation in the governing 2006 Revised Exit Plan (Dkt. 523; *See* revised 2006 Exit Plan at p. 4) was expressly upheld in a decision of the Court. Dkt. 465 at p. 3-4. Thus it remains in full force and effect and binding on Defendants.

2006 Exit Plan at p. 3.³ Accordingly, “Defendants must be in compliance with all of the [22] outcome measures, and in sustained compliance with all of the outcome measures for at least two quarters (six months)” after which “the Court Monitor shall conduct a review of a statistically significant valid sample at 96% confidence level, and such other measurements as are necessary, to determine whether Defendants *are in compliance*.” Dkt. 523; *See* revised 2006 Exit Plan at p.3 (emphasis added). In an effort to expedite final exit of all Outcome Measures, the parties have agreed to a modified “Pre-Certification” process that allows the DCF Court Monitor to conduct its qualitative compliance determination upon a showing of DCF’s sustained compliance for at least 6 months and their request for such review for *any specific* Outcome Measure (rather than waiting until all 22 measures are simultaneously in sustained compliance). (*See* Dkt. 710-1pp. 11-12; Quarterly Report September 2013 (Dkt. 681-3 at pp. 4-5)). The Defendants *have never asserted compliance* sufficient to trigger a Pre-Certification reviews for Outcome Measures 1, 2, 3, 15 or 18, nor were they ever in a position to do so. Defendants did seek Pre-Certification for Outcome Measure 17, but in January 2012, the DCF Court Monitor’s review found noncompliance. (*See* Dkt 710-1 at p. 13; Dkt. 657 at pp. 5-6; 32-53).

Accordingly, Defendants’ noncompliance with Outcome Measures 1, 2, 3 15, 17 and 18 is undisputed. Consistent with this reality, most recently, in her testimony before the Joint Appropriations Committee on January 23, 2017, DCF Commissioner Katz admitted that “we [DCF] are in noncompliance” with the Revised Exit Plan.⁴

As expressly found by the DCF Court Monitor, areas of improvement under the current administration,

. . . are consistently undermined by insufficient staffing, which translates to an overwhelming workload issue. There also continues to be insufficient community resources to address the needs of children and families. The State’s fiscal commitment to improving child welfare case practice, as outlined in the Exit Plan, is not being properly attended to ***and it is compromising the safety and well-being of Connecticut’s most vulnerable population.***

Status Report, January 2016 (Dkt. 702-1, p. 4) (emphasis added). Noncompliance with the resource requirement in the 2006 Revised Exit Plan is thus also severe and undisputed.

³ Just as Defendants are currently in noncompliance, the Court found that Defendants were in noncompliance in 2010, when it denied Defendants’ motion to terminate jurisdiction and dismiss this action. Dkt. 640.

⁴ *Budget committee rejects Malloy’s plan to lock in DCF Spending*. Connecticut Mirror. January 23, 2017. Available at: <http://ctmirror.org/2017/01/23/budget-committee-rejects-malloys-plan-to-lock-in-dcf-spending/>

Explaining the impact of Defendants' noncompliance, the DCF Court Monitor further found,

[A]t-risk children and families are not being seen often enough, service provision is not uniform or sufficient, siblings don't visit with one another regularly, proper assessments do not occur consistently, appropriate planning efforts are hampered, coordination with service providers and community stakeholders is not routine, [and] many of the Quality Assurance efforts . . . are severely minimized.

Dkt. 702-1 at pp. 4-5. Additionally, the DCF Court Monitor found:

As with prior reports, the reported barrier to appropriate service provision was due [to] the result of wait-lists and internal provider issues, client refusal, or the lack of/delayed referrals. As previously reported, interviews and e-mail exchanges with Social Workers and Social Work Supervisors indicates that some percentage of the categories of "lack of referral" or "delayed referral" are due to staff having knowledge that certain services are not readily available. Thus, the number of cases with unmet needs due to waitlists is understated.

Dkt. 702-1 at pp 6-7.

Areas of specific service shortages have been long documented and remain undisputed. As found by the DCF Court Monitor,

As with previous reports . . . services that are not readily available in areas of the state include: in-home services (including the most intensive services), domestic violence services, extended day treatment, substance abuse services, emergency mobile services, supportive housing vouchers, foster and adoptive care resources, and outpatient mental health services.

Dkt. 702-1 at p. 7.⁵

⁵ The undisputed staffing shortage and service deficiencies have been consistently documented in the DCF Court Monitor's reports. *See, e.g.*, Quarterly Report, June 2011 (Dkt. 651-1 at p. 3) ("wait-lists for a variety of critical services such as in-home services, mental health services, substance abuse treatment, domestic violence services, life skills, transitional living programs . . ."); Quarterly Report, January 2012 (Dkt. 657 at p. 4) ("areas of service gap include mental health services, in-home services, substance abuse treatment, domestic violence services, and limited life skills training opportunities"); Quarterly Report, April 2012 (Dkt. 660-1 at p. 3) ("Unavailability of services and service gaps significantly impact the ability to provide timely and appropriate services to children and families. The services include behavioral health services, in-home services, substance abuse treatment services, domestic violence services and limited transition services for adolescents."); Quarterly Report, April 2013 (Dkt. 674-2 at p. 4) ("Wait-lists and the lack of service availability combined with ongoing case management deficits contribute to families and children not receiving the services they require."); Quarterly Report, October 2013 (Dkt. 678-3 at p. 4) ("front-line staffing levels are inadequate given the complexity of cases that now make up the pool of Investigation and Ongoing Service cases that Social Workers have on their caseloads since the implementation of the Differential Response System (DRS)"); Quarterly Report, July

It is disappointing that, after so much progress has been made, the Plaintiffs are compelled to write this letter, which is not intended to be an exhaustive description of Defendants' undisputed noncompliance, nor a description of the impact and harm resulting to the children in the *Juan F.* class as a result of such noncompliance. It is further disappointing that the remedies the parties agreed were necessary to fully implement the governing 2006 Revised Exit Plan were rejected.

Rest assured, the Plaintiffs remain committed to taking whatever steps are necessary to protect the *Juan F.* class and ensure that Defendants make needed improvements for children in the class to achieve full compliance and exit from this action.

Very Truly Yours,



Ira P. Lustbader
Children's Rights

-and-

Steven M. Frederick
Wofsey, Rosen, Kweskin & Kuriansky, LLP

FOR PLAINTIFFS

Enclosures

cc: Hon. Stephan Underhill, U.S.D.J.
Raymond Mancuso, DCF Court Monitor
James Shearin, Esq.

2014 (Dkt. 686-3 at p. 4) (“Additional treatment and services for children and families, including the need to provide ample support services to family-based care providers in the community has not kept pace with the reduction in congregate care. This has resulted in thousands of children and families in need of behavioral health, substance abuse, educational, medical, domestic violence, permanency and other services, struggling to access the limited appropriate services now available.”); Quarterly Report, April 2015 (Dkt. 694 at p. 4) (“As with previous quarters, services noted that are not readily available in areas of the state include: in-home services, domestic violence services, extended day treatment, substance abuse services, emergency mobile services, supportive housing vouchers, foster and adoptive care resources, and outpatient mental health services.”); Quarterly Report, July 2015 (Dkt. 695 at p. 4) (“the freeze in hiring last year resulted in hundreds of workers with caseloads in excess of the maximum standard. Excessive workloads compromise the quality of the Department’s case management services, including the case record documentation”; “In addition, the well documented gaps in service that already existed and have been identified in the recent Mental Health Report, numerous legislative reports, external reports and Court Monitor reviews were further exacerbated”).